

(1996) 09 KAR CK 0049

In the Karnataka High Court

Case No : Civil Revision Petition No. 780 of 1988

Sawan Darbar Ashram, Kengeri, Bangalore and Others

APPELLANT

Vs

Alur Gurubasappa and Others

RESPONDENT

Date of Decision : 05-09-1996

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 92(1)
Karnataka Religious and Charitable Institutions Act, 1927 — Section 40

Citation : (1997) 2 KarLJ 626

Hon'ble Judges : M. F. Saldanha, J

Judgement

1. I have heard the petitioners' learned Advocate and the respondents learned Advocate.

2. This is a case in which a group of persons who claim that they are interested in the welfare and management of the Ashram, have instituted a suit wherein they have applied for leave to sue under Section 92, Civil Procedure Code. They contend that for all intents and purposes, the institution is a constructive Trust and they further contend that according to them, the Trust is not being run properly. They have given certain reasons for the charges levelled by them and they contend therefore, that the Court must frame a scheme and ensure that the properties of the institution are safeguarded and furthermore, that it is properly and correctly administered. The respondents had contested the grant of sanction and they had taken up various contentions, one of which was that the institution is not a mutt or a Trust and secondly, that no case has been made out for the grant of sanction. The learned trial Judge has held that prima facie, it does appear that the institution would come within the ambit of Section 92, Civil Procedure Code and furthermore, that this is a case in which, having regard to the reliefs, sanction ought to be granted. That order is the subject-matter of this civil revision petition.

3. The petitioners' learned Advocate submitted, that his clients have not filed the written statement in the main proceeding and that they have not dealt

elaborately with everything stated in the plaint, but that in their objection statement, they have very clearly made out the case that this is not a situation that qualifies for the grant of sanction. He submits that there is a clear-cut point of law involved in these proceedings namely, the basic issue as to whether assuming everything that the plaintiffs have pointed out is correct, a Court should straightaway grant sanction or whether under the law, it is obligatory for the Court to refer the parties to the concerned authorities who are specifically set up for this purpose and only thereafter, if the need arises, exercise jurisdiction. In this regard, the learned Advocate has submitted that Section 40 of the Karnataka Religious and Charitable Institutions Act, 1927 read with Sections 40-A and 40-B make it very clear that Courts ought not to exercise jurisdiction in the first instance, as an alternate remedy is available to the aggrieved party by way of an approach to the authorities who are specifically set up for purposes of redressal of such grievances. The learned Advocate has placed strong reliance on a recent judgment of this Court in Civil Revision Petition No. 562 of 1990, dated 14-8-1996 wherein my brother Rajaratnam, J., has upheld this position in law by holding that whereas it is true that the jurisdiction of the Civil Courts is not completely ousted, that the scheme of the law is that complaints in respect of mismanagement or negligence etc., must in the first instance be enquired into by the Designated authorities and appropriate action taken by them. The petitioners' learned Advocate submits that in this background, the learned trial Judge was certainly in error in having straight away granted sanction, whereas the correct procedure would have been to direct the plaintiffs to the Designated authorities and not to have entertained the suit.

4. The respondents' learned Advocate has made a strong grievance of the fact that the legal objections which are now sought to be argued, were not canvassed at any stage before the Trial Court or for that matter, even in the revision petition filed before this Court. He submits that this Court should disregard these submissions as the petitioners' learned Advocate is precluded from raising such points for the first time at this late stage in the proceedings. I do concede that the rule of propriety would normally require that the contentions that are now raised ought to have been canvassed before the Trial Court or for that matter, in the present proceedings so that the other side has notice of the contentions and could have dealt with them. That however, is a rule of procedure which in certain instances, particularly when it comes to factual situations, would prescribe a total bar because, it would be like changing the case or introducing new material at a belated stage. A point of law however, can never be precluded particularly since the case law is something that keeps developing and changing over the years and in these circumstances, if the state of the law or a legal submission is sought to be pleaded even at a later stage, the highest that the opposite party can do is to ask for reasonable time to consider it and reply. Beyond this, it can never be excluded from consideration.

5. On merits, the learned Advocate submitted that on the material before the Trial Court, the Karnataka Religious and Charitable Institutions Act could never

apply to this institution. It is further his contention that the type of reliefs asked for are not capable of being granted within the framework of this Act. These contentions are not altogether valid because, Section 2 of the Act defines religious or charitable institutions and the definition is wide enough to encompass an institution of the present type. Furthermore, I find that under Sections 26 and 27, the Designated authorities are empowered with full powers to hold an enquiry and to pass all orders that are necessary for the welfare of the institution and these would include the type of reliefs which the plaintiffs have asked for. In these circumstances, the objections canvassed on behalf of the respondents cannot be upheld. I need to further observe here that the main reason why Section 40 of this Act has been incorporated is in order to provide for speedy and effective remedies in cases where such institutions are sought to be mismanaged. The Legislature was conscious of the pressures on the Courts and the time frame which litigation normally takes and therefore, specifically provided for a situation whereby a domestic authority should be empowered to exercise jurisdiction in the first instance. There is also a deeper reason for it in so far as allegations of misconduct or mismanagement are contested issues and these are required to be enquired into and it is far more feasible for the authorities concerned to hold such an enquiry than for a situation where a judicial forum is burdened with going through that material in a contested proceeding. In the light of those provisions, it is obligatory on the part of an aggrieved party, to follow the mandate of the law though it may be open to the parties to thereafter approach a competent judicial forum if the enquiry is either not properly conducted or if the enquiry is being stalled or if the complainant is dissatisfied with the outcome of the enquiry.

6. This being the situation in law, to my mind, the grant of sanction in the present case was erroneous. The order in question is accordingly set aside. Normally, as a necessary consequence, the suit would have also been dismissed. However, I have taken note of the objections canvassed by the respondents" learned Advocate that for a period of eight years, this ground was never pleaded as otherwise, he submits that his clients would have gone to the authorities for purposes of the enquiry in question. Under these circumstances, I propose to direct that the suit in question shall be stayed until the directions which I propose to issue are complied with. If on the completion of the enquiry, the respondents are aggrieved by the outcome thereof, it shall be open to them to either take up fresh proceedings or if it is feasible or maintainable, to apply to the Court for amendment of the plaint and proceed with the existing suit.

7. The respondents are given the liberty of forwarding a copy of their plaint to the Designated authorities under the Act in question and of supplementing it, if they so desire, with an Additional material. They shall however, complete this process within an outer limit of eight weeks from today. If no steps are taken, then it shall be presumed that the respondents are not interested in the matter and the suit itself shall be dismissed by the Trial Court.

8. If the respondents adopt this course of action, then the authorities concerned shall give them an opportunity of substantiating their complaint. They shall also hear the petitioners and pass appropriate orders according to law. On disposal of the matter by the authorities concerned, it shall be open to the respondents to decide on their future course of action. If the enquiry is concluded in favour of the respondents, it shall equally be open to them to apply to the Trial Court for the disposal of the suit.

9. It is clarified, that if the petitioners are required to contest the present suit, that it shall be open to them to file their written statement and take up all contentions that they are entitled to.

10. The respondents' learned Advocate points out to me that the proceeding before the Trial Court was originally listed under a miscellaneous number and that subsequently, it has been numbered as Original Suit No. 331 of 1988.

11. With these directions, the civil revision petition which succeeds, is allowed. No order as to costs.