

(2002) 12 KAR CK 0045

In the Karnataka High Court

Case No : Civil Revision Petition No. 4638 of 2002

The Bangalore Malayali Catholic Association and Another

APPELLANT

Vs

K.J. Joseph and Others

RESPONDENT

Date of Decision : 05-12-2002

Acts Referred:

Specific Relief Act, 1963 — Section 34, 39

Citation : (2003) 2 KarLJ 19 : (2003) 1 KCCR 536

Hon'ble Judges : G.C. Bharuka, J

Bench : Single Bench

Advocate : M.A. Sebastian, for the Appellant;

Final Decision : Dismissed

Judgement

G.C. Bharuka, J.—Two of the defendants in O.S. No. 4200 of 2002 have preferred this revision petition u/s 115 of the CPC against the order dated 11-10-2002 by which the Trial Court has rejected their prayer for rejection of the plaint under Order 7, Rule 11(d) of the CPC. The said prayer was sought by the petitioners by taking a plea that the suit as framed is not maintainable u/s 34 of the Specific Relief Act, 1968 (in short "the Act").

2. It is not in dispute that both the plaintiffs as well as defendants are the members of an Association known and called as "Bangalore Malayali Catholic Association". The Association is registered under the provisions of the Karnataka Societies Registration Act, 1960 (in short "Societies Registration Act"). Its activities are governed by the Memorandum of Association, Rules and Regulations, 1998 (in short "the rules and regulations"), which are registered u/s 8(2) of the Societies Registration Act. The society can sue or be sued u/s 15 of the Societies Registration Act.

3. The plaintiffs had filed the suit for restraining the Association and the Returning Officer (defendant 17) from holding elections to various posts of the Association on the ground that some of the members who had filed their

nominations were ineligible in terms of Regulation 12(b) of the rules and regulations. This regulation provides that only those permanent members, who are not in arrears of any dues to the Association as on the date of the general body meeting, are eligible to vote at the meeting provided his membership is valid on the date of filing the nomination. Rule 12(b) of the Rules and Regulations reads as under:

"Rule 12(b).--The proposer, seconder and the candidate to be nominated by them, as the office-bearers and committee members, should have been members of the Association for a period not less than 2 years on 31st March, preceding the general body meeting in which election takes place and should not be in arrears of dues to the Association on the day of filing nomination. The provision "period not less than two years" is applicable only after 2 years from the date of registration".

4. The plaint allegation is that the defendants who wanted to contest the elections for various posts in the Association were in arrears of dues to the Association on the date of filing their nominations.

5. The present petitioner-defendants, after entering appearance in the suit, filed I.A. No. V requesting the Court to reject the plaint on the ground that the suit is essentially for declaration u/s 34 of the Act and since the plaintiffs had not sought any declaration either to the effect that they are entitled to any legal character or to any right as to any property the suit per se was not maintainable. The Court below has rejected the I.A. No. V on the ground that the question sought to be raised is a mixed question of law and fact and that can be adjudicated only after the evidence is led.

6. The learned Counsel appearing for the petitioner assails the impugned order by relying on a judgment of this Court in the case of Narayan Vs. R. Vaidyanath and Others, In this case it has been held that:

". . . . A suit for declaration and injunction is governed by the Specific Relief Act, 1963 (hereinafter called the "Act"). The grant of specific relief of declaration or injunction, is a discretionary remedy. Section 34 of the Act states:

In a suit under this section:

- (1) The plaintiff must be a person entitled to any legal character or to any right as to any property;
- (2) The defendant must be a person denying or interested to deny, the plaintiffs title to such character or right;
- (3) The declaration sued for must be a declaration that the plaintiff is entitled to a legal character or to a right to property; and
- (4) Where the plaintiff is able to seek further relief than a mere declaration of title, he must seek such relief.

If any of the first three conditions is not fulfilled, the suit should be dismissed".

7. In my considered opinion the above judgment is hardly of any relevance to the facts of the present case. The present suit, admittedly, has not been filed for seeking any declaration either as to a legal character or to any right as to any property. If the relief claimed is understood in its proper context, it is only to the effect that the defendant-Association and the Returning Officer should be restrained from holding the election since some of the members who have filed the nomination papers are ineligible to contest in the election in terms of Rule 12(b) of the Rules and Regulations. The suit is essentially a suit seeking mandatory injunction covered by Section 39 of the Act. Section 39 of the Act reads as under:

"Section 39.--When, to prevent the breach of an obligation, it is necessary to compel the performance of certain acts which the Court is capable of enforcing, the Court may in its discretion grant an injunction to prevent the breach complained of, and also to compel performance of the requisite acts".

8. Keeping in view the pleadings in the case and the grievance of the plaintiff the only inference which has to be drawn is that the relief claimed by the plaintiff was to prevent the defendant-Association and the Returning Officer to hold elections, which according to the plaintiff was sought to be held in breach of the rules and regulations of the Association.

9. Keeping in view the above aspects, in my opinion, the Court below was right in not acceding to the prayer made by the present petitioners-defendants in seeking rejection of the plaint. Revision petition is accordingly dismissed.