

(2013) 11 KAR CK 0114

In the Karnataka High Court

Case No : Regular First Appeal No. 1765 of 2013 (DEC/INJ)

The Karnataka Central Diocese

APPELLANT

Vs

Mr. Gabriel Gnanadas and Others

RESPONDENT

Date of Decision : 29-11-2013

Acts Referred:

Citation : (2013) 11 KAR CK 0114

Hon'ble Judges : Ashok B. Hinchigeri, J

Bench : Single Bench

Advocate : Arun B.M, for the Appellant; K. Hanumantharayappa and Smt. Mary Susheela, Advocates for R-1 to R-5, for the Respondent

Judgement

Ashok B. Hinchigeri, J.—The defendants are in appeal aggrieved by the judgment and decree, dated 11.10.2013 in O.S. No. 4865/2013 passed by the Court of the XLIV Additional City Civil and Sessions Judge, Bangalore. The facts of the case in brief are that the respondents are the members of the St. Barnabas Church situated in Murugeshpalya, Bangalore. The election to the Pastorate Committee of the said Church took place on 30.6.2013. Complaining of the irregularities in the said election, the respondents filed the suit seeking the relief of declaration that the said election is arbitrary and illegal. They further sought the relief of permanent injunction for restraining the third appellant (defendant No. 1) from convening the meetings of the members elected illegally in the said election. The appellants remained ex parte. On perusing the plaint averments, oral and documentary evidence placed on its record, the Trial Court decreed the suit. The appellants are restrained from convening the meeting of the elected members, as the election was considered to be in violation of the first appellant's (defendant No. 2) bye-laws.

2. Sri Arun B.M., the learned counsel for the appellants submits that the appellants could not take part in the suit, although they were served with the notice. The first appellant's office was locked since last week of July 2013 on account of certain disputes. Because of the confusion and communication-gap,

the appellants could not instruct their learned counsel. He submits that this is a solitary instance where the appellants did not take part in the suit proceedings. Otherwise they are diligent in following up the court matters.

3. Sri Arun submits that the suit filed by the respondents was liable to be rejected on the short ground of the non-joinder of necessary parties. He submits that St. Barnabas Church and the 10 elected members are not made parties to the suit. The election cannot be declared to be illegal without hearing the elected members.

4. The learned counsel submits that the first appellant's bye-laws provide for the raising of the election disputes before Diocesan Election Commission. He submits that the respondents have indeed filed the objections with the Bishop on 2.7.2013. The same are received by the Bishop's office on 4.7.2013. Without giving any time for breathing, on the very next day they have rushed to the civil court. He further submits that the objections from the voting members of the Pastorate to the elections are to be sent to the Bishop. He read out clause.11 of Chapter 5 of the first appellant's bye-laws, which are as follows:

11. Objections from voting members of the Pastorate, if any, to the election shall be sent to the Bishop in writing within five days from the date of election. If the Bishop is satisfied that the objection is valid he shall, with the assistance of four members chosen by him from the panel of the Diocesan Court, hold an enquiry. If upon such enquiry the objection is sustained, he shall declare the election invalid. In all matters relating to the election and the disputes thereon, the decision of the Bishop shall be final and conclusive.

5. The learned counsel submits that there are no irregularities whatsoever in the election held on 30.6.2013. No specific infringement or any violation is pointed out, no documents whatsoever are produced to show that the conducting of the elections suffered from any infirmity or irregularity.

6. Sri K. Hanumantharayappa, the learned counsel for the respondents submits that the appellants have had plenty of opportunities to respond to the suit. Even when they were served with the Court notice, they did not appear before the Trial Court. He submits that even the paper publication regarding the suit proceedings have not evoked any response from the appellants.

7. Smt. Mary Susheela the learned counsel for the respondents submits that the respondents are the members of St. Barnabas Church. They are the communicants of the said Church. They have been paying their contributions to the Church periodically. But the appellants have not been valuing the respondents valid objections.

8. On the Court specifically asking Sri Arun, the learned counsel for the appellants, as to the time-frame within which the objections filed by the respondents on 2.7.2013, received by the office of Bishop on 4.7.2013, would be disposed of, he submits that within 20 days it should be possible to consider and

dispose of the objections regarding the election in question.

9. The submissions of the learned advocates have received my thoughtful consideration. The reasons stated for not appearing before the Court even when the appellants had the notice of the suit proceedings are acceptable.

10. I see considerable force in the submission of Sri Arun that the suit ought to have been rejected on the short ground of the non-joinder of necessary parties. The election in question is to the Pastorate Committee of St. Barnabas Church, but St. Barnabas Church itself is not made one of the defendants. Furthermore, the election cannot be declared illegal without hearing the persons, who are elected as the members of the said Committee. For the reasons best known to themselves, the respondents did not make St. Barnabas Church and the elected members of its Pastorate Committee parties to the suit proceedings. The impugned judgment and decree are therefore not sustainable. They are set aside.

11. Invoking the relevant clause 11 of the bye-laws extracted hereinabove, the respondents have rightly resorted to the filing of objections before the Bishop. The ends of justice, would be met by placing on record the appellants' submissions that the Bishop would consider the respondents' objections and the version of the elected members and of the other concerned persons and take a decision in the matter within 20 days from today.

12. If the outcome of the objection proceedings pending consideration before the Bishop goes adverse to the interests of the respondents or if the Bishop takes no decision within 20 days on the respondents' objections, it is open to the respondents to file a fresh suit but by arraying St. Barnabas Church and the elected members also as the defendants. No order as to costs.