
(2002) 03 MAD CK 0145
In the Madras High Court
Case No : Appeal Suit No. 754 of 1990

The Roman Catholic Diocese

APPELLANT

Vs

R.S. Savarimuthu Reddiar, R.S. Amalorpavam (Died), R.S.
Gnanaprakasam, Sir R.S. Rose Phelominal (Died) and Sir R.S.
Dennis Barbara

RESPONDENT

Date of Decision : 19-03-2002

Acts Referred:

Succession Act, 1925 — Section 372

Citation : (2002) 03 MAD CK 0145

Hon'ble Judges : V. Kanagaraj, J

Bench : Single Bench

Advocate : D. Rajagopal, for the Appellant; R. Kannan, for the Respondent

Final Decision : Dismissed

Judgement

V. Kanagaraj, J.—The above Appeal Suit is directed against the judgment and decree dated 17.4.1990 rendered in O.S.No.13 of 1987 by the Court of the Subordinate Judge, Ramanathapuram.

2. Tracing the history of the coming into being of the above appeal suit, it comes to be known that the appellant herein had filed the suit in O.S.No.13 of 1987 before the Court below for a declaration that the amounts deposited by late Rev.Father Peter in Ramnad District Cooperative Bank in S.B.Account No.5179, in State Bank of India, Paramakudi in S.B.Account No.10/1814, in India Overseas Bank, Kilakarai in S.B.Account Nos.8767 and 8768 and in the State Bank of India, Kilakarai in S.B.Account Nosd.5433 belong to the plaintiff Trust and consequently restrain the defendants by an injunction from withdrawing the amounts standing to the said accounts, on the strength of the Succession Certificate granted in S.O.P.No.1/86 and for Mandatory Injunction directing the defendants to surrender the Succession Certificate and not to use the same and for costs.

3. In the plaint filed before the Court below, the plaintiff would submit that it is a registered Society under the Society's Registration Act and it maintains Churches, Seminaries, Machineries, Educational and Industrial Institutions and also controls the Parish Priests and provide maintenance etc. to the Parish Priests and that the Procurator is authorised to sue and be sued; that one Rev.Father R.S.Peter, who is hailing from a poor family, was working under the plaintiff as Priest in the Kilakarai Church and all the moneys that he collected as Priest from the devotees and from the foreigners, totaling a sum of Rs.1,46,978.09, were deposited by him in various Banks and though those amounts were deposited in his name, the entire money belongs to the plaintiff Diocese since the Priest is only collected the said monies as the trustee of the Church; that soon after the death of the said Rev.Father Peter, the defendants herein who are none other than the brothers and sisters of the said Peter, filed a Succession Original Petition No.1 of 1986 before the Court of Subordinate Judge, Ramanad praying to issue a Succession Certificate u/s 372 of the Indian Succession Act as though those amounts belong to them as heirs of the deceased Rev.Father Peter and on coming to know of the pendency of the said Original Petition, the plaintiff, by filing a petition, got impleaded himself as a party and objected issuance of any Succession Certificate; that the learned Subordinate Judge, by order dated 19.2.1987 while erroneously declaring that the defendants are entitled to a Succession Certificate, had also observed that the plaintiff can file a suit to establish their right and hence the suit.

4. The defendants filed a written statement before the trial Court thereby besides generally denying all the allegations of the plaint, they would also submit that the entire amount standing in the name of Rev.Father Peter in various banks are his personal and separate properties and as such only the defendants are entitled to succeed the same and the plaintiff Diocese has no manner of right or title over the same; that the plaintiff raised the same contentions, that it has raised in this suit, in Succession Original Petition No.1 of 1986 and the said contention was negated by the Court and since the plaintiff has not preferred any appeal, it became final and thus the present suit is barred by res-judicata; that the plaintiff has not paid proper court fee since they have paid only a sum of Rs.39,500/= as court fee while claiming that the defendants have applied for succession certificate for the amount of rs.2,46,978.09. On such grounds, the defendants would pray to dismiss the suit.

5. Based on the above pleadings by parties, the Court below would frame four issues for determination, viz.:

1.Whether the plaintiff is entitled for a declaration as prayed for regarding the amounts deposited by late Rev.Father Peter?

2.Whether the plaintiff alone is entitled to the amounts deposited by Rev.Father Peter?

3.Whether the plaintiff is entitled to the Mandatory Injunction as prayed for?

4.To what relief, if any, the plaintiff is entitled?

Thereupon, the Court below would conduct a trial, wherein on behalf of the plaintiff, one Selvaraj would be examined for oral evidence as P.W.1 and 16 documents would be marked for documentary evidence as Exs.A.1 to A.16. On behalf of the defendants, the first defendant would examine himself as D.W.1 for oral evidence and would mark 21 documents for documentary evidence as Exs.B.1 to B.21.

6. The Court below, in consideration of the evidence placed on record and holding that the amounts deposited by late Rev.Father Peter in various Banks are his individual and separate money; that there is no law to prevent the Father from having his personal property; that there is no evidence to show that the said Peter was appointed Agent of the plaintiff and that the amounts were not at all deposited by the said Peter in his capacity as the agent of the plaintiff, has ultimately dismissed the suit with costs. Aggrieved, the plaintiff in the suit has come forward to prefer the above appeal suit on grounds such as (i) that the late Father R.S.Peter was employed under the appellant and he was only collecting various contributions from the devotees on behalf of the appellant and in that case, he is only a Trustee of the appellant and but for the Rev.Father R.S.Peter acted as a Trustee of the plaintiff diocese he would not have earned such a huge sum since he hailed from a very poor family; (ii) that the learned Judge failed to note that whenever amounts are collected by late R.S.Peter from the devotees, they are made only to the Church and not to the Priest and the Priest is not entitled to that amount collected for the Church from the devotees and in that case he is accountable for the Principal and (iii) that the learned Judge failed to note that though the respondents obtained Succession Certificate in O.P.No.1/86 on the file of the Court of Subordinate Judge, Ramanathapuram, the question of claiming the amount deposited in various banks is left open and thus the learned Judge erred in denying the right of the appellant.

7. It comes to be seen from the letter dated 22.11.2000 addressed to the Registrar, Appellate Jurisdiction, High Court, Madras by the learned counsel for the respondents thereby praying to post the matter in the list, that the respondents 2 and 4 died long back. But, no steps were taken by the appellant to implead the legal representatives of the deceased respondents 2 and 4 and therefore this appeal as against the respondents 2 and 4, by efflux of time, is abated, consequent to which, this appeal has relevance only regarding respondents 1,3 and 5.

8. During arguments, both the learned counsel appearing for the appellant and the respondents would only reiterate those pleadings, prayers, the facts and circumstances and the evidence already brought forth on record, as afore-extracted, absolutely without any new facts or circumstances or law having been brought to fore and in such conditions this Court is left with no option but to base its judgment on such materials already made available on record and in the light of the prevailing laws on the subject.

9. In the above circumstances, the point that arises for consideration in the above appeal suit is "whether the Court below is right in dismissing the suit filed by the appellant herein?"

10. On a careful perusal of the materials made available on record, particularly the judgment of the trial Court, it comes to be known that the trial Court has not only traced the facts and circumstances pleaded by parties in full but also framed necessary issues, four in number, for determination of the questions which arose from the pleadings and has conducted a full trial with due opportunity for parties to record their evidence, both oral and documentary, during which on the part of the plaintiff Diocese, one Priest called Father Selvaraj would be examined for oral evidence besides marking 16 documents for documentary evidence as Exs.A.1 to A.16, Ex.A.1 being the registration certificate of the Diocese dated 23.12.1938, Ex.A.2 being the account books of the deceased Peter covering the period from 28.8.1980 to 15.6.198; Ex.A.3 dated 2.6.1985, Ex.A.4 dated 7.7.1985, Ex.A.5 dated 9.7.1985, Ex.A.6 dated 5.4.1985, Ex.A.7 dated 3.5.1985 and Ex.A.8 dated 27.7.1985 being the letters written to the deceased Priest Peter, Ex.A.9 being the savings bank account maintained by the deceased Priest Peter from 9.1.1978 to 31.5.1985 in the Central Cooperative Bank, Ramnad District; Ex.A.10 dated 30.5.1985 being the account book maintained in State Bank, Kilakarai by the deceased Peter; Exs.A.11 and A.12 being the account book pertaining to the savings bank accounts maintained in the Indian Overseas Bank, Kilakarai, Ex.A.13 being the account book relating to the accounts maintained in Paramakudi State Bank, Ex.A.14 being the Succession Certificate issued by the trial Court in S.O.P.No.1/86; Ex.A.15 being a letter dated 12.8.1985 in favour of the petitioner/plaintiff and ex.A.16 dated 18.11.1985 being the copy of the petition filed before the trial Court in S.O.P.No.1/86.

11. So far as the evidence submitted on the part of the defendants is concerned, the first defendant viz. Mr.Savarimuthu has examined himself as the sole witness on the defence side as D.W.1 besides 21 documents being marked as Exs.B.1 to B.21, Ex.B.1 being the notice dated 23.3.1987, Ex.B.2 being the acknowledgment, Exs.B3 to B6 respectively being the letter dated 12.9.1986, acknowledgment for the same, news item appeared in a paper and the death news appeared in another paper respectively; Exs.B.7 and B.8 being the letters, Ex.B.9 being the obsequies card of the deceased Peter, Ex.B.10 dated 21.10.1985 being the heirship certificate issued by the Tahsildar, Mudukulathur and Exs.B.11 to B.21 are the letters and acknowledgments on various dates in the years 1985 and 1986.

12. The trial Court while appreciating the above evidence placed on record would first deal with issues No.1 and 2 pertaining to the ownership of those amounts maintained in the accounts in various banks in the name of the deceased Peter and would discuss the oral evidence adduced by P.W.1 to the effect that the deceased was a Parish Priest; that the amounts maintained in his accounts were not his personal amounts belonging to him in his individual capacity but all the

monies were belonging to the plaintiff Diocese since they were collected by the deceased Priest only in his capacity as the Trustee of the plaintiff Diocese which are the amounts sent by the devotees from abroad for the Church.

13. On the contrary, D.W.1 would adduce evidence to the effect that the said amounts borne by Exs.A.9 to A.13 account books in different banks were the personal savings of the deceased Priest Peter and the defendants, being his brothers and sisters, are only entitled to the same since those amounts were given by different individuals for conducting mass service in their favour and they are considered to be the personal amounts of the deceased which according to law should only go to his successors and the defendants being his successors, they are fully entitled to the said amounts.

14. So far as the documentary evidence submitted on the part of the plaintiff is concerned, Ex.A.1 would show that the deceased was working as the Parish Priest in the church at Kilakarai and he died on 9.8.1985 and the account book maintained by him is Ex.A.2; that his obsequies card is Ex.A.9 and the publication of news of his death in the newspaper is Ex.A.6 and the passbooks of various Banks wherein he maintained the accounts are Exs.A.9 to A.13 and those letters written from abroad by different persons to the deceased are Exs.A.3 to A.8 which are relevant documents for consideration and from these documents placed on record, the plaintiffs would claim that all those documents would prove that the accounts maintained and the amounts involved were only collected by the deceased as a Trustee of the plaintiff diocese and they are not his personal properties.

15. On the other hand, various documents would be placed on record by the respondents in proof of their contention that the said amounts are the personal amounts of the deceased Peter besides relying on Ex.A.14 the order passed by the trial Court in S.O.P.No.1/86 thereby issuing the succession certificate in favour of the defendants recognising them as the successors of the deceased Father Peter.

16. The lower Court having had its own discussions on the oral and documentary evidence placed on record would give credence to Ex.A.14, the Succession Certificate whereunder earlier the lower Court arrived at the conclusion to recognise the defendants as the successors of the deceased Peter to succeed to his estates and would preliminarily arrive at the conclusion that those amounts were only the personal monies held by the deceased Peter since there was no relevant document placed on record by the plaintiff to the effect that those monies were either deposited in the name of the plaintiff or placed in proof of their claim, but they were only deposited in the individual name of the deceased Rev.Father Peter.

17. The lower Court would ultimately believe that the amounts sent even from abroad by the devotees were only for conducting the masses in their favour and for such services rendered by the deceased Priest, there is no law either

prohibiting the Priest in the diocese from holding such personal accounts or to the effect that they were belonging to the diocese; that moreover, nothing stood in the name of the plaintiff Diocese but only in the individual name of the deceased Father Peter and therefore the lower Court would ultimately arrive at the conclusion not only declaring the amounts maintained in the Bank accounts by the deceased Father Peter were his personal properties but also further holding that the defendants, being his successors in law, are entitled to the said amounts, thus answering the issues in favour of the defendants. The lower Court would also decide that it is not at all necessary in the circumstances of the case to grant mandatory injunction directing the defendants to surrender the succession certificate, thus deciding all the issues in favour of the defendants and against the plaintiff, thus ultimately dismissing the suit filed by the plaintiffs with costs further holding that the plaintiffs are not entitled to any relief as prayed for in the suit.

18. It is only against this judgment and decree as passed by the Court below, the plaintiff/Diocese has come forward to prefer the above appeal on the above extracted grounds of appeal which are mere repetition of the same grounds already raised before the trial Court which were fittingly answered already. No new facts or circumstances or law contrary to the decision arrived at by the trial Court has been either pleaded or established before this appellate Court and the trial Court having dealt with the subject in the manner expected by law not only tracing all the facts and circumstances pleaded by parties but also having conducted the trial affording sufficient and reasonable opportunities to both parties to exhaust their remedies, after framing proper issues for determination of all those questions involved in the suit and thereafter appreciating the oral and documentary evidence placed on record in the manner expected by law, has arrived at the valid decision to dismiss the suit filed by the plaintiff with costs.

19. Whether it is the decision arrived at by the lower Court or the manner in which the said decision has been arrived at following the procedures established by law and appreciating the evidence adhering to the rules and procedures, absolutely no inconsistency or legal infirmity are seen to have occurred nor could the judgment and decree as passed by the trial Court suffer from any patent error of law or perversity in approach so as to require this appellate forum to interfere with the decision arrived at by the lower Court in its judgment and decree, as prayed for in the appeal suit by the appellants.

20. In all probabilities, the trial Court has arrived at the valid conclusion since the case has been proved with such standard of proof of preponderance of probability in favour of the defendants and not in favour of the plaintiff and therefore the interference of this Court is neither necessary nor warranted to be made into such a well considered and merited judgment passed by the Court of Subordinate Judge, Ramnad at Madurai. The point is thus answered accordingly in favour of the respondents and against the appellant.

In result, the above appeal suit fails and the same is dismissed.

The judgment and decree dated 17.4.1990 rendered in O.S.No.13 of 1987 by the Court of Subordinate Judge, Ramanathapuram is hereby confirmed.

However, in the circumstances of the case, there shall be no order as to costs.