

* **HIGH COURT OF DELHI AT NEW DELHI**

% Judgment delivered on: December 23rd, 2009

+ FAO (OS) 505/2009

Church of India, Pakistan, Burma & Ceylon Appellant

-versus-

Church of North India Trust Association & others Respondents

Advocates who appeared in this case:

For the Appellant : Mr.Neeraj Kishan Kaul, Sr.Advocate with
Mr.A.K.Sengupta, Mr.Suraj Prakash &
Mr.S.Chaterjee, Advs.

For the Respondent: Ms.Anisha Banerji with Mr.Mrinalini Gupta,
Advs.

CORAM:-

HON'BLE MR. JUSTICE BADAR DURREZ AHMED

HON'BLE MS. JUSTICE VEENA BIRBAL

1. Whether the Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not? Yes
3. Whether the judgment should be reported in Digest? Yes

Veena Birbal, J.

1. Present appeal is filed under Order 43 Rule 1 read with Section 151 CPC read with Section 10 of the Delhi High Court Act, 1966 against the impugned order dated 6th October, 2009 passed in IA No.3969/2009 filed in CS(OS) 376/1999 by which the learned Single Judge of this court has dismissed the application filed by the appellant under Order 1 Rule 10 CPC for its impleadment as a party defendant in the said suit.

2. The aforesaid IA was filed by the appellant in the aforesaid suit [CS (OS) 376/1999] filed by respondent nos. 1 to 3 herein against respondent no.4 herein for its impleadment as one of the defendants. The aforesaid suit was filed in the year 1999 by the respondent nos. 1 to 3 making the following prayers:-

“a) Pass a decree declaring that the so-called Anglican Church of India has no connection with the erstwhile CIPBC (Church of India, Pakistan, Burma and Ceylon) or any of the plaintiffs individually or severally or jointly and that the so-called Anglican Church of India has no right, title or interest in any of the properties owned or held by the plaintiffs;

b) Pass a decree permanently injunctioning and restraining the defendant and his agents, attorneys, accomplices from selling, alienating or dealing in any manner with the properties belonging to the plaintiffs as detailed in the Schedule hereto; and

c) Award punitive, exemplary and/or other costs in favour of the plaintiffs and against the defendant.”

3. In the aforesaid suit, respondent no. 1 claimed itself as the only legal successor of the Church of India, Pakistan, Burma and Ceylon (hereinafter referred to as “CIPBC”) for all ecclesiastical and legal purposes. Appellant has alleged that the said claim of respondent no. 1 is a false and motivated one and has been made only to illegally grab and occupy control over the properties of CIPBC and not for any ecclesiastical purpose. The said suit was filed before this court. However, due to change in pecuniary jurisdiction, the said suit was subsequently transferred to the District Courts at the Tis Hazari complex where it was assigned to the court of Shri Yashwant Kumar, learned Addl. District Judge and was given a fresh number i.e., Suit No.5682/2003. The written statement has already been filed by the respondent no. 4/defendant in the said suit.

4. Thereafter, on or about 30th May, 2001, respondent no. 4 herein through its organization viz. the Anglican Church of India along with three others filed a suit

before this court being CS(OS) No.1214/2001 against respondent no.1 and 17

others under Section 92 of CPC wherein the following prayers were made:-

“(a) That by a decree for declaration, this Hon’ble Court may be pleased to declare that none of the defendants has a right to possess, use, manage or alienate any properties mentioned in the plaint or even otherwise belong to or held by the (Anglican) Church of India defined in the Indian Church Act, 1927;

(b) That by a decree for declaration, this Hon’ble Court may be pleased to declare that the Defendants have misused, mismanaged and mis-appropriate. The suit property and other properties belonging to the (Anglican) Church of India as defined in Church Act, 1927.

(c) That by decree for declaration this Hon’ble Court may be pleased to declare that the plaintiffs are the real Church of India (Anglican) as defined by the Indian Church Act, 1927 and its lawful Trustees and Office bearer.

(d) That by declaration, this Hon’ble Court may be pleased to declare that the act of unification held in November, 1970 at Nagpur between the six Churches viz (1) Anglican Church of India, Pakistan and Ceylon (2) Council of Baptist Churches in North India, (3) Church of the Brethren in India (4) The Disciples of Christ; (5) The Methodist Church (British & Australia Conferences) & (6) United Church in Northern India, to form a Union by the name of “Church of North India” is illegal, null and void of Constitution of India and in operative and even otherwise the identity and constituting of Anglican Church of India remains independent and separate from the said Union and not amalgamated into alleged newly formed Church of India.

(e) That by a decree for declaration this Hon’ble Court may be pleased to declare that the conduct of worships, solemnization of Holy Sacraments and Ceremonies of Anglican Church of India, management and enjoyment of all its properties, Churches and Institutions cannot be interfere or taken over by the Church of North India under the garb of disputed Union of Churches.

(f) That all the sale or lease deeds or agreements executed by any defendant or his agent transferring any suit property or any other property acquired from Anglican Church of India under the garb of Church Union or formation of Church of North India or any other Trust Properties original held or acquired by Anglican Church of India be declared null and void incapable of passing any right of ownership or management in the said defendants.

(g) Any other relief which this Ld.Court deems fit and proper

may kindly be granted in favour of the plaintiff as against the defendants.

(h) That full cost of the suit be kindly awarded in favour of the plaintiff payable by the defendants.”

5. Appellant has alleged that in the aforesaid suit filed by the respondent no. 4 herein through its organization, namely, Anglican Church of India, appellant has been arrayed as defendant no.13 and it relates to the same properties which are the subject matter of earlier suit i.e., CS(OS) No.376/1999. According to the appellant, the Church of North India Trust Association (respondent no. 1) and the Anglican Church of India [plaintiff no.1 of CS(OS) No.1214/2001] are two defected groups of CIPBC and are trying to grab its properties and have already disposed of many properties of the appellant for their personal gain.

It is alleged that after capturing, taking control and possession of most of the valuable properties belonging to the CIPBC, the respondent no.1 [plaintiff no.1 in CS (OS) No.376/1999] and respondent no.4 herein [plaintiff in CS(OS) No.1214/2001] have started selling, alienating and disposing of the church properties for their personal gains, as a result of which, the appellant filed a suit for declaration and permanent injunction against respondent no.1 in the court of the Civil Judge, Senior Division, Lucknow and the said suit was registered and numbered as Suit No.104 of 2003 in which the following prayers were made:-

“(a) That by means of a decree of Declaration it may be declared that all the properties indicated in the Schedule No.1 to this plaint are the properties of the plaintiffs and the defendants have got no right, title or interest in the same.

(b) That by means of a decree of permanent injunction the defendants their officers, members or any other persons claiming or acting on behalf of the defendants may permanently be restrained from interfering into the enjoyment of the properties of the plaintiffs indicated in Schedule No.1 to the plaint and they may further be restrained from alienating those properties in any manner whatsoever may be to any one including any body also.

(c) Any other relief which this Hon'ble Court may deem fit just and proper in the facts and circumstances of the case and for protecting the interest of the plaintiffs may also be decreed in favour of the plaintiffs against the defendants.

(d) Cost of the suit may be awarded to the plaintiffs and against the defendants.”

6. In the aforesaid suit at Lucknow, an application was filed under Order 39 Rules 1 & 2 CPC by the appellant with the prayer that during the pendency of the said suit, the respondent no. 1 along with other defendants, their servants, agents etc be restrained from interfering with the peaceful possession of the appellant in respect of suit properties. The learned Civil Judge at Lucknow passed an interim order on 28th May, 2003 in favour of appellant and against respondent no.1, which is still continuing.

It is also stated that on 19th February, 2004, respondent no. 4 herein through its organization, Anglican Church of India, moved an application before this court being IA No.715/2004 under Section 151 of CPC for consolidation of CS(OS) No. 1214/2001 with CS(OS) No.376/1999 which at that time was pending before Shri Yashwant Kumar, learned ADJ, Delhi. Thereupon, this court, after hearing counsel for the parties had withdrawn Suit No.376/1999 from the court of learned ADJ, Delhi and the same was consolidated with CS(OS) No.1214/2001 which was pending before this court, to avoid any conflicting decision by different courts.

7. Thereupon, a Transfer Petition being Transfer Petition (Civil) 680/2008 was filed by the appellant under Section 25 CPC read with Order XXXVI-B of the Supreme Court Rules, 1966 seeking transfer of its Suit No.104/2003 titled “Church of India and Another Vs. the Church of North India Trust Association and Another” from the court of the learned Civil Judge, Senior Division, Lucknow to this Court. The Supreme Court allowed the said Transfer Petition vide order

dated 20th October, 2008 and directed, inter alia, as under:-

“In the facts and circumstances of the case, Regular Suit No.104 of 2003 titled Church of India & Another vs. The Church of North India Trust Association & another, pending in the Court of Civil Judge, Senior Division, Lucknow, within the State of Uttar Pradesh is transferred to the High Court of Delhi for being heard with Suit Nos.376/1999 and Suit No.1214 of 2001. The Transfer Petition, is accordingly, allowed. Let hearing of all the suits be expedited.”

8. In the application for impleadment it was alleged that the interest of the appellant Church was inextricably connected with the subject matter of CS(OS) No. 376/1999. The appellant has further alleged that the subject matter is common in all the three suits. However, for reasons best known to respondent no.1, the appellant Church had not been made a party and by its non impleadment, its interest would be seriously prejudiced.

9. The said application was opposed by the respondents i.e., plaintiffs in CS(OS) No.376/1999.

10. The learned Single Judge after hearing counsel for the parties, dismissed the said application by passing the following order:-

“The applicant seeks impleadment under Order 1 Rule 10, stating that it was constituted under the Indian Church Act, 1927. Learned counsel submits that the applicant has real and substantial interest in the proceeding as the properties claimed in the suit are also the subject matter of the proceeding in another suit filed by it – CS (OS) 2685/2008.

The Court has considered the averments; the Supreme Court had directed transfer of CS(OS) 2685/2008, which was pending on the file of the learned Senior Civil Judge, Lucknow. The applicant is concededly plaintiff in that case and has claimed several reliefs, including in relation to the common properties which are subject to these proceedings. Having regard to the stage of the present suit, the Court is of the opinion that granting the application would move the clock back and delay the trial. On the other hand, the applicant would not be prejudiced by refusal of its request since substantive claims are also pending adjudication of Court and by an order dated 28.07.2009, proceeding in all the three connected suits were directed to be taken up together and consolidated.

IA No.3969/2009 is disposed of in the above terms.”

11. Learned Senior Counsel for appellant contended that the order of the learned Single Judge dismissing the application of appellant under Order 1 Rule 10 CPC for its impleadment as a party in CS(OS) 376/1999 amounts to prejudicing the valuable rights of appellant. It is contended that appellant is a necessary party inasmuch as it is allegedly raising claim over the suit properties of Suit No. CS(OS) 376/1999 and for a just decision and for proper determination of rights of parties, the learned Single Judge ought to have made the appellant a party defendant in CS(OS) No.376/1999. It is further contended that delay is not a relevant ground for rejecting the impleadment application. It is contended that the impugned order has caused serious prejudice to the applicant inasmuch as the case of the appellant is that actual owner of suit properties involved in the said suit is appellant as such appellant ought to have been impleaded in the said case.

In support of the above contention, learned Senior Counsel for the appellant has relied upon following judgments - (i) **Prem Lala Nahata and anr v. Chandi Prasad Sikaria** : 2007 2 (SCC) 551; (ii) **Chitivalasa Jute Mills v. Jaypee Rewa Cement** : AIR 2004 SC 1687 and (iii) **Ramesh Hirachand Kundanmal v. Municipal Corporation of Greater Bombay & ors** : 1992 (2) (SCC) 524.

12. On the other hand, learned counsel for the respondent nos. 1 to 3 contended that impleadment application is an abuse of the process of the court and has been filed to delay the disposal of the suit which is pending since 1999. Learned counsel for the said respondents submitted that the aforesaid three suits mentioned above have already been consolidated by this court vide orders dated 28th July, 2009 and the interest of the appellant is not affected in any manner by not impleading it in CS(OS) 376/1999 inasmuch as, as per its own case, appellant is defendant no.13 in CS(OS) 1214/2001 and plaintiff in the third suit i.e. CS (OS)

2685/2008 (transferred from Lucknow) and the suit properties are common in all the three suits. In support of the above contention, learned counsel has relied upon (i) *Amit Kumar Shaw & anr v. Farida Khatoon and anr* : 2005 (11) SCC 403 and (ii) *Kasturi v. Iyyamperumal and Ors* : (2005) 6 SCC 733.

13. We have considered the submissions made and perused the material on record.

14. It may be mentioned that the suit in which impleadment has been sought by the appellant and the other two suits mentioned above including the one filed by the appellant, which was earlier pending before learned Civil Judge, Senior Division, Lucknow and thereafter transferred by the Supreme Court to this court, have already been clubbed and consolidated with the consent of counsel for the parties by an order dated 28th July, 2009, which is reproduced as under:-

“By agreement of the counsel for the parties and in view of the order of the Supreme Court in Transfer Petition No.680/2008, all the suits, CS(OS) 376/1999, 1214/2001 and 2685/2008 (originally filed as CS(OS) 104/2003) before the Senior Civil Judge, Lucknow are clubbed and consolidated together. It is submitted that CS(OS) 1830/2006 Women’s Christian Temperance Union of India Vs. Indian Church Trustees and Others also has a bearing on the present proceeding and concerns same properties and that same issue would have to be tried. In the circumstances, list the above three suits along with CS(OS) 1830/2006. Ld.Counsel shall indicate after inter se discussions, the modalities to be adopted for a joint trial, including such aspects as marking of documents and recording of evidence etc. on the next date i.e. 06.10.2009.”

15. As per the case set up by the appellant, CIPBC owns several immoveable properties all over India worth more than Rs 50,000 crores under the control and management of the “Indian Church Trustees”. It is alleged that in 1970 some of the bishops who were active members of the General Council of CIPBC passed a resolution to form a spiritual union with six churches in accordance with Declaration IX of the CCR of CIPBC. A good number of bishops, priests,

clergymen, etc. did not join the said union. The defected bishops, priests etc and their followers under the garb of such union between six churches with some ulterior motive illegally amalgamated these churches into one new church under the name “Church of North India” and unauthorisedly took over the administration and control of the properties including that of appellant. It is further alleged that consequent upon the formation of the new Organization i.e Church of North India in 1970, the said organization, with some ulterior motive further decided that the various trusts, which were then holding properties belonging to the aforesaid six uniting churches including CIPBC would transfer their properties to a new trust organization under the name and style of Church of North India Trust Association.

16. The main allegations of the appellant are that Church of North India Trust Association (respondent no.1) has filed CS(OS) No. 376/1999 in order to illegally occupy and take control over the properties of appellant. As such, in order to protect its interest, appellant ought to have been made a party in the said suit. The impleadment application was filed on behalf of CIPBC by the Metropolitan of the applicant church i.e., John Augustine. As per the appellant, it has been impleaded as defendant no.13 in CS(OS) 1214/2001 which is filed by the Anglican Church of India and the suit properties of the said suit are the same as in CS(OS) 376/1999. According to appellant, the third suit i.e. CS(OS) No.2685/2008 was filed by it wherein it has sought a declaration and permanent injunction against respondent no.1 herein in respect of the very same properties which the respondent no. 1 is alleging to be the owner of. It has also come on record that there is also an ad interim order in favour of the appellant whereby respondent no.1 has been restrained from transferring and alienating the alleged church properties in any manner for their personal gain. It is not the stand of

appellant that stay has been vacated or modified in any manner. As per appellant's own case suit properties claimed in CS(OS) 376/1999 are also the subject matter of the two suits wherein the appellant is admittedly a party, as defendant no.13 in CS(OS) 1214/2001 and plaintiff in CS(OS) 2685/2008. The above facts show that the interest of the appellant is fully protected. All the three suits are clubbed and consolidated as per the order referred to above. The suit properties are common in all the three suits. We fail to understand as to how the interest of appellant is prejudiced by its non-impleadment in CS(OS) 376/1999. This is particularly so when the suit properties are common in all the three suits and the three suits are consolidated. Ld. Single Judge has correctly taken into account all the facts and circumstances of the case and has passed the impugned order. The delay of 10 years in moving the impleadment application before Ld. Single Judge is also unexplained. No attempt has been made in this regard. It is not the case that appellant had no knowledge of the pendency of CS(OS) 376/1999.

Considering the totality of circumstances, we find no infirmity in the impugned order.

The appeal is dismissed. There is no order as to costs.

Veena Birbal, J.

December 23rd, 2009
ssb

Badar Durrez Ahmed, J