

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE THOTTATHIL B.RADHAKRISHNAN
&
THE HONOURABLE MR. JUSTICE SUNIL THOMAS

TUESDAY, THE 26TH DAY OF MAY 2015/5TH JYAISHTA, 1937

FAO.No. 165 of 2011 ()

AGAINST THE ORDER/JUDGMENT IN OP (SCHEME) 6/2006 OF COURT OF
SUBORDINATE JUDGE, THIRUVALLA DATED 13-01-2010

APPELLANT(S)/PETITIONERS :

1. P.S.THOMAS, AGED 81 YEARS,
APPAKOTTUMURIYIL, THURUTHICADU P.O
KOLLOOPPARA VILLAGE, MALLAPPALLY TALUK.
2. P.M.GEORGE, AGED 82 YEARS,
KAITHAKUZHIMANNIL, THIRUVALLA TALUK
3. C.J.MATHEW, S/O.JOHN,
CHALLACKKAL HOUSE, PRAMADOM VILLAGE,
KONNI P.O.

BY ADVS.SRI.S.V.BALAKRISHNA IYER (SR.)
SRI.P.B.KRISHNAN
SRI.P.M.NEELAKANDAN
SRI.P.B.SUBRAMANYAN
SRI.SABU GEORGE
SRI.THOMAS NINAN

RESPONDENT(S) :/RESPONDENTS

1. THE BISHOP ABRAHAM MEMORIAL TRUST ASSOCIATION
AT MANJADI, THIRUVALLA,
REP.BY MRS.ACHAMMA GEORGE, AGED 88 YEARS
MARETTU MADOM, MANJADI, THIRUVALLA - 689 610.
2. MRS.ACHAMMA GEORGE,AGED 88 YEARS,
MERETTU MADOM, MANJADI, THIRUVALLA - 689 610.

3. ISRAEL THOMAS, AGED 74 YEARS,
HOME DOCTOR, VENPARAMBIL HOUSE, NIRANAM
THIRUVALLA TALUK, PIN - 689 610.
4. DR.SAMUEL KRISHNAMOORTHY, AGED 86 YEARS,
GRACE BHAVAN, (GRACE HOSPITAL),
CHANGANASSERY, PIN - 686 101.
5. MAMMAN MATHAI, PLOT NO.200, N.G.E.F LAYOUT,
SACHIDANANDA NAGAR, BANGALORE-94.
6. M.M.JOHN, AGED 71,
PLOT 154, N.G.E.F.LAYOUT, BANGALORE-94.
7. A.J.GEORGE, MARETTU MADOM, MANJADI P.O.
THIRUVALLA, PIN - 689 619.
8. P.K.MATHEW, AGED 76 YEARS,
PULIVELIL KOLLA, KARUNAGAPPALLY,
KOLLAM DISTRICT, PIN - 690 318.
9. PROF.C.C.JOSEPH, AGED 83 YEARS,
KALLOLIL HOUSE, KUTTAPUZHA P.O.,
THIRUVALLA, PIN - 689 103.
10. ANNA MAMMEN MATHAI, PLOT 200, N.G.E.F. LAYOUT,
SACHIDANANDA NAGAR, BANGALORE-94.
11. LEELA JOHN, PLOT 154, N.G.E.F.LAYOUT,
SACHIDANANDA NAGAR, BANGALORE-94.
12. P.P.MATHEW, AGED 58 YEARS,
VILANGUPARACKAL,
THURUTHICADU P.O., KOLLOPPARA
PATHANAMTHITTA DISTRICT, PIN - 689 597.
13. OMANA MATHEW, AGED 55 YEARS,
VILANGUPARACKAL, THURUTHICADU P.O.
KOLLOPPARA, PATHANAMTHITTA DISTRICT,
PIN - 689 597.
14. K.M.KURIAN, AGED 57 YEARS,
KOCHUPARAMBIL, THURUTHICADU P.O., KOLLOPPARA
PATHANAMTHITTA DISTRICT, PIN - 689 597.
15. K.M.MATHEW, AGED 45 YEARS,
KOCHUPARAMBIL, THURUTHICADU P.O., KOLLOPPARA
PATHANAMTHITTA DISTRICT, PIN - 689 597.
16. KURUVILLA THOMAS, AGED 49 YEARS,
VILANGUPARACKAL, THURUTHICADU P.O., KALLOPPARA
MALLAPPALLY TALUK, PIN - 689 597.

17. SAJI PHILIP, JOY VILLA,
THURUTHICADU P.O., KALLOPPARA VILLAGE,
PIN - 689 597.
18. ST.THOMAS EVANGELICAL CHURCH OF INDIA
REP.BY TRUSTEE, ST.THOMAS EVANGELICAL
CHURCH OF INDIA
MANJADI, THIRUVALLA, ADDRESS FOR SERVICE,
REV.THOMAS EVANGELICAL CHURCH OF INDIA,
MANJADI P.O., THIRUVALLA, PIN - 689 619.
19. THE PRESIDING BISHOP,
ST.THOMAS EVANGELICAL CHURCH OF INDIA,
MANJADI P.O., THIRUVALLA, PIN - 689 619.
20. SABHA SECRETARY, OF -DO-DO-, PIN - 689 619.
21. BISHOP ABRAHAM MEMEORIAL TRUST,
REPRESENTED ITS PRESIDENT, TRUSTEE
ST.THOMAS EVANGELICAL CHURCH OF INDIA
MANJADI THIRUVALLA, ADDRESS FOR SERVICE
REV.THOMAS, EVANGELICAL CHURCH OF INDIA,
MANJADI P.O., THIRUVALLA, PIN - 689 619.
22. M.G.UNIVERSITY, ATHIRAMPUZHA,
KOTTAYAM, REP.BY THE REGISTRAR,
M.G.UNIVERSITY,
PRIYADARSHINI HILLS, ATHIRAMPUZHA P.O.,
KOTTAYAM, PIN - 686 562.
23. THE MANAGER, BAM COLLEGE,
THOMAS ABRAHAM, AGED 62 YEARS, S/O.ABRAHAM
KURUDAMANNIL HOUSE, THURUTHICADU,
PIN - 689 597.

R23 BY ADV. SRI.M.NARENDRA KUMAR

R23 BY ADV. SRI.JOICE GEORGE

THIS FIRST APPEAL FROM ORDERS HAVING BEEN FINALLY HEARD
ON 26-05-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

THOTTATHIL B.RADHAKRISHNAN &
SUNIL THOMAS, JJ.

.....
F.A.O.No.165 of 2011
.....

Dated this the 26th day of May, 2015.

J U D G M E N T

Thottathil B.Radhakrishnan, J.

- 1.This appeal is against an order by which the court below has held that a suit instituted with leave under Section 92 of the Code of Civil Procedure, 'CPC', for short, is not maintainable, and, resultantly, the petition filed invoking Section 92 CPC was dismissed.
- 2.We have heard the learned senior counsel appearing for the appellants, who are the petitioners before the court below, and the learned counsel appearing for the contesting respondents.
- 3.The court below has held that proceedings initiated by the appellants before the court below seeking leave under Section 92 CPC are, essentially, ones which are aimed at vindicating private rights and the substance of the litigation is one which cannot be

treated as one falling within the enumerated clauses of Section 92 CPC. The court below drew support from the decision of the Honourable Supreme Court of India in Vidyodaya Trust v. Mohan Prasad [2008(2) KLT 68 (SC)].

4. We have perused the entire materials on record and the contents of the application under Section 92 CPC. First respondent in the application is Bishop Abraham Memorial Trust Association. Admittedly, that is a society registered under the provisions of the Travancore Cochin Literary Scientific and Charitable Societies Registration Act, 1955, 'the Act', for short. The substance of the contentions of the petitioners is that Bishop Abraham Memorial College, 'BAM College', for short, is an institution which came into being in the form of a trust inasmuch as the activity for establishing that institution was initiated by a group of people coming together much before the first respondent was registered under the Act in 1965 and that pursuant to public contributions made, the trust was constituted and it was thereafter that the first

respondent registered society came into being. It, therefore, sued seeking a declaration that the property scheduled to the original petition belonged to the trust and also sought for framing up of a scheme alleging mismanagement against those in office.

5. Among the materials, we see that there are indications that even before the registration of the society under the Act, activities had gone ahead for purchase of property and application was made to the University of Travancore for permission to establish a college. Be that as it may, the sweep of materials and sequence of different litigations tend to show that at least after 1964, for all intents and purposes, the first respondent BAM Trust Association was treated as an institution which is in control and governance of the BAM College.

6. Before proceeding further, we may immediately notice that insofar as the said Association is concerned, there was a litigation under the provisions of the Act touching its bye-laws. That led to

appellate proceedings before this Court and modification of bye-laws. Thereafter, a suit was proposed under Section 92 CPC. That led to appellate proceedings before this Court which also concluded by saying that the proceedings are ill constituted, and the proper remedy, if at all, is not under Section 92 CPC. The first petitioner, who is the first appellant herein, was a party to that suit. In the meanwhile, it appears that couple of persons filed a suit before the Munsiff's Court seeking rights in relation to the property as against the Association. The appellants, who are before us, joined the said suit as defendants to support the plaintiffs therein. The suit underwent a complete trial leading to its dismissal. However, it appears that the plaintiffs therein carried an appeal and sought and obtained leave from the appellate court to withdraw the suit. We are told by the learned counsel appearing for the contesting respondents that such leave was sought and obtained without publication of notice under Order I Rule 8 of the CPC, though the suit before the Munsiff's Court was instituted with such notice under Order I Rule 8. We

are also told that an original petition is pending before this Court invoking Article 227 of the Constitution of India challenging the grant of leave to withdraw the suit.

7. In the aforesaid view of the matter, we uphold the finding of the court below that the impugned proceeding is, essentially, a cloak and aimed at the vindication of private rights.

8. We hasten to add that we have expressed only on the legal issues and principles enunciated above and that we have not spoken anything on the merits or demerits on the legal effect of the different documents which are placed in the litigation before the court below and which may be subject to different litigations, having regard to the different proceedings noted above.

9. The learned senior counsel making reference to the decision in Kesava Panicker v. Damodara Panicker and Others [1975 KLT 797] argued that when material is available to show that the

properties were acquired before the registration of the society, it ought to be taken that the trust stood created at a prior point of time and an application under Section 92 CPC would lie in relation to such trust. In the light of the particular factors noted above regarding the litigation in hand, that precedent cannot be applied because the parties already stand bound by the decisions noted above touching the affairs of the properties over which claim is laid and more particularly because, a suit for declaration of title to property cannot be subject matter of a suit provided for under Section 92 CPC.

10. In the aforesaid factual matrix, we need to notice that what looms large is the public interest to sustain an educational institution and protect it from unnecessary litigation. The first respondent Association, which is a society registered under the Act, is admittedly dealing with the affairs of the educational institution for quite a long time, at least for the last 4–5 decades. Whatever be the quality of rights that the said society may have

over that educational institution; be it proprietary, possessory or managerial or otherwise, that is not a matter which could be pushed in for adjudication in a suit with leave under Section 92 CPC on the premise that declaration of title to property of the trust which is sought to be protected has also to be considered in Section 92 suit. A suit on title or a suit for title cannot be brought under the canopy of a suit under Section 92 and, hence, the impugned proceeding was not maintainable.

In the result, this appeal is dismissed, however clarifying that all what has been stated above is that no application under Section 92 CPC does lie; and, nothing more.

(THOTTATHIL B.RADHAKRISHNAN, JUDGE)

(SUNIL THOMAS, JUDGE)