

THE HON'BLE SRI JUSTICE M.S.K.JAI SWAL

CIVIL REVISION PETITION No.4907 of 2016

ORDER:

This civil revision petition is filed against the order dated 23.06.2016 in CMA No.16 of 2014 on the file of the Special Judge for trial of cases under SCs & STs (POA) Act-cum-Additional District Judge, Srikakulam.

The plaintiff is the revision petitioner. He filed the suit O.S.No.205 of 2014 on the file of the Principal Senior Civil Judge, Srikakulam for injunction. Along with the plaint, the plaintiff filed I.A.No.571/2014 seeking temporary injunction restraining the respondent/defendant from interfering with the peaceful possession and enjoyment over the plaint schedule property. The trial court, after considering the oral and documentary evidence, granted temporary injunction in favour of the plaintiff against the defendant, vide order dated 20.08.2014. Feeling aggrieved, the respondent/defendant preferred CMA No.16/2014. The Court below, after reconsidering the oral and documentary evidence, allowed the appeal, vide order dated 23.06.2016, setting aside the order of the trial court. Questioning the said order, the revision is filed by the plaintiff.

The case of the petitioner/plaintiff is that one Karanam Govindarao is the owner of the subject property and on the request of the plaintiff, the said Govindarao has orally gifted the site in the year 2007 to the plaintiff for purpose of construction of a church. The petitioner secured funds from villagers and constructed the church in the said site and enjoying the same since then. In March, 2014, the defendant entered

into the church and raised objection from conducting prayers in the church, for which, the plaintiff filed the suit.

The case of the respondent/defendant is that he was a converted Christian and was working as a pastor in a church at Chodavaram, and by way of donations, he claimed that he constructed the church in the schedule property in the year 2008, which was donated by one Krishna Murthy, Sarpanch of Sarubujjili village and to prove his contentions, he filed documentary evidence.

The plaintiff earlier filed two caveats, viz., COP No.9/2014 dated 14.03.2014 against the respondent/defendant on the file of Junior Civil Judge, Amadalavalasa and another caveat petition dated 24.03.2014 on the file of the Principal Senior Civil Judge, Srikakulam stating that he purchased the suit schedule property from Karanam Krishnamurthy under unregistered sale deed dated 29.07.2013, but he changed his version in the affidavit filed in support of the injunction petition stating that one Karanam Govindarao orally gifted the suit schedule property in the year 2007.

The learned counsel for the plaintiff submitted that the trial court has rightly granted injunction in his favour, but the learned appellate court has erroneously set aside the same, even though he has *prima facie* case for grant of injunction. It is further submitted that since the plaintiff is in possession of the management of the church, he obtained the electricity connection and the defendant is highhandedly interfering with his activities.

On the other hand, the learned counsel for the defendant submitted that taking undue advantage of the fact that the plaintiff

obtained electricity connection for the church in his name, the plaintiff is claiming himself to be the person entitled to manage the affairs of the church and except for that no satisfactory evidence has been produced. On the other hand, the respondent/defendant has produced voluminous documentary evidence to show that it is he who has been conducting prayers etc., in the church, and hence, the learned appellate court has properly appreciated the material on record and allowed his appeal.

The point that arises for consideration is whether the petitioner/plaintiff is entitled to injunction restraining the respondent/defendant from interfering with the management of the affairs of the church.

Point:

The plaintiff and the defendant claim themselves to be the pastors and preachers of Christianity. In Subhadrapuram village prayers were being held in a thached premises. One Karanam Krishnamurthy was having some land in Sy.No.47/11. Both the plaintiff and the defendants set up a common contention with regard to construction of a church in the said land. According to the plaintiff, he requested Karanam Govindarao, who was the owner of Ac.0.31 cents of land and he orally gifted Ac.0.04 cents of land and on that piece of land, the plaintiff with his own funds and with the donations he collected from the villagers, constructed the church in the year 2007 and ever since it is he who has been conducting the prayer meetings and celebrating festivities therein.

Similar is the contention of the respondent/defendant. According to him, he was a trained pastor and he requested Krishnamurthy, who is the Sarpanch of Sarubujjili village for some land and accordingly, he gifted

Ac.0.04 cents of land to the defendant who constructed the church thereon with his funds and also from the donations of the villagers. It is he has been conducting and managing the affairs of the church ever since 2007 when the church was constructed.

Both the plaintiff and the defendants claim that the land was orally gifted to them for the purpose of constructing a church. The plaintiff claims that it is Govindarao who gifted the land to him and the defendant claims that it is the father of Govindarao by name Krishnamurthy who gifted the land to him. Neither the plaintiff nor the defendant could produce legally acceptable evidence with regard to their contentions about the gift and the construction of the church and mobilisation of the funds. This is the issue which needs to be enquired into during course of trial in the suit. However, what is required to be seen as to whether there is *prima facie* case in favour of the plaintiff for injuncting the defendant from interfering with the management of the church. There is no quarrel in so far as visiting the church for offering prayers is concerned. Neither the plaintiff can obstruct the defendant nor can the defendant prevent the plaintiff from visiting the church for purpose of offering prayers. The only controversy is about managing the affairs of the church.

The plaintiff on his part produced Exs.P1 to P4. Ex.P1 is the certified copy of the sale deed in respect of the land over which the church was constructed. It however does not directly relate to the piece of land that was donated by the owner for the purpose of constructing the church. Exs.P2 and P3 are the electricity bill and receipt evidencing that in the church premises there is electricity connection which was obtained in the name of the plaintiff. Ex.P4 is the photo of the church. Exs.P1 and

P4 are not material. However, Exs.P2 and P3 are heavily relied upon by the plaintiff to contend that it is he who constructed the church and managing it. The defendant contended that the plaintiff who was also pastor of the neighbouring church used to visit the church and the plaintiff himself volunteered that he will obtain the electricity connection in the name of the church, but the plaintiff with ulterior motive has obtained the electricity connection in his name. Except for these documents, no other evidence was produced by the plaintiff to show that it is he who has been looking after the affairs of the church. Merely because the electricity connection is in the name of the plaintiff, it cannot be said that it is he who has constructed the church or he is incharge of the affairs thereof.

On the other hand, the defendant has produced Exs.R1 to R8. Exs.R1 and R6 are the bunch of the photographs. Ex.R2 is the certified copy of registration of the society and Ex.R3 is the certified copy of certificate of Ordination. Ex.R4 is the caveat petition filed by the plaintiff on the file of the Junior Civil Judge, Amadalavalass, wherein the plaintiff has taken a stand that he purchased the land under registered sale deed and constructed a church thereon. The recitals in the caveat petition are contrary to the plaint averments, according to which, he obtained the land from its owner under oral gift deed and constructed the church. Ex.R7 is the adangal pahani which shows that Krishnamurthy is in possession of Ac.0.15 cents in Sy.No.47/11. According to the defendant, it is Krishnamurthy from whom he took Ac.0.04 cents of land for construction of the church. As against this, the claim of the plaintiff is that he took the said land from Govindarao, who is the son of Krishnamurthy. The photographs of the church produced by both the parties show that it is

inscribed thereon that the donar of the land is Krishnamurthy, but not Govindarao. As a matter of fact, in Ex.R7 which shows that Krishnamurthy who is in possession of the land land, the claim of the plaintiff that he took Ac.0.04 cents of land from Govindarao cannot be believed, for the reason that the said Govindarao is not the person who is competent to donate the land, as the owner of which admittedly is Krishnamurthy, the Sarpanch of Sarubujjili village. Ex.R8 is the compact disc produced by the defendant to show that he is performing the religious ceremonies in the church.

When the documentary evidence that is produced by the plaintiff and the defendant is juxtaposed, *prima facie* it is evident that it is the defendant who is controlling the affairs of the church. The plaintiff could not place convincing evidence on record to show that it is he who took the land from the rightful owner and made the construction of the church, and therefore, he alone is entitled to manage the affairs of the church. The documents produced by the defendant clearly show that it is he who is managing the affairs of the church and got it registered as a society and also performing the religious ceremonies. Neither there is *prima facie* case in favour of the plaintiff nor is there any balance of convenience for granting injunction in his favour. The learned Additional District Judge, who has appreciated the material on record in proper perspective has vacated the injunction granted in favour of the plaintiff and upon perusing the material on record, I see no reasons to hold that the said view is incorrect warranting interference. The view taken by the appellate court is based on well settled principle of adjudicating the question of grant or refusal of injunction pending disposal of the suit.

It is however made it clear that neither the plaintiff nor the defendant should interfere with the right of one another in so far as their visiting the church or offering the prayers.

In view of the foregoing discussion, the civil revision petition is dismissed. Since the controversy lie in narrow compass, I feel it appropriate to direct the trial court to dispose of the suit, as expeditiously as possible, preferably, within a period of 6 (six) months from the date of receipt of a copy of this order, without seeking any further time for its disposal. No order as to costs.

Pending miscellaneous applications, if any, shall stand closed in consequence.

Date: 07.02.2017
Dsr

M.S.K.JAI SWAL,J

