



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 07.07.2021

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

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S.A. (MD)No.826 of 2005 and
M.P. (MD)Nos.1 & 2 of 2014 & 1 of 2015

1. Roman Catholic Bishop,
Kottar Diocese,
Ramavarmapuram,
Nagercoil,
K.K.District.

2. Parish Priest,
Kappakadu,
St.Antony's Church,
Kappakadu,
Kunnathoor Village,
Vilavangodu Taluk,
K.K.District.

... Appellants/Respondents 1 & 2/
Defendants 1 & 2

Vs.

1. Rathina Sigamany
2. Belarmin Joseph

... Respondents 1&2/Appellants 1&2/
Plaintiffs 1 & 2

3. Christopher
4. A.Jeyaraj
5. Rosemary
6. Arul Bose
7. Nithya
8. Divya

... Respondents 3 to 8/Defendants
3,4,6 to 9/Respondents 3,4,6 & 9

Prayer:

Second appeal filed under Section 100 of C.P.C., to set aside the Judgment and Decree passed in A.S.No.32 of 2004 on the file of the I Additional Sub Court, Nagercoil dated 10.02.2005 reversing the Judgment and Decree passed in O.S.No.169 of 1998 on the file of the II Additional District Munsif Court, Nagercoil, dated 08.08.2003.



For Appellants : Mr.Meenakshisundaram,
Senior counsel,
for Mr.C.Selvakumar.

For R-1 : Ms.Krishnaveni,
Senior counsel,
for Mr.P.Thiyagarajan.

For R-3 : Mr.S.Wilfred Prakash

For R-2 : No appearance.

For R3 to R8 : Given up

J U D G M E N T

The defendants in O.S.No.169 of 1998 on the file of the II Additional District Munsif, Nagercoil, are the appellants in this second appeal.

2. The said suit was instituted by respondents 1 and 2 herein for restraining the appellants herein from deleting or changing the name of the suit church. The appellants herein filed their written statement opposing the suit claim. The first plaintiff Rathina Sigamany examined himself as P.W.1 and marked Ex.A.1 to Ex.A.18. On the side of the defendants, Rev.Kulandhaisamy and Rev.Soosaimariyal were examined as D.W.1 and D.W.2. Ex.B.1 to Ex.B.5 were marked. After examining the evidence on record, the learned trial Munsif by judgment and decree dated 08.08.2003 dismissed the suit. Aggrieved by the same, the plaintiffs filed A.S.No.32 of 2004 before the I Additional Sub Court, Nagercoil. By judgment and decree dated 10.02.2005, the appeal was allowed and the judgment and decree passed by the trial Court was set aside. Challenging the same, the contesting defendants filed the present second appeal.

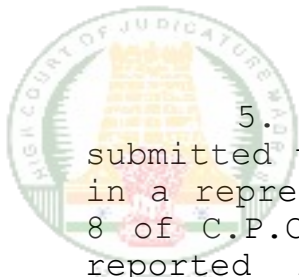
3. This second appeal was admitted on the following substantial questions of law:-

" a) Whether the first appellate Court is correct in not discussing about the applicability of the decision reported in 2003 (1) CTC 577, while reversing the judgment of the trial Court?

(b) Whether the first appellate Court is correct in coming to the conclusion that the suit is maintainable without following Order I, Rule 8 of C.P.C.?

(c) Whether the first appellate Court is correct in not giving reasons when reversing the judgment of the trial Court discussing each ground?"

4. Heard the learned Senior counsel on either side.



5. The learned Senior counsel appearing for the appellants submitted that the suit is not maintainable as it has not been filed in a representative capacity. The procedure set out in Order 1 Rule 8 of C.P.C. was not followed. By placing reliance on the decision reported in CDJ 2003 MHC 1059 (C.S.Robert and Another V. M.Kanagappan and others), the learned Senior counsel contended that once a church has been consecrated, it would vest in the Pope and the Arch Bishop as a delegate of the Pope is entitled to the spiritual and temporal powers over the church and its properties. He also submitted that this is a second round of litigation and the power and authority of Bishop to effect name change of the church was already sustained by the Hon'ble Apex Court in C.A.No.1037 of 1991 dated 13.10.1994. He prayed that the decision of the first appellate Court must be reversed.

6. Per contra, the learned Senior counsel appearing for the plaintiffs/respondents 1 and 2 drew my attention to the very same decision of the Hon'ble Division Bench and pointed out that as per Canon Law 1218, each church is said to have its own title and once the church has been consecrated, its title cannot be changed. She pointed out that the church is presently located in Kappukadu and that in view of the aforesaid Canon Law, the appellants cannot be permitted to tamper with the name. The learned Senior counsel submitted that the impugned judgment and decree passed by the first appellate Court does not call for any interference.

7. I carefully considered the rival contentions and went through the evidence on record.

8. I do feel swayed by the reference to Canon Law 1218. However, what comes in the way is the outcome of the earlier round of litigation. The name of the church was originally "St. Antony's Church, Kallithattu". It was changed as St. Antony's Church, Kappukadu by the then Bishop. That gave rise to the institution of O.S.No.381 of 1973 on the file of the I Additional District Munsif Court, Kuzhithurai. The said suit was originally decreed on 17.11.1975. Questioning the same, the then Bishop, Roman Catholic Bishop, Kottar Diocese and Parish Priest, Kappukadu, St.Antony's Church filed A.S.No.359 of 1977 before the Sub Court, Kuzhithurai. Allowing the appeal filed by the church, the first appellate Judge gave a finding that the Bishop has every right to change the name of the church for administrative purposes. The matter went right up to the Hon'ble Supreme Court. The Hon'ble Supreme Court in C.A.No.1037 of 1991 held that there is no interdict to change the name of the church as St.Antony's Church Kappukadu. However, it was directed not to tamper with the name "Kallithattu" in the inscription of the slab fixed in the foundation stone. Thus when in respect of the very same church, the power and authority of the church- Bishop to effect name change was already upheld, I have to answer the first substantial question of law in favour of the appellants. It is not necessary to

<https://hcmv.courts.mca.in/hcmv/judges/> substantial questions of law.



9. In this view of the matter, the impugned judgment and decree passed by the first appellate Court is set aside and the judgment and decree passed by the trial Court is restored. This second appeal is allowed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-I)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

PMU

Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To:

1. The I Additional Sub Judge,
Nagercoil.
2. The II Additional District Munsif,
Nagercoil.

Copy to

The Record Keeper, V.R.Section,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.P.THIYAGARAJAN, Advocate (SR-21780[F]dated 08/07/2021)

+3 CC to M/s.C.SELVAKUMAR, Advocate (SR-21794[F] dated 08/07/2021)

S.A. (MD) No.826 of 2005
07.07.2021



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