

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MRS. JUSTICE K.HEMA

WEDNESDAY, THE 28TH JUNE 2006 / 7TH ASHADHA, 1928

CRP.No. 2147 of 2003(E)

AGAINST THE ORDER DATED 29/11/2003 IN EP.89/2001 IN
OS.4/1987 of I ADDL.DISTRICT COURT, ERNAKULAM
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REVN. PETITIONER: RESPONDENTS 9 TO 11/JUDGMENT DEBTORS 9 TO 11

1. CHERIAKKU IYPOORU, KATTAKAMPAL,
THALAPPALLY TALUK.
2. REV.FR.KURIAKOSE THANNICOT,
PENGAMUKKU, THALAPPALLY TALUK.
3. MAR MELATHIOSE METROPOLITAN,
ARTHAT OLD CHURCH, KUNNAMKULAM.

BY ADV. SRI.BIJU ABRAHAM
SRI.B.G.BHASKAR

RESPONDENTS: PETITIONERS & RESPONDENTS/DECREE HOLDERS/J.DEBTORS

1. WILSON, S/O. PAPPACHAN, KOLLANNUR HOUSE,
KATTAKAMPAL.
2. STANLY, S/O.UKKURUKUTTY,
PULIKOTTIL HOUSE.
3. P.P.WILSON S/O.PATHU,
KATTAKAMPAL, THALAPPALLY TALUK.
4. MOLU D/O. VARIATH, CHERUVATHOOR,
ERNAKULAM.
5. C.V.VARIATH S/O. VARIATH CHEERAN,
PENGAMUKKU, KATTAKAMPAL, THALAPPALLY TALUK.
6. P.V.THARUKUTTY, S/O.VARIATH
PULIKOTTIL KATTAKAMPAL, THALAPPALLY TALUK.
7. C.V.ITTIIYASSAN, S/O.VARIATH,
CHERAVATHOOR, KATTAMPAL, THALAPPALLY TALUK.

8. C.C.KOCHUNNU S/O. CHERIAKU,
CHERAVATHOOR, KATAKAMPAL, THALAPPALLY TALUK.

9. P.K.CHACKORU S/O. ITTATHU, PULIKOTTIL,
KATAKAMPAL VILLAGE, THALAPPALLY TALUK.

10. K.V.JOSE, S/O. VARIATHU, KOLLANNUR
KATTAKAMPAL, THALAPPALLY TALUK.

11. C.C.PAILAPPAN S/O. CHERU,
KATAKKAMPAL, THALAPPALLY TALUK.

12. C.I.PAUL S/O. IYYAKUTTY CHEERAN,
KATAKAMPAL, THALAPPALLY TALUK.

BY ADV. SRI.A.N.RAJAN BABU
SRI.P.J.PHILIP
SMT.DEEPTHI
SRI.S.V.S.AYYAR (SR)

THIS CIVIL REVISION PETITION HAVING BEEN FINALLY HEARD
ON 28/06/2006, THE COURT ON 28/06/2006 PASSED THE
FOLLOWING:

K.HEMA, J.

C.R.P.NO. 2147 OF 2003

Dated this the 28th day of June, 2006

O R D E R

As per the order under challenge, the First Additional District Court directed that an election of the Managing Committee of St.Peter's and St.Paul's Orthodox Syrian Church, Pengamukku will be conducted by deputing an Advocate-Commissioner. Several other directions were also given as per the order. This order was passed in an execution petition filed by respondents 1 to 8 in this Revision Petition. They sought for execution of a decree passed in O.S.No.4 of 1987, as per which, an election for a new Managing Committee for the plaint Church was ordered to be conducted as it was done in the Piravom Church. In appeal A.S.Nos.121 and 123 of 1999 filed against the decree, this part of the order was not disturbed by this Court. The petitioners therefore sought for conduct of an election as stated in the decree.

2. Revision petitioners are respondents 9 to 11 in the Execution Petition. They raised objection against execution of the decree and conduct of the election as prayed for. Their main contention is that the execution petitioners who are respondents 1 to 8 are not members of Malankara Orthodox Syrian Church and therefore they have no manner of right to ask for execution of the decree in respect of the plaint Church. The revision petitioners contended that the respondents are not members of Malankara Orthodox Syrian Church as they ceased to be members of the plaint Church, after forming a separate Church in the year 2002. But the execution court held that the Execution Court is incompetent to implement the appellate decree in letter and spirit on the principle that the Execution Court cannot go behind the decree.

3. Learned counsel for the revision petitioners vehemently contended that the fact whether the execution petitioners ceased to be the members of the plaint Church is a vital factor which is to be looked into, before the decree is executed. Unless they have right or locus standi to execute the decree,

no execution is possible and the election ordered to be conducted is illegal, it is contended. Learned counsel for the petitioners contended that in the light of the decision of the Supreme Court reported in ***Municipal Board, Kishangarh v. Chand Mal and Co.*** (1999(9) SCC 198) and AIR 1997 SC 181, subsequent events can be looked into by the executing court in an execution petition. Whether a decree could be executed in the light of execution petitioners being no longer the members of the Church, is a question which could directly hit the execution and hence it has to be looked into by the court below and the court ought not to have ordered election of the Managing Committee, it is argued.

4. On going through the dictum laid down in the above decisions, it is clear that the court can look into the subsequent events which take place after the decree is passed, especially when subsequent events may stand in the way of an effective execution being made. Petitioners strongly contended that the execution petitioners have no locus standi or right to execute the decree since they ceased to be members of the relevant

Church and the court ought to have resolved that issue before ordering election. This is for the reason that an election as ordered would not have been possible for the various reasons explained by learned counsel for the petitioners.

5. The petitioners would contend that as per the order of the court below, the election has to be conducted in accordance with the provisions of the 1934 Malankara Church Constitution. It is submitted that as per Section 7 of the above Constitution, a person becomes eligible to vote for the election only if he confesses before the Vicar of the Church within one year prior to the date of the meeting. But it was argued that the execution petitioners, who have allegedly formed a separate Church and also declared that they will not be bound by 1934 Constitution, as per certain documents produced by the revision petitioners before the court below (which are not marked in the impugned order), it will not be proper for them to make confession before the Vicar of the plaint Church and hence they will not become eligible for voting in the election to be conducted by the Commissioner.

6. Learned counsel for the respondents strenuously contended that the respondents are following 1934 Constitution, even though they had not accepted the Vicar of the plaint Church. It is submitted that they are prepared to follow the 1934 Constitution and hence they are eligible for voting. It is made clear that they agreed to abide by the Constitution as per clause 2 of the modified decree passed by the first appellate court in A.S.Nos.121 and 123 of 1999. But learned counsel for the petitioners would argue that there are several documents which will establish that they have moved out and formed a separate Church and they are acting not in accordance with the 1934 Constitution. There are also some documents in which they vehemently expressed that they do not intend to abide by the 1934 Constitution. If those decrees are approved, it is submitted that they will not be eligible for taking part in the election in accordance with clause 2 of the decree. Therefore, the question of eligibility to vote in the election itself is under dispute. This has to be resolved by the fact finding court by looking into the evidence available.

7. It was strongly contended by learned counsel for the respondents at this juncture that the executing court cannot admit evidence and make a detailed enquiry. A meticulous enquiry into the disputed facts, according to him, will be barred and such dispute can be resolved only in a separate suit. He has placed reliance upon ***Karunakaran and others v. Janaki Amma and others*** (1987(2) KLT 1010) in support of his contention. In reply to this, learned counsel appearing for the petitioners would argue that the Supreme Court has made it clear that in the decision reported in ***Municipal Board, Kishangarh v. Chand Mal and Co.*** ((1999)9 SCC 198) that evidence can also be let in at the execution stage, with respect to subsequent events.

8. I am not going into the controversy discussed above and entering a finding on the disputed question in this revision since a remand may be necessary in this case. Any finding on the disputed question may prejudice the decision to be taken by the court below. The court below shall have to consider the nature of enquiry to be made and the nature of evidence to be

adduced in the light of the decisions cited by both sides. Any way, I make it clear that the court below has to look into the question regarding the entitlement of the respondents to execute the decree. In this regard learned counsel for petitioners has drawn my attention to clause 2 and clause 4 of the modified decree in the First Appeal and argued that notwithstanding the decree passed to the effect that the voters shall be at liberty to qualify themselves as members of Church with liberty to vote by complying with the requirements for making confession before a Vicar of their choice. It is clear from clause 4 of the decree that the respondents cannot make confession before the Vicar of their choice after the meeting held in 2002. It is pointed out that as per the decision reported in AIR 1997 SC 1035, election has to be conducted in accordance with the amended Constitution of the year 1934.

9. It was also pointed out that as per clause 4 of the decree, the parishioner of the Patriarch group will necessarily have to accept the Vicar transferred and appointed by the Catholics or the Metropolitan as per the provision in the 1934

constitution. This Vicar is the Vicar of plaintiff Church. There cannot be dispute on this. But as per clause 4 of the decree itself it is argued that any Vicar approved by the Patriarch faction can also function as a Vicar. But this is subject to the limits of the status quo order issued by the Supreme Court. It was submitted that as per the Supreme Court's order, the priests of the Patriarch group, who were functioning before 1995 can continue till the Malankara Association meeting is held. It was also pointed out that a petition was filed with a request for impleading another Vicar while First Appeal was pending, consequent to the death of the Vicar who was functioning on behalf of the respondents. But that petition was dismissed, by holding in paragraph 20 of the judgment in A.S.No.121 of 1999 that such Vicar has not been duly appointed as the Metropolitan of this diocese and so, it is not possible to accept the appointment of Vicar by the Metropolitan of the Patriarch faction who himself seems to have assumed office only in 1997.

10. It is argued that the benefit of status quo order

passed by the Supreme Court, will be available only to the persons who were functioning as Vicar prior to 1995, specifically the date of the Supreme Court judgment. Therefore, by interpreting clause No.4 in the modified decree as clause No.2 it is contended that the respondents cannot confess before any Vicar of their choice. These arguments are raised by learned counsel for the respondents referring to clauses 3, 4 and 6 of the same decree.

11. Learned counsel for the respondents argued that clause No.4 is only a restriction imposed with respect to the conduct of the prayers in Church on Sundays and use of the cemetery and this has nothing to do with the eligibility of the members to vote. It is also argued that this will not affect the decree passed by the appellate court to the effect that the members shall be at liberty to qualify themselves as members of the Church with eligibility to vote with the requirements of making confession before Vicar of their choice.

12. Thus, in respect of different clauses in the decree itself there is a strong dispute. Both sides are giving two

different interpretations. But factual details have to be looked into even for resolving those disputes. Since the dispute raised will directly touch upon the eligibility of the members to vote, this also has to be considered and decided by the trial court before the decree is executed.

13. I am not pronouncing anything upon the factual disputes. As a revisional court, this Court cannot resolve such issues also. The documents which are said to be produced before the court below by the petitioners are not marked and those are not before me. In the above circumstances, the trial court will consider the eligibility of the entitlement of the execution petitioners to execute the decree. Various aspects which are referred to by me in this judgment regarding the dispute shall also to be considered by the executing court and a speaking order has to be passed, by taking into consideration the objections raised and the contentions taken up by both sides. In a matter of this type where there is a strong contest, it is always for the executing court to settle those issues in accordance with law and in the light of the dictum laid down in

the various decisions. I make it clear that I am not pronouncing anything on merit in this case. It is also submitted that the order passed by the court below that the members must be allowed to make confession before the Vicar of their choice will be inconsistent with the direction already given. It was also pointed out as per the order of the Supreme Court (vide SLP against AFA.21/1996) placed before the lower court it was held that the 1934 Constitution will be applicable to all Parish Churches. It is also submitted that there is a decision of this Court that the relevant Church in this case is a Parish Church. Therefore, in the light of the decision of the Supreme Court in the SLP, an election can be conducted only in accordance with the provisions contained in 1934 Constitution, it is contended. The order passed by the court below allowing the members to make confession before the Vicar of their choice will be totally against the provisions contained in 1934 Constitution as well as clause 2 of the impugned order.

14. Learned counsel for the petitioners also pointed out that the order was passed by the court below mainly in the

light of the judgment of this court in ILR 1998 Ker. 237 wherein election was ordered to be conducted by a Commissioner. This decision was based on a consent of the parties and it was later followed in a contested matter in A.F.A.No.21 of 1996. An order was passed in the said appeal by this Court allowing conduct of election by a Commissioner. It was submitted that it was following the principles in those decisions that the court below has passed an order to conduct election by a Commissioner. But those principles ought not to have been followed, since the Supreme Court has stayed the judgment itself passed in A.F.A.No.21 of 1996 referred above. Having stayed the judgment itself, it is contended that the lower court ought not to have passed an order to conduct an election by the Commissioner. But these contentions were not considered by the lower court while passing an order which is challenged in this revision.

15. Learned counsel for the respondents vehemently contended that the stay granted by the Supreme Court of the judgment itself in A.F.A.No.21 of 1996 will be absolutely of no

consequence, because that is in respect of another Church. As far as this case is concerned, the decree has become final by the modified decree passed in the First Appeal and also in the Second Appeal. Therefore, the question of executability in the light of the Supreme Court order staying the judgment in A.F.A.No.21 of 1996 need not be looked into by the court below.

16. On hearing both sides, I find that since the matter relates to the executability of the decree and the contentions are taken up by the revision petitioner in the written objection itself, whether the contentions are sustained or not, the court is bound to consider the same and enter findings on those aspects. On hearing both sides, it is clear that several disputed facts have to be gone into. The question whether the execution petitioners are members of the Church in the light of the allegation that they have formed as separate Church with a separate Constitution etc. is to be decided as a subsequent event, before passing an order to conduct election by a Commissioner. The Court has also look into the question

whether it will be possible for the execution petitioners and their group to make a confession before the Vicar of the plaint Church to attain the eligibility. If it is not possible, there will be disputes after disputes, in which event, it will not be possible to comply with the directions passed by the court below. So these are matters to be resolved at the initial stage itself and only the fact-finding court can resolve those issues. The lower court has not gone into any of these aspects on the premise that the executing court cannot go beyond the decree. But the matters of the above nature are relevant even for the purpose of an executing the decree, as held in the decision referred to by me above.

17. In the above circumstances, I find that the order under challenge is not sustainable. The lower court is to be directed to consider the question afresh in the light of the objections raised, regarding the right of the execution petitioners to file execution petition and other relevant matters and if so necessary, both sides may be allowed to adduce evidence on the disputed issues. It is only after resolving

these questions especially in the light of the subsequent events that an effective execution can be made. It cannot be said that for this purpose the court will have to go behind the decree.

In the result, the order under challenge is set aside. The case is remanded to the court below for a fresh consideration and disposal in accordance with law in the light of the observation made in this judgment.

The Revision petition is allowed.

K.HEMA, JUDGE

vgs.