

C.P.Devi Vs. N.Dakshayani

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Court : Kerala

Decided On : Oct-05-2013

Judge : Honourable Mr.Justice Thottathil B.Radhakrishnan

Appellant : C.P.Devi

Respondent : N.Dakshayani

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE MR.JUSTICE THOTTATHIL B.RADHAKRISHNAN & THE HONOURABLE MR. JUSTICE BABU MATHEW P.JOSEPH SATURDAY, THE 5TH DAY OF OCTOBER 2013 13TH ASWINA, 1935 AS.No. 460 of 1998 ()
----- AGAINST THE

JUDGMENT

IN OS6031995 of SUB COURT, KOZHIKODE -----
APPELLANT(S) PLAINTIFFS): ----- 1. C.P.DEVI.

2. C.P.MOHANDAS.

3. C.P.VALSARAJ.

4. C.P.PREMKUMAR 5 C.P.RANI.

6. C.P.SREEKUMAR.

7. C.P.BALAJI. THE1T APPELLANT IS THE WIFE AND APPELLANTS2TO7ARE THE CHILDREN OF SANKARAN, RESIDING AT CHEENATHUKANDY PARAMBIL, KALATHINKUNNU AMSOM AND DESOM, KOZHIKODE TALUK. THE2D APPELLANT IS REPRESENTED BY POWER OF ATTORNEY HOLDER, 6TH APPELLANT. BY ADVS.SRI.K.RAMACHANDRAN SRI.P.RAMACHANDRAN RESPONDENT(S)DEFENDANTS): ----- 1. N.DAKSHAYANI.

2. N.SARASWATHI.

3. N.RAMACHANDRAN PJ2/- ..2.. AS.No. 460 of 1998 () ----- 4. N.SREEJA.

5. N.BINDU.

6. N.SURESH CHANDRAN.

7. RAVICHANDRAN.

8. KANNAN. THE1T RESPONDENT IS THE WIFE AND RESPONDENTS2TO6ARE THE CHILDREN OF VELAYUDHAN, RESIDING AT NEELAMBALATH, KALATHINKUNNU AMSOM AND DESOM, KOZHIKODE TALUK, THE7H RESPONDENT IS THE SON OF SANKARAN, RESIDING AT KOYILOTH MADAPPURA, KALATHINKUNNU AMSOM AND DESOM, KOZHIKODE TALUK AND THE8H RESPONDENT IS THE SON OF CHOYI, RESIDING AT NEELAMBALATH, KALATHINKUNNU AMSOM AND DESOM, KOZHIKODE TALUK. R2-6 BY ADVS. SRI.T.KRISHNAN UNNI (SR.) SRI.A.P.CHANDRASEKHARAN (SR.) SMT.PRABHA R.MENON SRI.SAJU.S.A SMT.P.A.SHEEJA SRI.K.C.KIRAN THIS APPEAL SUITS HAVING BEEN FINALLY HEARD ON0510-2013, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: PJ AS.No. 460 of 1998 () ----- APPENDIX PETITIONERS' ANNEXURE ANNEXURE1 PHOTOGRAPH IN RELATION TO THE DISPUTED BUILDING. ANNEXURE A: A PHOTOGRAPH SHOWING THE BANIYAN TREE IN THE TEMPLE COMPOUND. ANNEXURE B: A TRUE COPY OF THE PHOTOGRAPH APPEARED IN MATHRUBHUMI DAILY DATED46/2011

SHOWING THE FALLEN OF TREE ANNEXURE C: A TRUE COPY OF THE NEWS AND THE PHOTOGRAPH RELATING TO THE FALLEN TREE APPEARED IN MALAYALA MANORAMA DATED 46/2011. ANNEXURE D: A PHOTOGRAPH SHOWING THE DAMAGES CAUSED DUE TO FALLING OF THE TREE. ANNEXURE E: A TRUE COPY OF THE PHOTOGRAPH OF DAMAGED PORTION, A TARPOLINE WAS PUT UP SUPPORTED BY BAMBOOS IN THE PLACE OF DAMAGED ROOM. RESPONDENTS' ANNEXURES NIL. / TRUE COPY / P.S. TO JUDGE PJ "CR" Thottathil B. Radhakrishnan & Babu Mathew P. Joseph, JJ.

= = = = = A.S.No.460 of 1998 & Cross Objections = = = = = Dated this the 5th day of October, 2013 Judgment Thottathil B. Radhakrishnan, J.

1. This appeal is by the plaintiffs. Cross objections are by respondents 1 to 6 and 8 in the appeal. They are among the defendants. 2. Suit properties were acquired by two ladies. They married brothers, one of whom is stated to have married another lady after he turned a widower. The suit properties, even going by the pleadings, came to be a seat of worship with a Madappura and different other adjunct and ancillary points of worship. The substance of the litigation is the plaintiffs' claim to participate in the management of the Madappura on the basis of their AS460/98 & Cross Obj. 2 one half share over the properties. The suit was initially laid as one for partition. It was amended pleading that if partition by metes and bounds is not possible, the plaintiffs may be granted the right to participate in the right of administration and management of the temple and its properties and to have right to conduct the festivals, poojas and offerings and also to adorn the position of a Madayan which is the office of the priest who conducts the offerings and poojas in a Madappura. 3. The court below, on the basis of the rival contentions as to title and also after noticing the relevant precedent law, concluded that the suit for partition or for the alternative relief of declaration to participate in the management and the right to office of the Poojari or Madayan and the right to different reliefs claimed in connection with the affairs of the temple cannot be granted in such a suit of the nature before it; either for declaration or for partition. The court below went on to observe that this may be a AS460/98 & Cross Obj. 3 case where the

plaintiffs have to file a scheme suit. 4. Having heard the learned counsel appearing for the appealing plaintiffs and the learned senior counsel appearing for the cross objectors, we see that the conclusion of the court below in paragraph 26 of the impugned judgment that a suit for partition or declaration as laid before the court below would not lie cannot be faulted. 5. In the course of his extremely persuasive submissions, the learned counsel appearing for the appellants referred to the decision of Allahabad High Court in Ramesh Chandra v. Gulab Rai [AIR1980 Allahabad 283] to say that notwithstanding any particular relief to frame a scheme in terms of Section 92 being pointedly sought for among the reliefs claimed, the court was within jurisdiction to mould relief in that suit itself by framing a scheme. 6. Ramesh Chandra (supra) was a case where the AS460/98 & Cross Obj. 4 application made before the Advocate General under the law as it then stood, did not specifically mention the relief sought for under Section 92 CPC. The learned Judge of the Allahabad High Court took the view that in view of the different provisions in Section 92, the application could have been considered because the draft plaint asks for further or other relief as the nature of the case may require. It was in that context that it was viewed by the learned Judge in that case that mere absence of relief made under a specific clause of Section 92(1) CPC would not make the proposed suit as not maintainable. That cannot be treated as a precedent on any principle of law. That apart, primarily and fundamentally, even according to all parties to this litigation, the property is a private trust. The scope of Section 92 CPC may not, therefore, come into operation. Hence, we dissuade ourselves from taking that as a precedent to be applied on the facts of the case in hand. AS460/98 & Cross Obj. 5 7. There can be a scheme suit even for a private trust. There can also be suits to protect trust properties, even without taking recourse to an action for framing of scheme or for administration through interference of court. 8. Therefore, in our considered view, the court below ought to have kept itself away from stating that the plaintiffs have to file a scheme suit. All that was sufficient, as rightly done, was to hold that the relief sought for in the suit cannot be granted; nothing more. It ought to have been left to the wisdom of the parties, with the aid of wise counsel, to decide on any course of action, even through court, if and when it becomes necessary. 9. Having demonstrated to the satisfaction of this Court that dismissal of the suit is to be confirmed, the cross

objectors are justified in saying that many of the findings, on facts, as rendered in the impugned judgment, ought not to have been made. The quality of the litigation and AS460/98 & Cross Obj. 6 the nature of the conclusions arrived at, in the fitness of things, ought to have left the parties without dice being loaded as against any of them, either on facts or in law. Therefore, when the plaintiffs were being non-suited on an issue as to maintainability as to the nature of the litigation, any finding on facts or the quality of title as against the defendants ought to have been excluded. The suggestion in the impugned judgment that the plaintiffs could have filed only a scheme suit ought to have been excluded. The cross objections, therefore, succeed. In the result, i.the appeal is allowed partly vacating the penultimate sentence in paragraph 26 of the impugned judgment that the plaintiffs have to file a scheme suit. All rights of parties to seek relief in accordance with law would stand open without being impinged by any observation, either in the trial AS460/98 & Cross Obj. 7 court's judgment, or in this judgment, as to any particular course of litigation to be adopted. ii.The cross objections are allowed vacating the findings rendered by the court below. iii.No costs. iv.Before parting, we suggest that the parties reconcile. God, if one believes in such an entity, is never understood as exclusive to anyone. Sd/- Thottathil B.Radhakrishnan Judge Sd/- Babu Mathew P.Joseph Judge Sha/ -true copy- PS to Judge AS460/98 & Cross Obj. 8 Thottathil B.Radhakrishnan & Babu Mathew P.Joseph, JJ.

===== A.S.No.460 of 1998 & Cross Objections =====
===== Judgment 5th October, 2013 =====

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