

Chinnasami Mudali and ors. Vs. Advocate-general of Madras and ors.

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Court : Chennai

Decided On : Jul-18-1894

Reported in : (1894)ILR17Mad406

Judge : Arthur J.H. Collins, C.J. and ;Parker, J.

Appellant : Chinnasami Mudali and ors.

Respondent : Advocate-general of Madras and ors.

Judgement :

1. We agree with the learned Judge that the plaintiffs have not been able to show that the position of themselves or their party has, in a canonical point of view, been materially affected by the concordat of 1886. The plaintiff's, no doubt, belong to the caste of Christian boatmen, for whose religious benefit the fund was originally intended. But by the decree in Original Suit No. 105 of 1863, it was decided that it was for the majority of the caste to determine whether in spiritual matters, the Church of St. Peter at Royapuram should be placed under the Vicar Apostolic or under the Goanese Bishop of Mylapore. Although the result of the first caste meeting held in pursuance of that decree was to place the Church under the Bishop of Mylapore, the order of 30th January 1867 recognized the election of the Rev. T. Gnanaprakasa Nadar as the successor of the Rev. Vincent de Silva. The Rev. T. Gnanaprakasa Nadar was subordinate to the Vicar Apostolic, and ever since 1867 the Church of St. Peter has remained under the spiritual jurisdiction of the Bishop of Madras.

2. The concordat of 1886 and the decree of 1887 have not, therefore, affected the position of the plaintiffs with regard to the sacraments called 'paracholia.' If plaintiffs are unable now to obtain these sacraments in St. Peter's Church, they have been under the same disability since 1867, and the concordat between the Pope and the King of Portugal has not altered their position in respect to these sacraments.

3. All that can be alleged by plaintiffs as a grievance against the concordat is that at any future election of a priest by the members of the boatmen caste, it may be practically impossible for the adherents of the Goanese party--even if in a majority--to elect a priest of their own party, since by the concordat, St. Peter's Church has been definitely placed within the territorial jurisdiction of the Vicar Apostolic. We are by no means clear that this result would necessarily follow. Seeing that the differences settled by the concordat related only to questions of patronage and jurisdiction, and did not touch the validity of the orders of either party or the faith of the Church, it may be that a Goanese priest, if elected, would be granted the necessary faculties by the Supreme Pontiff or the Vicar Apostolic. It appears from the evidence of Father Mayer, the Vicar-General under the Archbishop of Madras, that such canonical faculties can be given, though no doubt they very rarely are given. But even if supreme ecclesiastical authority has imposed upon the priests of the Goanese party a prohibition to accept this particular office, it appears to us that such prohibition is a matter of ecclesiastical jurisdiction with which the Courts have nothing to do. It could hardly be contended that it would not be open to the Supreme Pontiff to impose such a prohibition upon any individual priest in obedience to the See of Rome. And the possibility that the right of the caste to have one of the Goanese clergy as their officiating priest might be terminated by the permanent surrender of the church to the jurisdiction of the Vicar Apostolic was clearly contemplated by Scotland, C.J. and Bittleston, J. in Civil Suit No. 136 of 1866, and by Turner, C.J. in his judgment in Civil Suit No. 102 of 1880.

4. It is not, however, necessary for us to speculate upon a contingency which may never arise, for even if the practical effect of the concordat is to prevent the election of a Goanese priest, it is clear that that fact will not justify the Court in

taking away from St. Peter's Church part of its endowment and bestowing that part upon the Church of St. Anthony. It was held in Civil Suit No. 105 of 1863, and re-affirmed in Civil Suit No. 102 of 1880, that the purpose of the fund was the erection of a church for the use of the caste of Christian boatmen at Royapuram, the performance of divine worship therein and other religious observances connected with the church, and to that purpose the whole property must be devoted. The question of the division of the fund so as to endow two churches for the use of the two parties has been previously considered, and it has been twice held that on principle and authority no such division can be made, and that the fund and the church cannot be separated.

5. Finally it was urged for the appellants that they were entitled to their costs out of the fund, since they had a bond fide grievance, and that the Advocate-General had accorded his sanction for the bringing of the suit. We have already shown that the concordat has not altered the existing position of the plaintiffs with regard to the rites of the church, which remain the same as it has been since 1867, while the possible future grievance, if it exist at all, is one with which the ecclesiastical authorities alone can deal. As regards the sanction of the Advocate-General, it is rightly pointed out that it is no part of the duty of that officer to decide the case as a Judge, and that if an apparently good and bond fide grievance is shown, he may properly leave the applicants to bring the suit at their own risk. When, however, we find that an opportunity has been taken of a friendly settlement of differences between the highest authorities in Church and State to re-agitate in a hostile spirit questions long ago decided against the party of the appellants, we can see no reason why they should not be left to bear their own expenses. It would be an evil precedent if litigants were advised or encouraged to think that they could renew litigation with impunity, drawing the expenses of so doing from trust funds and not from their own pockets. We cannot but see how the very existence of such a fund as this may offer temptation to fomenters of litigation and encouragement for speculative actions. The last suit, which was decided by Sir Charles Turner on December 5th, 1883 cost the fund no less than Rs. 20,366. The present suit, which is framed to re-open the same questions, was filed within 5i years of that decision, and here too we find that separate costs for third defendant, as well as those of the Advocate-General (first defendant), amounting in all to Rs. 4,775,

have been allowed out of the fund. Apparently none of this has yet been recovered from the plaintiffs. It is lamentable to find that moneys which have been devoted to the performance of divine worship and the religious instruction of the poor should be dissipated in fruitless litigation, and we cannot but express our regret that the Court was not moved to call for security for costs before the hearing of this appeal.

6. We dismiss the appeal with costs, but we do not feel ourselves justified in ordering that any further sum be paid out of the fund.

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