

D'Cruz and Ors. Vs. D'Silva and Ors.

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Court : Chennai

Decided On : Oct-15-1908

Reported in : 1Ind.Cas.995

Judge : Arnold White, C.J. and ;Abdur Rahim, J.

Appellant : D'Cruz and Ors.

Respondent : D'Silva and Ors.

Judgement :

Arnold White, C.J.

1. In this case the plaintiffs sue as subscribers to a society known as the Society of St. Vincent de'Paul St. Francis Conference, on behalf of themselves and all other persons interested in the subject-matter of the suit. They ask in their plaint (1) that the defendants may be removed from their respective offices in the St. Vincent de'Paul St. Francis Conference at Cochin, and (2) that they may be ordered to render an account of the affairs of the society for the time daring which they wore in office.

2. In their written statement the defendants allege that the society is a voluntary society whose primary object is the spiritual well-being of its members, and that only, secondarily, it has a charitable object, as ministering to such spiritual welfare; that the society is governed by a written constitution and by the directions issued by the general council in Paris; that the first plaintiff has been a subscriber of the

sum of two annas monthly from 1893 till December 1902, since when he has subscribed four annas per mensem; and that the second plaintiff has been a subscriber of two annas per month till December 1903, and in January 1904 increased the subscription to four annas.

3. The suit was decided on a preliminary issue whether the subscribers to the society have, as such, any right to bring a suit of this kind. The Courts below have held they have no such right. The organization of the society and the objects for which it was intended are explained in the judgment of the Subordinate Judge.

4. I express no opinion whether this suit is maintainable without the consent of the Advocate-General having been obtained under Section 539 of the Code of Civil Procedure. For the purposes of my judgment. I assume that the suit can be brought without the consent of the Advocate-General.

5. It has not been suggested that under the rules of the society, subscribers, as such, have any control over the officers of the society or the conduct of the society's affairs. The officers of the society are appointed under the rules of the society, and not by the subscribers. It is clear that subscribers are not entitled as of right to make any claims upon the funds of the society. They are not the beneficiaries of the trust.

6. I do not think the decision of Scott, J., in *Thackersey Dewraj v. Hurbhum Nursey* (1) applies to the present case. In that case, in dealing with the question whether the plaintiffs could maintain the suit in their own right and in their own names without the permission of the Court or notice to other parties interested under section. 30, the learned Judge observed that the plaintiffs sued not as members of the castes but as subscribers to the temple funds and devotees of the idol, and, as such, each had a right to complain of mal-administration.

7. In the present case it does not appear that the plaintiffs are even members of the society, and their ecclesiastical rights, if any, in connection with the society, are, in my opinion, in no way analogous to the rights of the worshippers in a Hindu temple.

8. I think the Courts below were right and I would dismiss the appeal with costs.

Abdur Rahim, J.

9. The plaint in the suit states in its first paragraph that the plaintiffs who are the subscribers to the society of St. Vincent de'Paul St. Francis Conference, British Cochin, sue on behalf of themselves and all other persons interested in the subject-matter of the suit, and, in its second paragraph, describes the seven defendants respectively as the President, the Secretary, the Treasurer and the active members of that society. The reliefs specifically asked for are the removal of the defendants from their respective offices, for accounts and for payment into Court of the money which may be found due from them to the society. Assuming that the defendants are in the position of trustees of the society, or of the Cochin Conference, and thus liable to be sued for misconduct or neglect of their duties, by persons interested in the administration of the trust which is one partly for religious and partly for charitable purposes; the plaintiffs clearly cannot maintain a representative suit like this without the sanction or leave obtained either under Section 539 or Section 30 of the Civil Procedure Code. But it is contended by the learned vakil for the appellants that the decisions reported in *Budree Das Mukim v. Chooni Lal Johurry* 33 C.T. 89 and *Subbayya v. Krishna* 14 M. 186, have laid down the law differently. All that these two cases lay down is that Section 539 of the Civil Procedure Code is permissive, and not mandatory, so that suits which were maintainable before its enactment without special leave are not affected by its provisions. But in *Subbayya v. Krishna* 14 M. 186 the general rule is stated to be that, all persons interested in a suit should join in bringing it, and Woodroffe, J., in *Budree Das Mukim v. Chooni Lal Johurry* 33 C.T. 89 says with reference to Section 539, As regards the general public interested, it is enabling, in this sense that two persons may sue now where it would have been necessary before that all should sue' (the italics are mine), 'or that some should obtain leave to sue on behalf of the rest. To this special privilege it annexes a condition to prevent wasteful suits in that it requires that sanction should be obtained.' I adopt this proposition as correctly stating the law, and hence the present suit having been brought without the sanction of the Court or the consent of the Advocate-General has been rightly held to fail.

10. If the defendants be treated as servants of the council appointing them, and not trustees the suit might be open to a further objection that they are liable to be sued only by their employers. I am inclined to think, however, that they occupy the position of trustees.

11. In the view I have expressed it is not necessary that I should deal with the argument of the learned Counsel for the respondents that the suit is not maintainable because the plaintiffs are subscribers paying only a small monthly subscription, and not beneficiaries who alone, according to him, can institute such an action as this. Nor do I feel myself called upon to consider his other argument, that, as the prominent object of the society is the advancement of the spiritual benefit of the members and charity is but its subsidiary object, the Civil Courts have no jurisdiction to entertain a suit relating to its management. But I must say that I should have felt considerable hesitation in accepting either of these two contentions. However that may be, for the reasons I have mentioned I agree that the appeal must be dismissed with costs.