

Solomon vs Rev. Dr. Soosai Pakiam M. on 7 January, 2020

Bench: Uday Umesh Lalit, Vineet Saran

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IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 0058 OF 2020
(@ out of SLP (C) No.21579/2019)

SOLOMON & ANR.

App

VERSUS

REV. DR. SOOSAI PAKIAM M. & ORS.

Res

O R D E R

Leave granted.

This appeal challenges the order dated 08.08.2019 passed by the High Court of Kerala at Ernakulam in O.P. (C) No.3026 of 2012 which arose out of Civil Suit No.791 of 2009 on the file of Munsif's Court, Thiruvananthapuram.

The Principal prayers in said suit were as under:

“A. A decree declaring that the plaintiffs and the people of ward numbers 1 and 2 has got all kind of rights in the parish and the plaint scheduled church and that the defendants and; have got no right to make a compulsory bifurcation.

B. A permanent prohibitory injunction restraining the defendants and their henchmen from obstructing the plaintiffs or the people of ward numbers 1 and 2 from enjoying all the rights of St. Antony's Forane Parish and plaint schedule church as parishioners including offering prayer, Holy Sacraments, Catechism classes and other ecclesiastical services, etc.” Pending disposal of the suit, interim relief in the nature of interim injunction under Order 39 Rule 1 read with Section 151 of the Code of Civil Procedure, was prayed for as under:

“For the reasons stated in the accompanying affidavit it is humbly prayed that this Hon'ble Court may be pleased to direct the 1st Defendant to give 1st Holy

Communion to the daughter of the 1st petitioner at the earliest from the St. Antony's Forane Church, Valiyathura." The prayer for interim relief was initially rejected by the Trial Court. However, when the matter was carried in appeal, the First Appellate Court accepted the prayer and held as under:

"..It is well settled that unless it is consented by all the members of the Parish, no bifurcation can be effected because of the reason that it is their property and it was a religious congregation though ultimately administered by the first counter, the Bishop of diocese but it is for and on behalf of the Parishioners and he is actually the representative of the Parishioners. If it is viewed in that perspective I can very well say that the Parishioners are the supreme authority because the Bishop is the representative of the Parishioners. Yet another reason is also there to non suit the counter petitioner/defendant because of the reason that when there is a religious congregation it will act as an implied trust for and on behalf of the parishioners wherein the parishioners are beneficiaries though the property is in the hands of Bishop of diocese as custodian. This would definitely make the legal position well clear and unless the Parish members consented for the bifurcation and separation of the estate into two, no bifurcation can be conducted. In other words, if any bifurcation is conducted without the consent and knowledge of Parishioners it would be an invasion upon the rights of Parishioners with respect to right to hold the property and right to offer prayer and right of burial and right of religious observations. Once it is congregated by the parish people for their benefit, nobody can bifurcate the same or separate the same without the consent of its parishioners. Now it was fairly conceded by the learned counsel appearing for the counter petitioners that they actually held a public meeting of the parish members in the year 2008 but no decision was taken up in that meeting because of the difference among the Parish members regarding the alleged bifurcation. Later on a meeting of representatives was convened and the decision was taken. In other words he himself has admitted that though they have opted for convening a meeting of parish members no decision was taken up favouring bifurcation. If that be so the decision taken by representatives of parish members subsequent to the rejection made by the parish members cannot be accepted and it cannot be equated with the decision taken by the parish members because of the reason that already the parish members expressed their opinion differing and not favouring the alleged bifurcation. So in fact there cannot be a bifurcation without the consent and permission of all parish members and no such right is vested either with the first respondent (first counter petitioner) or with the second and third counter petitioners. So the apprehension in the mind of present petitioners/plaintiffs who are members of the parish is well placed and it will constitute a prima facie case in their favour and I am satisfied that the balance of convenience is also in their favour and likelihood of irreparable injury is also in favour of the plaintiff/petitioners and as such I have no hesitation to set aside the order passed by the lower court in both the I.As. by allowing this appeal and I am doing so.

In the result appeal allowed. Order passed in I.A. Nos.4620/10 and 3474/09 are hereby set aside and temporary injunction granted as prayed for in both the I.As. Until disposal of the suit and there will be a direction to the lower court to expedite the disposal of matter as early as possible. Considering the nature of dispute, parties are directed to suffer their respective costs of appeal.” The order passed by the First Appellate Court has however, been reversed by the High Court.

Thus, the matter raises two questions, namely;

(i) whether the defendants were within their rights to bifurcate the church in question; and

(ii) whether the daughter of the first plaintiff(second appellant before this Court) could be given her 1 st Holy Communion and other ecclesiastical services in the undivided church.

Insofar as the first question is concerned, it must await the final decision that may be arrived at after hearing rival contentions. However, the second question in the said suit, as regards, 1st Holy Communion and other ecclesiastical services that the daughter of the first plaintiff is entitled to, ought not to be deferred till the final conclusion of the controversy.

It is true that the directions issued by the First appellate Court have now been set aside by the High Court. But considering the peculiar facts and circumstances on record, while allowing the appeal only to the limited extent, we direct:

A. The daughter of the first plaintiff (second appellant in this court) shall be entitled to have her 1st Holy Communion and other ecclesiastical services in the undivided church, namely St. Antony Farane church. B. All the entries to that effect shall initially be made in the undivided church in namely St. Antony Farane church.

C. After disposal of the suit, if the claim for bifurcation is accepted by the court below, then the entry about 1st Holy Communion & other ecclesiastical services and other entries shall be transmitted and transferred to the other Parish.

D. The concerned services including 1st Holy Communion and other ecclesiastical services shall be completed as early as possible and preferably within three months. It is made clear that we have not and shall not be taken to have expressed any opinion on the merits or demerits of the matter which shall be gone into by the concerned court. With the aforesaid observations, the appeal is allowed.

.....J. (UDAY UMESH LALIT)J. (VINEET SARAN) New Delhi January 7,2020.

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (C) No(s). 21579/2019

(Arising out of impugned final judgment and order dated 08-08-2019 in OPC No. 3026/2012 passed by the High Court Of Kerala At Ernakulam) SOLOMON & ANR. Petitioner(s) VERSUS REV. DR. SOOSAI PAKIAM M. & ORS. Respondent(s) (IA No. 127861/2019 - EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT IA No. 127862/2019 - EXEMPTION FROM FILING O.T. IA No. 133324/2019 - PERMISSION TO FILE ADDITIONAL DOCUMENTS/FACTS/ANNEXURES) Date : 07-01-2020 These matters were called on for hearing today. CORAM :

HON'BLE MR. JUSTICE UDAY UMESH LALIT HON'BLE MR. JUSTICE VINEET SARAN For Petitioner(s) Mr. A. Venayagam Balan, AOR Ms. V.S. Lakshmi, Adv.

For Respondent(s) Mr. Thomas P. Joseph, Adv.

Mr. Jose Abraham, AOR Mr. M.P. Srivignesh, Adv.

Mr. B. Mathews, Adv.

Ms. Sarah Shaji, Adv.

UPON hearing the counsel the Court made the following O R D E R Leave granted.

The appeal is allowed in terms of the signed order.

Pending applications, if any, also stands disposed of.

(INDU MARWAH)
COURT MASTER

(SUMAN JAIN)
BRANCH OFFICER

(signed order is placed on the file)