Baselius Mar Thoma Mathews & Ors vs Paulose Mar Athanasius Ors on 10 August, 1979

Equivalent citations: 1979 AIR 1909, 1980 SCR (1) 250, AIR 1979 SUPREME COURT 1909, (1980) KER LT 1

Author: V.R. Krishnaiyer

Bench: V.R. Krishnaiyer, P.N. Shingal

PETITIONER:
BASELIUS MAR THOMA MATHEWS & ORS.

Vs.

RESPONDENT:
PAULOSE MAR ATHANASIUS ORS.

DATE OF JUDGMENT10/08/1979

BENCH:
KRISHNAIYER, V.R.
BENCH:
KRISHNAIYER, V.R.
SHINGAL, P.N.

CITATION:
1979 AIR 1909 1980 SCR (1) 250
1980 SCC (1) 601

ACT:
Code of Civil Procedure-S. 24(1) (b)-High Court when can withdraw suits from a lower court and itself try them.

HEADNOTE:
A large number of suits filed by a religious community in the State were pending over the years in several courts. Considering the prolongation and plurality of cases and the deleterious social consequences resulting from such litigation the High Court and the State Government selected eight of the most significant suits and constituted an Additional District Court to try them. After the court had recorded evidence of numerous witnesses and before the commencement of arguments a petition under s. 24(1)(b) of the Code of Civil Procedure was presented to the High Court for withdrawal of the suits to the file of the High Court.

This was dismissed by the High Court.

On the question whether at this stage and in these circumstances the suits should be called up to the High Court and disposed of

Allowing the appeal,

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HELD: Advancement of public justice will be promoted by the High Court itself at this stage, proceeding to hear the suits. All the suits should be transferred to the High Court and, tried from the present stage, since expeditious termination is the driving force behind this order for transfer. [243H]

What is more important in a case of this kind is shortening the longevity of these quasi-public litigations, reducing the enormous expenditure involve for both sides and entrusting the first determination to the highest deck of justice in the State. The case involves questions of public moment which are likely to spiral up to the Supreme Court on appeal. In this jurisdiction, the approach has to be pragmatic, not theoretic, without whittling down the basics of law bearing on transfer of cases. Where a large number of people are affected and the fate of a few hundred suits and a thousand churches are involved, the elimination of some years and duplication of hearings and full arguments at the commanding height of the High Court is a wise measure, alt things considered. The social savings of abbreviation of law's delays re important to social justice. [253B, D, G]

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 2222 of 1979.

Appeal by Special Leave from Judgment and order dated 4-7-1979 of the Kerala High Court in CMP (Transfer) No. 5069/79.

F. S. Nariman and K. R. Nambiar for the Appellants.

V. M. Tarkunde, P. P. John and N. Sudhakaran for RR 18 and 20.

The Judgment of the Court was delivered by KRISHNA IYER, J.-The Malankara Sabha, on the Kerala Coast, is an ancient Church with a legendary past, and has a phenomenal following of a million and a half Orthodox Syrian Christians with over a thousand parish churches to nourish the spiritual life of the flock. Schismatic pathology which ordinarily afflicts secular institutions struck this ecclesiastical organisation resulting, inter alia in bitter litigative battles of several years standing. Some 250 suits, manifesting this litigious syndrome, are stated to be pending in the several courts of Kerala. The members of this church are not new to forensic struggles and have, on earlier occasions, fought right up to the Supreme Court. The prolongation of such plurality of court

cases in a community at once influential, important and numerous, has many deleterious social consequences and it was wise of the High Court and the Government of Kerala to have thought in terms of selecting eight of the most significant suits out of the spate of cases and constituting an 'Additional District Court' specially for disposal of these socially sensitive cases. Thanks to this imaginative measure the eight suits which were made over to the specially appointed District Judge made headway steadily forwards. An Additional District Judge, by name, Shri N. Vishwanath Iyer was first put in charge of these suits and he examined several witnesses. When he was transferred from Ernakulam, which is the venue of the District Court, another judicial officer by name, Shri S. Ananthasubramanian was posted in his place. The latter kept up the progress of the case and actually finished recording the entire evidence. Hardly had the arguments commenced when an application for transfer was made to the High Court under Section 24(1) of the Civil Procedure Code praying for making over the suits to some other court for disposal. Certain aspersions suggestive of bias were made therein, but the High Court (Mr. Justice Bhaskaran) eventually and rightly dismissed the petition. A petition to appeal by special leave was filed to this court but, after making some submissions, counsel withdrew that petition when we indicated our reaction. Another petition had been filed under Section 24(1)(b) of the Code for withdrawal of the suits to the file of the High Court, which was heard by another Judge of the High Court (Mr. Justice Khalid). The learned Judge dismissed that petition, and against that order the present petition for special leave to appeal has been moved.

We are deeply disturbed that an important community in the State of Kerala should be locked in litigation for long years and if amity can be restored by an early end of the crop of cases which drive a wedge between sections of the same community it is 'a consummation devoutly to be wished'. But all that courts can do is to adjudicate cases with the utmost speed and that has apparently been attempted successfully in the present instance. The short point is whether, at this stage and in these circumstances, the eight suits concerned should be called up to the High Court and disposed of.

The learned Judge considered the various grounds urged before him for withdrawal of the suits to the High Court and was unimpressed by them. Merely because a considerable section of the public was tensely interested in these litigations the court was not prepared to withdraw them to the High Court, nor was the circumstance that important and intricate questions of law were involved sufficient for such transfer in its view. A massive volume of oral evidence had been recorded by the specially appointed Judge and so the High Court felt that it would be "proper for the court that recorded the evidence to hear the arguments also". We are not inclined to fault the learned Judge in the view he has adopted. But there are many buts to any general proposition.

Shri Tarkunde appearing for the respondents, stressed before us, as an additional consideration that if the cases were withdrawn to the High Court and tried, as was likely by a Division Bench of that court his clients might lose a statutory right of appeal and would have to depend upon the chancy jurisdiction under Article 136 of the Constitution. A single appeal, as of right, would be taken away, was his apprehension.

Shri Nariman, appearing for the petitioners, having prudently though belatedly withdrawn the Special Leave Petition which made reference to bias, focussed on the advantage both sides would

derive by an early determination of the litigation at the High Court level. He also submitted that there was hardly any doubt that questions of law of considerable public importance were involved and an appeal to the Supreme Court, as of right, both under Article 133 and Section 110 C.P.C., was a certainty. He further emphasised that Section 24(1) (b) would become a dead letter if Shri Tarkunde's objection that an automatic right of appeal to the Supreme Court would be imperilled in the event of the High Court withdrawing suits, were to be accepted.

We agree with the learned Judge of the High Court that some of the grounds put forward for withdrawl of the suits to the High Court were without merit and were rightly rejected. But we are not inclined to exaggerate the importance of the demeanour of witnesses observed by the trial judge, especially when years have lapsed, heaps of evidence have been recorded and judicial memory with hyper psychic sensitivity is more in the books than in the wear and tear of life. What weighs with us is the importance of shortening the longevity of these quasi-public litigations, reducing the enormous expenditures involved for both sides and entrusting even the first determination, now that all evidence has been recorded, to the highest deck of Justice in the State.

It is indubitable that after the decision by the District Court appeals will inevitably be carried to the High Court. It is predictably reasonable to expect, from all that has been presented to us and all that we have been able to gather from the records, that the case involves questions of public moment and are likely to spiral up to the Supreme Court on final appeal. In this jurisdiction, the approach has to be pragmatic, not theoretic, without whittling down the basics of law bearing on transfer of cases.

We do not for a moment countenance the suggestion that the district judge is not equal to the legal instricacies or factual challenges of these or other cases, the procedural law having vested him with unlimited jurisdiction and the High Court having committed these cases to his seisin. Hints of bias are also out of bounds, as we have indicated. If these suits at this stage of early arguments which have yet to begun effectively, are transferred to the High Court a spell of few years in the stressful life of the litigation will be saved. Taking copies of a bunch of decrees by the District Court, followed by preliminaries and filing of appeals, service of notices and other ripening processes, may consume considerable time and money. And then the High Court would begin de novo the entire arguments and appreciation of the whole range of facts and law as in first appeal it is bound to do in a case of this type. Where lakhs of people are excitedly affected by the ultimate decision and the fate of a few hundred suits and a thousand churches is to be settled by a single adjudication, the elimination of some years and duplication of hearings and full arguments at the commanding height of the High Court is a wise measure, all things considered. The social savings of abbreviation of laws' delays are important to social justice.

We do not tarry to dilate on the many dimensions to this transfer petition except to state that we feel the advancement of public justice will be promoted by the High Court itself at this stage, pro-

ceeding to hear the suits. We, therefore, direct that all the suits covered by the transfer petition be transferred to the High Court and tried from the present stage post-haste, since expeditious termination is the driving force behind this order for transfer.

A last thought before we part with this case. When sacerdotal institutions are litigious fights double disaster threatens society because of the souls of the votaries not only suffer spiritual neglect but are maddened by the passions unleashed by forensic disputation. We leave this lis with the deep wish that the High Court will give the suits high priority in its agenda of postings and finish this unhappy chapter, if persuasively possible, by both sides burying the hatchet, abjuring litigative pugilistics and restoring a modus vivendi which will heal old wounds, bring new harmony and please the Spirit of Christ. That is the highest justice the several lakhs of good Christians, now locked in long years of suits and appeals, sincerely hunger for.

We allow the appeal as indicated above.

P.B.R. Appeal allowed.