

**IN THE COURT OF THE DISTRICT MUNSIF,
ERANIEL.**

Present: **Thiru. M. Senthil Kumar, B.A.,B.L.,**

District Munsif, Eraniel,

Thursday the 15th day of December 2022

I.A.No.1/2022

IN

O.S. No.10/2020

1. Fr. Jesu Rethnam

2. Bishop of Kuzhithurai Petitioners 1 & 2 / Defendants 2 & 3

/Vs./

A. Arul Tinto singh Respondent / Defendant

Sri. Adv. Mr. S. Standly Casmic Sundar, For the Petitioner / Plaintiff

Sri. Adv. Mr. P. John Xavier, For the Respondent / Defendant

This petition is coming hearing on 15.12.2022 and upon hearing the argument on petitioner side and having stood over for consideration till this day, this court delivered the following Order :

ORDER

1. The 2nd defendant who claims to be the vicar general of the R.C. Diocese of Kuzhuthurai has filed the present application under Order 7 Rule 11(d) of CPC praying for rejection of plaint on the

grounds that the suit is expressly barred by law quoting canon laws that this court does not have jurisdiction to try this suit.

2. Brief summary of the Petitioner

The plaintiff herein had originally filed the suit praying for compensation by way of damages as against the defendants which includes the 3rd defendant Kuzhithurai R.C. Diocese. The claim made by the plaintiff is pursuant to the default of the 1st defendant's in refusal to conduct baptism for the daughter of the plaintiff on 27.12.2019 at Chithanthoppu Church. This particular act according to the plaintiff brought disrespect to the plaintiff before the society causing low esteem before his relatives. Hence forth the plaintiff pleads that he has to be duly compensated for the tort committed by the 1st defendant .

3. In the above said background now the petitioner/2nd defendant pleads in the rejection application that conducting baptism is her exclusive spiritual affair of the church with in its own domain ruled by canon law and as such a civil cannot have jurisdiction to entertain any suit as there are established tribunals by the rules of canon law. The strong and vehement contention raised in the application by the petitioner that when there is a exclusive tribunal to resolve the disputes between the church and its members this

Respondent/Plaintiff can not bypass it and filed this suit. Hence, the petitioner herein prays that the plaint has to be rejected as expressly barred by law.

4. Brief Summary of the counter statement filed by the Respondent/Plaintiff:-

Resisting the application the Respondent/ Plaintiff invokes the rudimentary principles (UBI JUS IBI REMEDIUM) which means where there is right their is remedy. Further the respondent emphasize upon section 9 of CPC stating that this court has got all jurisdiction to try all the suits which has got a civil nature. The respondent concede that conducting baptism is spiritual which according to him is already over but, as far as the Respondent/ Plaintiff is concerned he restricts his claim for only damages for the default of the parish priest who failed in his duty there by causing disrespect to the plaintiff. Hence the respondent prays to dismiss the application.

5. The petitioner counsel submitted that Canon 1401 Rule makes its clear that church is the ultimate authority in deciding a matters relating to spiritual faith, morals, The sacrament and liturgy in such circumstances a civil suit on a whole is not maintainable hence the learned counsel prayed to allowed the application. On the other hand the learned counsel for the plaintiff submitted that what is to be determined is whether the act of the 1st defendant refusing to

oblige the orders of the 3rd defendant in conducting baptism on a particular date for the plaintiffs daughter amounts to a tort or not. Before the legal aspect could be determined there cannot be any premature conclusion hence, prayed to dismiss the application.

6. Heard the rival contentions before proceeding into deciding the application this court for convenience sake reminds itself to the provisions of order 7 rule 11 CPC.

11. Rejection of plaint- The plaint shall be rejected in the following cases:—

(a) where it does not disclose a cause of action;

(b) where the relief claimed is undervalued, and the plaintiff, on being required by the court to correct the valuation within a time to be fixed by the court, fails to do so;

(c) where the relief claimed is properly valued, but the plaint is written upon paper insufficiently stamped, and the plaintiff, on being required by the court to supply the requisite stamp paper within a time to be fixed by the Court, fails to do so;

(d) where the suit appears from the statement in the plaint to be barred by any law;

(e) where it is not filed in duplicate;

(f) where the plaintiff fails comply with the provision of Rule 9.

The petitioner had invoked order 7 rule 11(B) claiming that the plaint filed by plaintiff is barred by law as the statements made in the plaint is directly related to the spiritual affairs of the church which is ruled by Canon law. Now, this court for determining this application gave a conjoint reading of the plaint where it is seen that on Second November of 2019 plaintiff approached the 1st defendant to give baptism for his daughter of the plaintiff and registered for the date as on 27.12.2019.

7. It seems there was a direction from the 2nd defendant to the plaintiff to approach the 2nd and 3rd defendant to get permission for conducting baptism for the plaintiff's child on 27.12.2019 so that the 1st defendant parish priest will be authorized to perform the spiritual act, In this regard the 2nd defendant has given an order dated 25.11.2019 directing the 1st defendant to give baptism to the plaintiff's child on the particular date of 27.12.2019. Further development the 1st defendant parish priest informed the plaintiff that on 27.12.2019 at 5.30 a.m. the baptism will be conducted as scheduled believing these words the plaintiff proposed to celebrate the function by inviting all his relatives.

8. In the above stated circumstances the 1st defendant as per the rules never gave a notice and the last date of mass i.e. 25.12.2019 and there by refused to proceed further for conducting baptism to the plaintiff's child and it also seems that on 25.12.2019 the 1st defendant openly proclaimed that the order of 2nd and 3rd

defendant will not bind him. The plaintiff further states that after making all the arrangements for the baptism function spending more than Rs.1,50,000 he was compelled to conduct baptism for child at Chunkankadai Church. Hence subsequent to the development of events on the failure to confer baptism at Chithanthoppu Church the plaintiff aggrieved by the loss of respect before his relatives plead in its plaint for compensation for the loss of reputation before the society.

9. In the above stated backgrounds the plaintiff has filed a suit claiming a sum of Rs. 1,00,000 as compensation by the way of damages. Now this court considers the law of tort that is followed in our country. Though there are several definitions this court takes into consideration of the definitions given by SALMOND “ **Tort is a civil wrong for which the remedy is a common law action for unliquidated damages, and which is not exclusively the breach of contract, or, the breach of trust, or, other merely equitable obligation.**”

Now taking the view of the Civil wrong what is quoted above whether, that has happened or committed towards plaintiff has to be determined. The plaintiff pleads because of the refusal of the 1st defendant to give baptism to his daughter on 27.12.2019 at Chithanthoppu Church leading to further difficulties for the plaintiff to get his child baptized on the very same date at a different church

which caused severe mental agony to the plaintiff in addition to that bringing disgrace to his Honor and Reputation.

10. Now this court considers the above pleading that the plaintiff seeks a remedy under Common Law for the so called tort said to have been committed by the defendants. In such situations this court has a primary duty to decide whether the actions of the defendants is a tort and whether compensation can be awarded. This court reasonably believes that the plaintiff has come before this court for the civil wrong that has damaged his reputations before the relatives. In the considered opinion of this court what is to be determined whether relief prayed by the plaintiff and this suit falls within the ambit and scope of sec.9 of CPC.

This court follows what was observed in M.C. MEHTHA /VS/ UNION OF INDIA

“ We have to evolve new principles and lay down new norms which will adequately deal with new problems which arise in a highly industrialized economy. We cannot allow our judicial thinking to be constructed by reference to the law as it prevails in England or for the matter of that in any foreign country. We are certain prepared to receive light from whatever source it comes but we have to build our jurisprudence.”

11. The foremost contentions put forth by the petitioners that canon law over rides the statutory law does not hold any water since the prepositions of law on this legal aspect has been already decided by our honorable apex court in,

Supreme Court of India

Molly Joseph @ Nish vs George Sebastian @ Joy on 18 September, 1996

Bench: N.P. Singh, S.B. Majumdar

PETITIONER:

MOLLY JOSEPH @ NISH

Vs.

RESPONDENT:

GEORGE SEBASTIAN @ JOY

DATE OF JUDGMENT: 18/09/1996

BENCH:

N.P. SINGH, S.B. MAJUMDAR

12. From a bare reference to the different provisions of the Act including preamble thereof it is apparent that Divorce Act purports to amend the law relating to divorce of persons professing the Christian religion and to confer upon courts which shall include District Court and the High Court jurisdiction in matrimonial matters. In this background, unless the Divorce Act recognizes the jurisdiction of Ecclesiastical Tribunal (sometimes known as Church Court) any order or decree passed by such Ecclesiastical Tribunal cannot be binding on the courts which have been recognized under the provisions of the Divorce Act to exercise power in respect of granting

divorce and adjudicating in respect of matrimonial matters. It is well settled that when legislature enacts a law even in respect of the personal law of a group of persons following a particular religion, then such statutory provisions shall prevail and override any personal law, usage or custom prevailing before coming into force of such Act. From the provisions of the Divorce Act it is clear and apparent that they purport to prescribe not only the grounds which a marriage can be dissolved or declared to be nullity, but also provided the forum which can dissolve or declare the marriage to be nullity. As already mentioned above, such power has been vested either in the District Court or the High Court. In this background, there is no scope for any other authority including Ecclesiastical Tribunal (Church Court) to exercise power in connection with matrimonial matters which are covered by the provisions of the Divorce Act. The High Court has rightly pointed out that even in cases where Ecclesiastical Court purports to grant annulment or divorce the Church authorities would still continue to be under disability to perform or solemnize a second marriage for any of the parties until the marriage is dissolved or annulled in accordance with the statutory law in force.

13. The apex court has made clear observation “ **It is well settled that when legislature enacts a law even in respect of the personal law of a group of persons following a particular religion, then such statutory provisions shall prevail and override any**

personal law, usage or custom prevailing before coming into force of such Act” Now this lower court duly follows the principles of law laid down in the above judgment that when there is an enacted law a personal law cannot prevail over it hence Canon law does not have statutory enforcement as far as a tort is committed.

***In a judgment rendered by hon'ble Bombay high court in
Bombay High Court***

***Shri Elmano Menino Dias vs The Archbishop, Archdiocese
Of ... on 28 February, 2007***

Author: S Shah

Bench: S Shah

JUDGMENT S.K. Shah, J.

14. The Bombay High Court had settled the issue that Canon law can not create any embargo on the civil court in trying the dispute of civil nature. The relevant portion of the judgment is as follows,

This provision indicates that the suits of civil nature are triable by the Civil Court unless the suits are specifically barred by the provisions of law or impliedly barred. Counsel on both sides unanimously submit that there is no provision in the Canon Law which bars the suit being filed in the Civil Court. Surprisingly, the trial Court has made observation that Even otherwise, the jurisdiction of the Civil Court is barred

under the Canon law. The learned trial Judge also wrongly mentioned that the Canon law is not a special or local law and it is a divine law and, therefore, the civil Court had no jurisdiction. The Canon law is a Code in itself and it governs the Roman Catholics. The parties to the suit are Roman Catholics. There is no dispute that they are governed by Canon Law. Under these circumstances, it was futile to consider whether the Canon law has force of law or whether it is a statute or otherwise. Under the circumstances, the trial Court has committed a grave error in rejecting the plaint under Order 7, Rule 11(d) of C.P.C. Therefore, the impugned order cannot be sustained. It has, therefore, to be set aside.

15. The application to reject the plaint on the grounds that it is barred by law does not hold water since, the ecclesiastical tribunal is not competent enough to decide the subject matter of this suit.

16. In Result

The petition is dismissed. No costs.

Dictated to the Steno-typist, transcribed by her, corrected and pronounced by me in open court this the 15th day of December 2022.

Sd/-
District Munsif ,
Eraniel.

Draft/Fair Order

I.A.No.1/2022

in

O.S.No.10/2020

D.M., Eraniel.

Dated : 15.12.2022.