

NO

SLP(C)No. 6097-6098 OF 1999
ITEM No.207

Court No. 4

SECTION XII
A/N MATTER

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 (Civil) No.6097-6098/1999

(From the judgement and order dated 16/12/1998 in RA 8 & 9/1997
of The HIGH COURT OF MADRAS)

THE PALANI ROMAN CATHOLIC MISSION

Petitioner (s)

VERSUS

S. BAGIRATHI AMMAL

Respondent (s)

(With prayer for interim relief)

(With Appln(s). for receiving additional documents & c/delay in
filing rejoinder) (For Final Disposal) (With office report)

Date : 02/02/2001 This Petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE S. RAJENDRA BABU
HON'BLE MR. JUSTICE K.G. BALAKRISHNAN

For Petitioner (s) Mr. P.P. Rao, Sr. Adv.
Mr. V.J. Francis, Adv.
Mr. P.I. Jose, Adv.
Mr. Jenis V. Francis, Adv.

For Respondent (s) Mr. T.L. V. Iyer, Sr. Adv.
Mr. K.B. Sounder Rajan, Adv.
Mr. R. Nandakumar, Adv.
Ms. Pushpa Rajan, Adv.

UPON hearing counsel the Court made the following
O R D E R

.....L.....I.....J
.SP2

Leave granted.
Appeals are allowed in terms of the signed order.

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(Meenu Sethi)
Court Master

(R.K. Kumar)
Court Master

Signed order is placed on the file

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IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.1055-1056./2001@@

The Palani Roman Catholic Mission .. Appellant

Vs.

S. Bagirathi Ammal .. Respondent

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Leave granted.

After disposal of A.A.O. No. 767/1989 and CRP No. 1445/1988 by the High Court holding that the petitioner being a registered Society under the Societies Regulation Act is not a public, religious and charitable institution exempted under Madras City Tenants Protection Act, 1921, a Special leave petition had been filed before this Court under Article 136 of the Constitution. And, this Court by an order made on 3.12.1996 dismissed the same inlimine without setting out any reasons. Thereafter, an application for review was filed in the High Court on 2.1.1997. The Review Petition has been dismissed on the ground that it is not maintainable as the judgment dated 26.7.1996 of the High Court has merged in the order of this Court dated 3.2.1996 dismissing the Special leave petition. The learned Judge in reaching this conclusion relied upon various other decisions of this Court.

On behalf of the appellant the learned counsel raised a question whether the judgment of the High Court merges in a

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non-speaking order of this Court, dismissing the Special leave petition inlimine without stating any reasons. This question is no longer res integra. This Court in Kunhayammed V. Kerala(2000) 6 SCC 359 has taken the view that an order of the nature made in the Special leave petition arising out of the order of the High Court, which is a non-speaking order, does not attract the doctrine of merger and it would not substitute the order impugned in the Special leave petition proceedings with the result that the Court was not inclined to exercise its discretion so as to allow the appeal to be filed. This Court has in the said decision proceeded to state that a review can be filed in such a case even after Special leave petition is dismissed inasmuch as no leave had been granted to file an appeal and until there is no appeal in the eye of law in the superior Court review can be preferred in the High Court. In view of the decision in Kunhayammed's case the order made by the High Court cannot be sustained.

The Judgment of the High Court is set aside and the matters are remitted to the High Court for fresh consideration of the Review Petition filed by the appellant in accordance

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with law. Inasmuch as the matters are old one, it would be appropriate for the High Court to dispose of them as expeditiously as possible. The appeals are allowed accordingly.

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(S. RAJENDRA BABU)@@
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.....J@@
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(K.G. BALAKRISHNAN)@@
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New Delhi,@@
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February 2, 2001.