

CASE NO.:
Appeal (civil) 3679 of 2006

PETITIONER:
Vidyodaya Trust and Ors.

RESPONDENT:
Mr. Mohan Prasad R and Ors.

DATE OF JUDGMENT: 25/08/2006

BENCH:
ARIJIT PASAYAT & LOKESHWAR SINGH PANTA

JUDGMENT:
J U D G M E N T
(Arising out of SLP (C) Nos. 24382-24383 of 2004)

ARIJIT PASAYAT, J.

Leave granted.

While in one of the appeals challenge is to the legality of the judgment dated 5.2.2004 passed in CRP No.1260 of 2003 by a learned Single Judge of the Kerala High Court, in the other appeal challenge is to the judgment passed on 20.8.2004 in WP(C) No.14961 of 2004 by another learned Single Judge of the said High Court.

Essentially the factual position is as follows:

Respondents as plaintiffs filed OP No.238 of 2000 before the District Court, Ernakulam under Section 34 of the Indian Trust Act, 1882 (in short the 'Trust Act') in respect of Vidyodaya Trust and applied to the Court for direction for management and administration of the said trust and the school run by the trust. But the said Court by order dated 31.1.2000 held that the OP was not maintainable and dismissed the petition. Thereafter the suit No.20 of 2000 was filed by the respondents as plaintiffs claiming several reliefs. The respondents filed an application (IA 349 of 2000) seeking leave of the Court to institute the suit under Section 92 of the Code of Civil Procedure, 1908 (in short the 'CPC'). According to the appellants, without notice to them the concerned Court granted leave to the respondents to institute the suit. The suit was numbered as OS 20 of 2000. Plaintiffs filed written statement inter alia taking the stand that suit was actuated by personal motives. The suit under Section 92 CPC is of a special nature which pre-supposes existence of a Public Trust of religious or charitable character. From the averments in the plaint and the reliefs sought for it is clear that the plaintiffs were not suing to vindicate rights of the public, and it has not been filed in the representative capacity. The plaintiffs four in number are trustees who instituted both the suits against other trustees for personal reliefs and as individuals and seeking vindication of alleged individual rights and not as representatives of the public. Therefore, the suit as framed is not maintainable under Section 92 CPC. The defendants filed an application before the District Judge, Ernakulam for hearing as preliminary issue, the question of maintainability of the suit. On the basis of contentions raised by the plaintiffs as well as defendants, the Court framed preliminary issue as to whether the suit as framed is maintainable under Section 92

CPC. By order dated 11.4.2003 the Court held that the suit was maintainable.

Questioning correctness of the order, a petition for revision in terms of Section 115 CPC was filed. The High Court dismissed the Civil Revision petition on the ground that the same was not maintainable. Though the High Court made reference to some factual aspects, it ultimately came to hold that the revision petition was not maintainable as order dated 4.11.2003 was an interlocutory one. Thereafter the appellants filed writ petition before the High Court praying, inter alia, for writ, direction or order, questioning the order dated 2003. By order dated 20.8.2004 the High Court dismissed the writ petition holding that the view taken in the Civil Revision apparently was not correct, as by no stretch of imagination it can be held that the High Court had no jurisdiction. It accepted the stand of the respondents herein that since there was discussion on merits, though the petition was not held to be maintainable subsequent proceedings initiated under Article 227 of the Constitution of India, 1950 (in short the 'Constitution') cannot be maintained.

Both the orders i.e. one in the Civil Revision petition and the other in the writ petition form subject-matter of challenge in these appeals.

Learned counsel for the appellants submitted that the appellants have been placed at a very peculiar position. One learned Single Judge held that the Civil Revision was not maintainable. Another learned Single Judge observed that the view expressed in the Civil Revision was not correct, but since the merits were discussed in the order passed in the Civil Revision, the writ application was not maintainable.

In response, learned counsel for the respondent submitted that though their stand before the High Court during the hearing of the Civil Revision was that the same was not maintainable, that does not appear to be a correct stand. Nevertheless, merits were discussed and, therefore, the writ petition has been rightly dismissed.

For appreciating rival stands, the scope and ambit of Section 115 CPC needs to be examined.

"115. Revision. \027 (1) The High Court may call for the record of any case which has been decided by any Court subordinate to such High Court and in which no appeal lies thereto, and if such subordinate Court appears\027

- (a) to have exercised a jurisdiction not vested in it by law, or
- (b) to have failed to exercise a jurisdiction so vested, or
- (c) to have acted in the exercise of its jurisdiction illegally or with material irregularity,

the High Court may make each order in the case as in thinks fit:

Provided that the High Court shall not, under this section, vary or reverse any order made, or any order deciding an issue, in the course of a suit or other proceeding, except where the

order, if it had been made in favour of the party applying for revision, would have finally disposed of the suit or other proceedings.

(2) The High Court shall not, under this section, vary or reverse any decree or order against which an appeal lies either to the High Court or to any Court subordinate thereto.

(3) A revision shall not operate as a stay of suit or other proceeding before the Court except where such suit or other proceeding is stayed by the High Court.

Explanation. In this section, the expression "any case which has been decided" includes any order made, or any order deciding an issue, in the course of a suit or other proceeding."

The proviso to sub-section (1) of Section 115 CPC is of relevance.

The amendment to Section 115 CPC is based on the recommendations made by the Malimath Committee. The said Committee was of the opinion that the expression employed in Section 115 CPC which enables interference in revision on the ground that the order if allowed to stand would occasion a failure of justice or cause irreparable injury to the parties against whom it was made, left open wide scope for exercise of powers with all types of interlocutory orders and this was substantially contributing towards delay in the disposal of cases. The Committee did not favour denuding the High Court of the power of revision, but strongly felt that the powers should be suitably curtailed. The effect of the erstwhile clause (b) of the proviso was deleted and a new proviso has been inserted so that the revisional jurisdiction is substantially curtailed. A revisional jurisdiction cannot be exercised unless the requirement of the proviso is satisfied. It is thus clear that the proviso creates an embargo in exercise of revisional power. These aspects have been highlighted in *Surya Dev Rai v. Ram Chander Rai and Ors.* (2003 (6) SCC 675).

Judged in the aforesaid background the view of the learned Single Judge that the Civil Revision was not maintainable is clearly indefensible. Learned counsel for the respondent has fairly conceded to this position. If it is held that the suit in terms of Section 92 CPC is not maintainable, that would have the result of final disposal of the suit. However, the learned counsel made an attempt to justify the order by stating that the matter was also dealt with on merits. That would not improve the situation. The Civil Revision was clearly maintainable. Therefore, we allow the appeal so far as it relates to Civil Revision Petition No.1260/2003 disposed of by judgment dated 5.2.2004 by the High Court. The said order is set aside.

The High Court shall now to hear the Civil Revision on merits and dispose of the same as expeditiously as practicable preferably within four months from the date of receipt of our order. The time period is being fixed considering the pendency of the matter for a considerable length of time.

In view of the order passed in the appeal relating to Section 115 CPC no order is necessary to be passed in respect

of the judgment in the writ petition. It may be noted that the learned Single Judge observed that the Civil Revision was maintainable and, therefore, declined to entertain the writ petition. This order was passed on the face of the order passed by learned Single Judge holding that it was not maintainable. The same, therefore, is not justifiable. But it is not necessary to deal with that matter as the Civil Revision shall be heard on merit.

The appeals are accordingly disposed of with no order as to costs.

JUDIS