



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 26TH DAY OF MAY, 2023



BEFORE

THE HON'BLE MR JUSTICE H.P.SANDESH

MISCELLANEOUS SECOND APPEAL NO.98 OF 2021 (RO)

BETWEEN:

...APPELLANT

(BY SRI SACHIN B S, ADVOCATE)

AND:

Digitally signed
by SHARANYA T
Location: HIGH
COURT OF
KARNATAKA



...RESPONDENTS

(BY SRI MANJUNATH PRASAD H N, ADVOCATE)

THIS MSA IS FILED UNDER ORDER 43 RUEL 1 (U) OF CPC, AGAINST THE JUDGMENT AND DECREE DATED 09.03.2020 PASSED IN RA NO.64/2019 ON THE FILE OF THE PRINCIPAL SENIOR CIVIL JUDGE AND CJM, CHIKKAMAGALURU AND ETC.

THIS APPEAL COMING ON FOR ADMISSION, THIS DAY THE COURT DELIVERED THE FOLLOWING:



J U D G M E N T

This miscellaneous second appeal is filed under Order 43 Rule 1(u) of CPC against the order dated 09.03.2020 passed in R.A.No.64/2019 on the file of the Principal Senior Civil Judge and CJM, Chikkamagaluru.

2. Heard the learned counsel appearing for the respective parties.

3. The factual matrix of the case of the plaintiffs before the Trial Court is that the plaintiffs are the citizens of this country by birth and they are residing at Chikkamagaluru town. They are Christian Catholics and their mother tongue is Konkani. They follow the language and traditions of Konkani speaking Catholics. It is contended that there exists a sizeable population of Konkani speaking people in the town of Chikkamagaluru. The plaintiffs are offering prayers at the local church situated at Chikkamagaluru town. The defendant is the religious head of the Archdiocese of Chikkamagaluru. Under the control of the defendant, all the churches in



Chikkamagaluru and Hassan districts are functioning. The defendant is the head of the churches, which comes under the diocese of Chikkamagaluru and Hassan. He has been vested with the powers in relation to all matters relating to the administration of the churches. It is further contended that the plaintiffs have not been allowed to offer prayers/mass prayers in their language i.e., Konkani. Under Indian Constitution, Konkani is a recognized language and finds place at the 9th entry of 8th Schedule to the Constitution of India. It is their constitutional religious right to offer their prayers in the church in their own language. The act of the defendant amounts to infringement of fundamental right under Article 25(1) of the Constitution of India. It is also their case that on 18.08.2018, the plaintiffs have addressed a letter and requested the defendant to permit them to offer one prayer/mass prayer on Sunday at Chikkamagaluru Church in Konkani language. It is further contended that there is no response to the said request. The plaintiffs are not against offering prayers in Kannada or any other language.



It is contended that there is no statute framed even during British regime which had adopted the statutory or Canon Law to the churches in India. No Law in respect of Christian churches has been framed in India and there is no statutory law. The defendant is also governed by the law of the land. Hence, prayed the Court to direct the defendant to conduct the prayers/mass prayers in Konkani language on every Sunday by allowing one mass out of three masses held on each Sunday at the discretion of the defendant at the churches situated in Chikkamagaluru and also sought the relief to direct the defendant to allow on each Sunday one time Konkani catechism classes and at least two masses in a week and one mass in Konkani in every festival mass and also sought for the relief of permanent injunction restraining the defendant from curtailing the fundamental rights of the plaintiffs guaranteed under Article 25(1) of the Constitution of India.



4. In pursuance of the suit summons, the defendant appeared and filed the written statement and also filed an application under Section 9 and Order I Rule 8 and also under Order VII Rule 11(a) and (d) of CPC and prayed the Court to dismiss the suit as barred by law as well as no cause of action and for not obtaining permission from the Court to file representative suit in the interest of justice. In support of the application, an affidavit is also sworn to by the Bishop, Chikkamagaluru Diocese contending that with respect to religious matter, the plaintiffs have approached the Court and the same is outside the purview of civil law and it has to be handled by the religious authority of the Catholic church. The civil Court has no jurisdiction to entertain the suit. It is also contended that as per the Canon Law, the Bishop of the Diocese is empowered to take decision with respect to the language policy. It is contended that suit is barred under Canon 221(1), 375(1), 391, 392, 393, 1400(2), 1401, 1419 and 1442. It is contended that the plaintiffs have no locus standi to represent the community at large. Hence,



the plaintiffs have filed this suit in the individual capacity, not in the representative capacity. Hence, prayed the Court to dismiss the suit by allowing the application.

5. The said application is contested by the plaintiffs by filing the detailed objections contending that while deciding the application filed under Order VII Rule 11(a) and (d) of CPC, only the plaint averments are to be looked into and not the written statement. The Canon Law has not been recognized by the Constitution of India. The issue relating to Section 9 of CPC is exclusively dealt by the Apex Court and the issue involved between the parties is not ritual right and the plaintiffs cannot be prevented by worshipping as their wish and also sought for permission to make the prayer in Konkani and not causing any obstructions to the other languages which have been used in the church.

6. It is an undisputed fact that even though an application is filed under Order VII Rule 11(a) and (d) CPC, the same was not pressed. Hence, the consideration



remains only to the application filed under Section 9 and under Order I Rule 8 of CPC. The Trial Court having considered the material on record framed the points for consideration that whether the suit is barred in view of the provisions of the Canon law and whether there is no cause of action for the suit. Having considered the material on record, the Trial Court answered both the points as affirmative in coming to the conclusion that the Canon Law is applicable and the defendant is following the same. Accordingly, the said Law is absolutely necessary for the church. The Trial Court also relies upon Section 6 of the Law and having considering the same comes to the conclusion that when there is any bar, the Code of Canon does not apply. Canon 6 read with Section 9 of CPC is clear that there is a bar under CPC to decide the religious rights expect with relating to the powers of office or right to property and thus impliedly the Cannon Law applicability is confirmed. It is also held that the jurisdiction of the Court depends either on the statute or on the law. The Trial Court also comes to the conclusion



that that the civil Courts have jurisdiction to entertain the suits for violation of fundamental rights guaranteed under Articles 25 and 26 of the Constitution of India. But comes to the conclusion that judgment of the Apex Court reported in **1995 Supp (4) SCC** is not applicable to the case on hand.

7. The Trial Court comes to the conclusion that the plaintiffs have approached the Court seeking the relief to direct the defendant to conduct prayers/mass prayers in Konkani language on every Sunday by allowing one mass out of the three masses held on each Sunday and the same cannot be permitted. When the plaintiffs themselves have admitted that all the churches in Chikkamagaluru and Hassan are functioning under the control of the defendant who is religious head of Archdiocese of Chikkamagaluru and he has been vested with the powers. The plaintiffs cannot seek the relief as sought in the suit and there is no jurisdiction to entertain the same. It is also the reason for dismissal of the suit that the plaintiffs



have filed the suit in their individual capacity which affects the whole community at large and not sought permission under Order I Rule 8 of CPC. The Trial Court also made an observation that the plaintiffs submit that they have not filed the suit in the representative capacity and the same is in the interest of the particular community or people who are speaking in Konkani language and this Court has to consider that the said suit is filed under the representative capacity as relying upon the principles laid down in the judgment referred in the order and only for the four people who are speaking Konkani, they cannot seek for the relief that the prayer has to be conducted in Konkani. If there was large number of people who are affected by the prayers in Kannada language, could have represented before the concerned authority by filing a requisition and if the suit is decreed and the defendant is directed to conduct the prayers in Konkani, the other people having their own different mother tongue can also come out for a requisition for conducting the prayers in



their own language. Hence, the very application filed under Section 9 read with Order I Rule 8 of CPC is allowed.

8. Being aggrieved by the said order, an appeal is filed before the First Appellate Court wherein the First Appellate Court having considered the grounds urged in the application as well as in the statement of objections and also considering the grounds urged in the appeal formulated the points that whether the plaintiffs have established that their suit is cognizable by the civil Court and whether the order passed by the Trial Court suffers from any illegality or irregularity. The First Appellate Court considering the grounds urged in the appeal, in detail discussed and answered both the points as affirmative in coming to the conclusion that the civil Court is having jurisdiction to entertain the same and the very contention of the defendant in the written statement as well as application that the suit is barred under the provisions of Canon Law cannot be accepted. The First Appellate Court relied upon the judgment of the Apex Court reported in



1995(4) SCC 286 and extracted paragraphs 42 and 43 of the said judgment and comes to the conclusion that that Canon Law is not applicable in India and also comes to the conclusion that the civil Court has jurisdiction to entertain the suits for violation of the fundamental rights guaranteed under Articles 25 and 26 of Constitution of India. The First Appellate Court also taken note of the fact that the Trial Court comes to the conclusion that the suit ought to have been filed in the representative capacity and the very approach of the Trial Court is erroneous. The First Appellate Court taken note of the principles laid down in the judgment reported in **AIR 1998 Alahabad (1)** and **AIR 1952 SC 245** comes to the conclusion that even a single member of the community is entitled to bring a suit in respect of his right to offer a prayer and also comes to the conclusion that the suit filed by the plaintiffs is maintainable and hence, the very approach of the Trial Court that the suit has not been filed in the representative capacity is erroneous and hence, it requires interference of this Court to set aside the order passed by the Trial Court



and to remand the matter to consider in accordance with law.

9. Being aggrieved by the order passed by the First Appellate Court in R.A.No.64/2019, the present miscellaneous second appeal is filed before this Court. The main contention of the counsel for the appellant is that the finding recorded by the First Appellate Court is erroneous. The counsel would vehemently contend that the prayer sought in the plaint that they may be permitted to make the prayer in Konkani is not a civil right and it amounts to a practice of ritual and no fundamental right is violated. The counsel would vehemently contend that the plaintiffs have not been prevented for worship but they are insisting to conduct their prayer in a particular language and the same cannot be accepted. The very prayer sought in the plaint is against the community at large and it affects the community at large who are making the prayer in particular language. The counsel also vehemently contend that the suit is not filed in the representative capacity and the same is filed in the individual capacity



only by four persons and the relief sought in the suit is against the community at large and hence, the Trial Court rightly comes to the conclusion that the civil suit is not maintainable for the relief as sought in the piaint. The counsel further submits that the Trial Court also taken note that the suit is not in the representative capacity and the same is in the individual capacity. But the First Appellate Court committed an error in coming to the conclusion that the Canon Law is not applicable and also the judgment relied upon by the First Appellate Court is not applicable to the facts of the case on hand and erroneously comes to the conclusion that the suit is maintainable and the matter requires to be considered and extracted paragraphs 42 and 43 of the relied judgment will not come to the aid of the plaintiffs.

10. The counsel also brought to notice of this Court to paragraph 20 of the order of the First Appellate Court wherein the Apex Court judgment discussed and held that in the absence of Order I Rule 8 of CPC to file a



representative suit which is mandatory, any member of the community may successfully bring a suit to assert his right in the community property or for protecting such property. Such a suit need not comply with the requirements of Order I Rule 8 of CPC. Even though extracted the same, the First Appellate Court committed an error and the same is not in respect of asserting the right of the community property. Hence, it requires interference of this Court.

11. The learned counsel appearing for the appellant in support of his argument relied upon the judgment of the Madras High Court dated 20.11.1992 and brought to notice of this Court paragraphs 14, 15 and 16 wherein discussed with regard to Section 9 of CPC and held that first is that a suit asserting a right to an office is a suit of a civil nature and the second is that it does not cease to be one of the civil nature, even if the said right depends entirely upon a decision of a question as to the religious rites or ceremonies. There is a further implication that



questions as to religious rites or ceremonies cannot independently of such a right to an office from the subject matter of a civil suit.

12. The counsel would vehemently contend that the prayer sought in the plaint is not a civil right and same is a matter of ritual. The counsel relying upon the said judgment wherein the Madras High Court in paragraph 17 held that the law of land having been settled by the Apex Court in this country, there is no doubt that the right claimed by the appellant herein is not a civil right and he cannot enforce it in a civil Court. The word "ritual" means pertaining or relating to, connected with rites. The word "rite" is a formal procedure or act in a religious or other solemn observance. In the present action right to worship is not the subject matter of the dispute. The counsel relying upon this judgment vehemently contend that the matter of ritual cannot be questioned in civil Court hence, the very judgment is aptly applicable to the case on hand.



13. The counsel also relied upon judgment of the Apex Court in the case of **DIOCESE OF MYSORE vs REV. DEEPAK SARASWATHI NIRMALE** reported in **1987 0 SUPREME (KAR) 57** brought to notice of this Court paragraph 5 wherein the Apex Court discussed with regard to the jurisdiction of the Court to come to the conclusion that the Court below took up the question of jurisdiction and held ultimately that the civil Court had got the jurisdiction and also brought to notice of this Court to paragraph 7 wherein a discussion was made that the parties are governed by the Canon Law in all religious matters, is not disputed. Canon law is based on and contains the principles and directions regulating the religious business and management of Catholic community religious affairs. And also brought to notice of this Court paragraph 12 wherein discussed with regard to the jurisdiction of the civil court is barred. The Courts shall have jurisdiction to try all suits of a civil nature excepting suits of which their cognizance is either expressly or impliedly barred. The counsel referring this judgment



vehemently contend that under Canon Law, the suit is barred.

14. The counsel also relied upon the judgment of the Apex Court reported in **1988 0 SUPREME (SC) 55** in the case of **DISTRICT COUNCIL OF UNITED BASEL MISSION CHURCH AND OTHERS vs SALVADOR NICHOLAS MATHIAS AND OTHERS** and brought to notice of this Court paragraphs 11 and 12 wherein the Apex Court discussed with regard to the dispute between the parties is not one of the civil nature. Hence, suit was not maintainable and an observation is made that it is clear therefore that right to worship is a civil right, interference with which raises a dispute of a civil nature though as noticed earlier disputes which are in respect of rituals or ceremonies alone cannot be adjudicated by civil courts if they are not essentially connected with civil rights of an individual or a sect on behalf of whom a suit is filed. In paragraph 12 discussed that it must be made it clear that maintainability of the suit will not permit a court to



consider the soundness or propriety of any religious doctrine, faith or rituals. The scope of the enquiry in such a suit is limited to those aspects only that have direct bearing on the question of right of worship and with a view to considering such question the Court may examine the doctrines, faith, rituals and practices for the purpose of ascertaining whether the same interfere with the right of worship of the aggrieved parties. It is further held that in view of Section 9 of CPC an enquiry of the Court should be confined to the disputes of a civil nature. Any dispute which is not of a civil nature should be excluded from consideration. The counsel relying upon this judgment vehemently contends that when the dispute between the parties is not a civil nature and when the Canon Law applicable, the First Appellate Court ought not to have entertained the appeal and set aside the order.

15. The learned counsel for the appellant relied upon the judgment reported in **1995 SUPP (4) SCC 286** in the case of **MOST REV P.M.A. METROPOLITAN AND**



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MARTHOMA AND ANOTHER and brought to notice of this Court paragraph 89 and contends that Section 9 is very wide. However, in the absence of any ecclesiastical Courts any religious dispute is cognizable, except in very rare cases where the declaration sought may be what constitutes religious rite. The counsel referring this judgment contended that with regard to the matter of ritual aspects cannot be adjudicated in a civil Court.

16. Per contra, the learned counsel appearing for the respondents/plaintiffs would vehemently contend that the very framing of point for consideration by the Trial Court that when the application is filed under Section 9 and Order I Rule 8 of CPC is with regard to the applicability of Canon Law and also with regard to the cause of action. The counsel vehemently contends that when the objection is filed, the defendant restricted his prayer with regard to Section 9 as well as Order I Rule 8 of CPC and not pressed the application filed under Order



VII Rule 11 (a) and (d) of CPC. When such being the case, the Trial Court ought not to have framed the said point for determination. The counsel vehemently contends that the very approach of the Trial Court is erroneous and framing of point for consideration is against the pleadings. The counsel vehemently contends that the order was pronounced on 9th before the Court, but the very order is signed and also dated 10th. Though he has brought to notice of this Court to the said aspect, not seriously argues the same and the same is also a technicality.

17. Further, he vehemently contends that it is not a ritual right as contended by the appellant's counsel and prayer made before the Trial Court in a suit is very specific that out of three masses on every Sunday sought only for one prayer in Konkani and not made any prayer preventing others in making the prayer. The counsel also brought to notice of this Court to paragraph 19 of the plaint wherein it is made it clear that suit is filed in the individual capacity and not in the representative capacity.



When such specific pleading is made, the Trial Court ought not to have invoked Order I Rule 8 of CPC. The counsel also vehemently contends that in paragraph 17 of the plaint also categorically stated that the prayer in other language is also recognized by the defendant in the churches which are situated within the district of Chikkamagaluru and also Hassan. The counsel would vehemently contend that the Canon Law is not recognized in the Constitution of India.

18. The counsel in support of is arguments relied upon the judgment of the Apex Court reported in **(2018) 17 SCC 734** in the case of **CLARENCE PAIS vs UNION OF INDIA AND OTHERS** wherein discussed with regard to the applicability of Canon Law and brought to notice of this Court paragraph 4 wherein discussed with regard to the applicability of Canon Law and the same is extracted below:

“4. From a bare reference to the different provisions of the Act including Preamble thereof it is apparent



that the 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 recognises the jurisdiction, authority or power 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 recognised 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 on 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 solemnise a second marriage for any of the parties until the marriage is dissolved or annulled in accordance with the statutory law in force.”

19. The counsel also vehemently contend that the judgments which have been relied by the counsel for the appellant are prior to this judgment and this judgment is of the year 2018 and hence, the principles laid down in the recent judgment of the Apex Court is applicable to the facts of the case on hand. The counsel also vehemently contend that the suit is filed for the relief of directing the defendant to conduct prayer in Konkani language and it is nothing but a right to worship and the same is a fundamental right. The judgment relied upon by the learned counsel for the appellant referring paragraph 17 of the Madras High Court is also helpful to the respondent



wherein the Madras High Court also discussed with regard to that the worship is not violating any fundamental right and the same is recognized under the Law. The counsel also would vehemently contend that Article 25 is applicable and if the plaintiffs are not allowed to worship in Konkani language, it amounts to violation of fundamental right and whether the plaintiff is entitled for the relief or not is a mixed question of fact and law and unless the trial is conducted, the same cannot be decided. The counsel also would vehemently contend that when an application is filed praying that the suit itself is not maintainable, the Court has to see the averments made in the plaint and not the defence. It is also a settled law that the defendant's contentions cannot be entertained with regard to the maintainability, if suit is barred by law and there is no cause of action. Hence, the First Appellate Court rightly considered the provision of Order I Rule 8 of CPC and also comes to the conclusion that the Canon Law is not recognized. Hence, the very appeal requires to be set aside.



20. Having heard the learned counsel appearing for the respective parties and also on perusal of the material on record, it is not in dispute that the suit is filed for the relief of directing the defendant to allow them to make the prayer in Konkani language. The defendants have come up with the defence that Canon Law is applicable and the civil Court is not having any jurisdiction to entertain the same. Having considered the principles laid down in the judgments referred supra and also the contentions urged by both the parties, the Court has to look into the material on record. On perusal of the plaint, it discloses that the prayer is sought with regard to directing the defendant to conduct the prayer/mass in Konkani language on every Sunday by allowing one mass out of the three masses held on each Sunday at the discretion of the defendant at the churches.

21. The prayer in the plaint is only for conducting the prayer in Konkani language on every Sunday and the same is also at the discretion of the defendant and the



same is nothing but for worshipping. The very contention of the appellant's counsel that it amounts to matter of rituals cannot be accepted. The other contention is that the defendant is having all right to conduct the prayer and the same is its discretion and the said contention is also cannot be accepted. The law of land is applicable and the statutory law has to be looked into and the same is considered by the First Appellate Court relying upon the judgment of Apex Court in the case of **CLARENCE PAIS** referred supra and this Court also extracted the paragraph 4 of the Apex Court judgment wherein the Apex Court held that unless the Divorce Act recognizes the jurisdiction, authority or power 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 further held that 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. It is further held that 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. It is also observed that 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.

22. Having considered the principles laid down in the judgments referred supra, it is very clear that the Canon Law is not recognized but the Trial Court has framed the point for consideration with regard to the applicability of Canon Law and based on the Canon Law



only comes to the conclusion that the suit itself is not maintainable. Admittedly, the suit is filed for the relief of worshipping in the church in a particular language. It is the contention in paragraph 6 of the plaint that there are 42 Parishes of Chikkamagaluru and out of which the Parishes of different places are also allowed to do the prayer in different languages and the same is disputed by the appellant herein. When such being the case, the same has to be decided only in full fledged trial and not at the initial stage of considering the averments made in the plaint. It is rightly pointed out by the learned counsel for the respondent that while entertaining the application with regard to the maintainability is concerned, the Court has to look into the averments of the plaint and it is also settled law that the defence cannot be considered while considering the averments made in the plaint with regard to the maintainability and for rejection. No doubt, the application is also filed along with other provisions invoking Order VII Rule 11(a) and (d) and the same is not pressed. But main contention is that suit in the capacity of



individual cannot be maintained. The said aspect is also considered by the First Appellate Court while reversing the finding of the Trial Court. The First Appellate Court having taken note of the principles laid down by the Apex Court, in paragraph 20, applied the said principle and apart from that relied upon the principles laid down in **AIR 1998 ALAHABAD (1)** and **AIR 1952 SC 245** and comes to the conclusion that even in the individual capacity also prayer can be made with regard to right to offer a prayer. The First Appellate Court taken note of the factual aspects that the very approach made by the Trial Court in framing the point for consideration with regard to the applicability of Canon Law and also with regard to the cause of action. The First Appellate Court observed that even though the defendant already urged before the Trial Court that he will not press question of cause of action, the Trial Court erroneously made the approach without the pleadings which has not been pressed into service when the application filed by them is only with regard to Section 9 as well as Order I Rule 8 of CPC. Hence, the First



Appellate Court rightly reversed the finding of the Trial Court having considered the material on record and comes to the conclusion that the very defence taken by the appellant is not sustainable in the eye of law and the matter requires to be considered in accordance with law. Hence, I do not find any error committed by the First Appellate Court in reversing the finding of the Trial Court thus, no merit in this appeal to set aside the order of the First Appellate Court.

23. In view of the discussions made above, I pass the following:

ORDER

The miscellaneous second appeal is dismissed.

In view of dismissal of the main appeal, I.A. if any, does not survive for consideration and the same stands disposed of.

**Sd/-
JUDGE**

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