

(2007) 04 GAU CK 0019

Gauhati High Court (Aizawl Bench)

Case No: None

Congregational Church of India
(Maraland), Serkawr Group

APPELLANT

Vs

Congregational Church of India
(Maraland), Saiha Group

RESPONDENT

Date of Decision: April 24, 2007

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 47 Rule 1

Citation: (2009) 1 GLR 136 : (2007) 3 GLT 763

Hon'ble Judges: A.B. Pal, J

Bench: Single Bench

Final Decision: Allowed

Judgement

A.B. Pal, J.

In this second round of appeal the challenge is to the order dated 19.4.2006 passed by Additional District Magistrate (J), Saiha District, Saiha in "Revised Order Application No. 1 of 2006" whereby his earlier order dated 7.3.2005 in Civil Revision No. 1 of 2005, which was set aside and quashed by this Court in RFA No. 3 of 2005, has been confirmed after rehearing on remand.

2. The case has a chequered career with its genesis in a dispute over certain Church properties between two factions carrying their quarrel to the doors of the court. From a careful reading of the original judgment in Title Suit No. 2 of 2004 and other materials on recor the admitted position emerging from the co. troversies and the background facts may be noticed thus:

In 1905 Mr. and Mrs. Rev. Reginald Arthur Lorrain established Lakher Pioneer Mission at London. They came to Serkawr (Maraland) in 1907 and named the Church there as "Lakher Church". In 1961 "Lakher Church" was renamed as "Lakher Independent Evangelical Church (LIEC)". In 1966 it was again renamed as "Mara

Independent Evangelical Church" followed by a further renaming as "Independent Church of Maraland (ICM)". In 1989 the followers of the Church broke into two groups. The majority group established "Evangelical Church of Maraland (ECM)" with headquarter at Saiha. The minority group remained with ICM at Serkawr. In 1994 ICM was renamed as "Congregational Church of India (Maraland)", CCI (M), which was recognized by Rev. Dr. F. Lambert Carter, Moderator, Congregational church Federation of New South Wales (Australia).

The rival groups known as CCI(M) Saiha and CCI(M) Serkawr, remained united under CCI(M) till 2002 where-after in the assembly at Tongkolong the Church leaders were elected with Rev. L. Mark as General Secretary, Rev. L. Lychhua and Rev. K.T. Nocho as two Executive Secretaries for the period 2002-2005. Rev. K.T. Nocho was given the charge of Mission Department. He claimed that he would hold the charge of that department independently as per resolution in Vahai assembly in 2001. This came to be the contentious issue which finally split the followers into two factions, one is led by Rev. L. Mark known as Serkawr Group and the other led by K.L. Bana, known as Saiha Group. After the split bitterness flowed when one group cancelled pastoral ordination of the other. All attempts of the Church leaders to work out a settlement miserably failed. The bone of contention now centered round the Church properties which brought the Saiha Group to the court of District Magistrate (J) in Title Suit No. 2 of 2004 filed by its Chairman and General Secretary against the Serkawr Group claiming a declaration that it is the original CCI(M) and, therefore, entitled to hold in control all the CCI(M) church properties.

3. The main question adverted to in the said proceeding is which group after the split can be said to be original CCI(M) to be entitled to hold the Church properties exclusively. It is not in dispute that the CCI(M) assembly of church-elders is the highest authority who can make or amend its constitution. The decisions in such assembly are taken by majority votes. It is also admitted position that in case of a split the group having the support of more than 50% of the members shall be in full control of the Church properties as provided in Clause 2(g) in chapter 14 of the church constitution. The learned trial court recorded the depositions of several witnesses from the rival sides and carefully appreciated the historical background of establishment of CCI(M) in the light of the materials placed on record including the Constitution of the Church. Before dismissing the suit of the Saiha Group the Trial Court noticed the following factual position:

(i) the CCI(M) was established under the recognition of Rev. Dr. F. Lambert Carter, Moderator, Congregational Church Federation of New South Wales (Australia);

(ii) CCI(M) assembly is the highest authority;

(iii) in case of split the group enjoying majority support shall be in full control of the Church properties;

(iv) the contentious issue is whether Mission Department should be looked after by Rev. K.T. Nocho independently and the matter was placed before the Church assembly for decision on 7.8.2003;

(v) the minute book of the CCI(M) recorded that only 11 members supported separation of Mission Department in independent charge while 70 members opposed it;

(vi) the Regional Secretary, I.C.F., Asia/Pacific addressed a letter to the Court during trial that the International Congregational Fellowship and the Congregational world Family recognize the body of people which met in 44th General Assembly at Serkawr from February 26th to 29th, 2004 and appointed P. Chholy as Chairman and Rev. Mark Lapi as General Secretary. The Regional Secretary also rejected the claim of Rev. B. Beilua, Rev. K.T. Nocho, Elder C. Hlyuchho and elder N. Chama. Thus, the Saiha Group was de-recognized;

(vii) Rev. Dr. Jannet H. Wootton, Moderator, I.C.F. addressed a letter to the learned trial court informing that eight members of Saiha including Rev. B. Beilua and Rev. K.T. Nocho had been ex-communicated.

4. After noticing the above factual position and placing the same in the historical background of the CCI(M), the trial court came to hold that Serkawr Group enjoyed majority support in the Church assembly and is the original CCI(M). Plaintiff Saiha Group being minority and ex-communicated cannot have any claim over the Church properties. Thus, the suit was dismissed with the decision that all Church building, Motherless Home and other property of CCI(M) would be in-charge of the Serkawr Group.

5. The plaintiff Saiha Group felt aggrieved and approached the trial court once again for review of the judgment by an application dated 17.1.2005. Naturally, the Serkawr Group opposed the prayer for review. The learned trial court by order dated 7.3.2005 reconsidered the claim that Saiha Group as the original CCI(M) and for that purpose took into consideration certain documents, such as letter dated 23.4.2004 by Rev. N. Haolua, Evangelical Church of Maraland Hqrs., Saiha, addressed to General Secretary, WARC, Geneva. Surprisingly, ignoring the evidence of the minute book regarding majority support, the learned trial court made an observation that as both parties claimed to be greater in number and a physical counting cannot be done, both the groups after the split are to be held as original CCI(M) and, therefore, the properties should be shared by them as indicated in the judgment. Aggrieved, the Serkawr Group preferred an appeal which was heard by this Court in RFA 3 of 2005. This Court observed that the learned trial court reviewed the judgment and decree dated 20.12.2004 without recording as to whether any ground of review could be made out by the plaintiff. After setting aside and quashing the review judgment this Court remanded the case to the trial court for deciding the case afresh keeping in mind the limited scope of review under Order 47, Rule 1 of the

Civil Procedure Code.

6. After receiving the case on remand the trial court in its order dated 19.4.2006, impugned herein, found no reason to make any change in the earlier order. On the contrary, recording the background of the case and referring to certain correspondence discussed in the second review judgment confirmed its earlier position. The present appeal seeks to assail the said order dated 19.4.2006.

7. I have heard Mr. M. Zothankhuma, learned Counsel for the appellant and Mr. C. Lalremzauva, learned Counsel for the respondent.

8. The first review order dated 7.3.2005 having thus merged into second review order dated 19.4.2006 learned Counsel for the appellant herein has assailed both by submitting that a perusal of the two review orders would give the clear impression that the original decree in the Title Suit No. 2 of 2004 has been reversed by re-appreciation of evidence and ignoring the provisions of the Constitution of CCI (M), which is impermissible in law. He has pointed out that though no new evidence or materials were brought on record the direction of this Court in order dated 23.1.2006 in RFA No. 3 of 2005 has been totally ignored. The strange situation emerging from second review order dated 19.4.2006, as explained by the learned Counsel, is that though this Court set aside and quashed the first review order dated 7.3.2005 for failure of the trial court to record the grounds of review, the same order has been confirmed without conforming to the requirement as pointed out by this Court while remitting the case to the trial court.

9. Mr. Zothankhuma further submits that though the trial court dismissed the suit of the Saiha Group after declaring that Serkawr Group enjoying majority support is the original CCI(M) with all Church properties in their control, in the review orders the said decision has been reversed by holding that both the groups are original CCI(M). Recognizing the split of the CCI(M) Church into Saiha Group and Serkawr Group the learned trial court most illegally declared that 5(five) churches with all properties would be under the disposal of the Saiha Group and 15(fifteen) churches with all properties would go to the Serkawr Group, throwing thus into air the relevant provision of the CCI(M) constitution and other evidence on record which led the court to dismiss the suit of the Saiha Group. It is the strong submission of Mr. Zothankhuma that the learned trial court by making a turned-around decision has crossed beyond the well-defined bounds of the re-view jurisdiction.

10. Mr. Lalramzauva, learned Counsel for the respondent (Saiha Group) has first shown how the original decree dated 20.12.2004 in T.S. No. 2 of 2004 is erroneous and illegal calling for a review of the same. According to him, the suit was filed by Saiha Group which could either be decreed or dismissed. In stead of doing so, the said court wrongly recorded a declaration in favour of Serkawr Group that it is the original CCI(M) which has later been found to be not borne by materials on record.

It is to be noticed here that the court by review judgment decreed the suit partly in favour of the Saiha Group and partly in favour of the Serkawr Group. Mr. Lalramzauva has not explained how a part-decree in favour of the Serkawr Group in a suit filed by Saiha Group can be supported and if a part decree in favour of defendant legally sustainable, why a full decree in the form of a declaration that Serkawr Group is the original CCI(M) can not survive. After all, in the said suit the question falling for decision is which group, after the split, is to be held as original CCI(M) as that would enable that group to be in control of the CCI(M) Church properties. It is his further submission that only by two third majority a local church can decide which group it would join and in the order impugned that liberty has been given by the learned trial court keeping in mind the practical situation disturbing the peace in the area.

11. Be that as it may, the original decree having not been assailed in any higher forum, the question, inter alia, gaining prominence in the controversy is whether by the review orders impugned, the learned trial court, could reverse his own judgment in the grab of review jurisdiction after re-appreciation of the evidence and materials already on record. A civil court cannot decide which group a church should join. However, the right to hold certain office, or right to property being of civil nature, can be adjudicated by a civil court. In the present case the trial court recorded observation in the order impugned that the members of the Saiha Group and Serkawr Group contributed and sacrificed for establishment of CCI(M) Church and, therefore, both should be treated original CCI(M) and should share the CCI(M) properties. But after the split the Saiha Group by means of the suit sought to be declared as the original CCI(M) to hold exclusive control of all the church properties. The court was, therefore, to decide their right to hold the office of the CCI(M) Church and consequently the right to hold and control the property of that church. Adverting to this question the trial court after recording the history of said church and recognizing the split relied on the minute book of the CCI(M) to find that majority members of the church elders were with the Serkawr Group. Therefore, taking note of the recognition received by the Serkawr Group from the Regional Secretary, I.C.F. Asia/Pacific of Congregational Church the court unhesitatingly recorded the finding that the Serkawr Group is the original CCI(M) to be in control of the church properties. As such well reasoned findings have been reversed, it is now to be seen how and to what extent the order of reversal is sustainable in law.

12. In the prayer for review the Saiha Group is the first place asserted that in (i) New Colony local church, (ii) Old Saiha local church, (iii) Meisatla local church, (iv) College Veng local church, (v) New Lato local church, (vi) Tongkolong local church and (vii) Vahai local church the Serkawr Group is in minority and Saiha Group enjoys majority support. The second ground taken to justify the review is that the CCI(M) church does not have any relation with church administration of Australia and, therefore, excommunication of Saiha Group by Mr. Keith Lyons and Janet Woodton is of no consequence. The review petitioners made a significant change in their stand by

urging that in view of the split the court may order distribution of the church properties between the Saiha Group and Serkawr Group. According to their proposal Serkawr Group will look after the Mission compound up to the southern part of the Press and Book room and the old main office. Saiha Group will be in-charge of Motherless Home and Theological College building.

Thus, by raising a completely new issue relating to support local churches the review petitioners sought a share of the church properties giving thereby a new dimension to the original controversy. The trial court chose to look afresh to this new issue in exercise of its review jurisdiction.

13. A closer examination of the first review order, which has been quashed by this Court but confirmed by the trial court by its second review order, brings to focus the sharp contrasts in its findings and manner of arriving at the same. The court has first recorded the grounds of review advanced by the Saiha Group and then the provision in Chapter 14 providing that church properties would go to the group who has more than 50% supporters. Thereafter, a letter to Rev. Dr. Setri Nyomi, General Secretary, WARC, Geneva written by Rev. N. Haolua of Evangelical Church of Maraland (ECM) has been quoted. According to that letter the CCI(M) Church has been split and the faction led by Rev. Beiho Beilua (Saiha Group) has been enjoying majority support. The trial court has also quoted another letter to Rev. Dr. Setri Nyomi, General Secretary, WARC by one Rev. Vanlalchhuyanga. According to that letter the reason for the split in CCI(M) Church is opposition to the CCI(M) rules and regulation by Rev. L. Mark and Rev. Lychhua (Serkawr Group). The letter claims that elder K.L. Bana and elder Chilo Hlychho and Rev. Beiho Beilua (Saiha Group) are in control of the CCI(M) Church. Admittedly, ECM and CCI(M) are two separate and distinct entities. Similar is the position of ELC. How the first letter from ECM and second letter from ELC, who are outsiders, about majority support in favour of the Saiha Group have anything to do with CCI(M) Church is not at all clear. It is really not intelligible what good reason actuated the trial court to quote the letters by some outsiders.

The Serkawr Group obviously raised objection to the review petition claiming that it enjoys 120 church elders and having K.N.R and K.T.R organized groups under its control. They also claimed that four churches in Saiha town and 12 churches in the villages support their denomination. Another contention advanced by Serkawr Group is that after the Saiha Group has been reduced to minority as per record in the minutes book of the church, they are intending to join ECM church.

14. After recording the rival contentions in the review judgment the trial court jumped into an observation that as both parties are claiming to be greater in number, a physical counting cannot be done. Therefore, both factions (Saiha Group and Serkawr Group) are to be regarded as the original CCI(M) as both had sacrificed their all mental and physical strength for the CCI(M) church. Thus, throwing into the winds the provision in Chapter 14 of the church constitution which was the basis for

recording earlier finding in the original judgment. In a completely new approach the Court seems to have been caught into cobweb of the claims of local church supports" though the same is extra-constitutional factor in the controversy. The tribunal now observed that it had nothing to say except to divide the church and properties between two factions in order to avoid future disturbances. Thus, after declaring both the groups as original CCI(M), the trial court declared that 5(five) churches will be in the hands of Saiha Group and 15(fifteen) in the hands of Serkawr Group. This again indicate the court found support of 3/4th churches were with Serkawr Group. As regards the land, building and other properties the court further made orders distributing them between the two groups without recording the basis therefor. It would thus appear that while by the original decree the right to hold the office of the CCI(M) Church was declared in favour of the Serkawr Group on the basis of majority support of church elders, without any reference to the local church-support, by the review judgment both the groups have been declared original CCI(M) only because both were claiming majority but no counting was possible and then distributed the local churches and the CCI(M) properties between them without recording any basis whatsoever. This is complete rewriting of the judgment disregarding materials on record and basing on conjecture and considering need to maintain peace. It is to be noticed that in the first review order distributing the local churches an observation has been made that such churches have to right to join any of the factions or other denomination if they so desire by two-third majority of the members taking a resolution to that effect.

15. Mr. Zothankhuma, would now proceed to argue from the above premises that the review orders being without jurisdiction can not be allowed to survive. Order 47, Rule 1 of the CPC (CPC) provides when a review can be allowed, firstly, when new and important matter or evidence which could not be produced or was not within the knowledge after due diligence but discovered after decree or order was passed or made; secondly when some mistake or error apparent on the face of the record or any other sufficient reason justify review of the decree passed or order made. Mr. Zothankhuma has placed reliance on following decisions of the Apex Court in support of his submission that the review jurisdiction cannot be exercised for correction of a mistake by re-appreciating evidence and re-writing the judgment. An error can be said to be apparent on the face of the record if it is self-evident and no exercise to detect it is necessary. The long and strenuous efforts made by the trial court, Mr. Zothankhuma submits, to take a different view that both the factions are original CCI(M), is strong enough pointer that there was no error apparent on the face of the record.

In [Parsion Devi and Others Vs. Sumitri Devi and Others](#), , the Supreme Court held in Para 9 and 10 as follows:

9. Under Order 47, Rule 1 CPC a judgment may be open to review inter alia if there is a mistake or an error apparent on the face of the record. An error which is not

self-evident and has to be detected by a process of reasoning, can hardly be said to be an error apparent on the face of the record justifying the court to exercise its power of review under Order 47, Rule 1 CPC. In exercise of the jurisdiction under Order 47, Rule 1 CPC it is not permissible for an erroneous decision to be "reheard and corrected". A review petition, it must be remembered has a limited purpose and cannot be allowed, to be "an appeal in disguise".

In *Kerala State Electricity Board v. Hitech Electrothermics & Hydropower Ltd. and Ors.* reported in (2005) 6 SCC 651, the Apex Court made following observation in para 10:

10. This Court has referred to several documents on record and also considered the documentary evidence brought on record. This Court on a consideration of the evidence on record concluded that the respondent had been denied power supply by the Board in appropriate time which prevented the respondent from starting the commercial production by 31.12.1996. This is a finding of fact recorded by this Court on the basis of the appreciation of evidence produced before the Court. In a review petition it is not open to this Court re-appreciate the evidence and reach a different conclusion, even if that is possible. Learned Counsel for the Board at best sought to impress us that the correspondence exchanged between the parties did not support the conclusion reached by this Court. We are afraid such a submission cannot be permitted to be advanced in a review petition. The appreciation of evidence on record is fully within the domain of the appellate court. If on appreciation of the evidence produced, the court records a finding of fact and reaches a conclusion, that conclusion cannot be assailed in a review petition unless it is shown that there is an error apparent on the face of the record or for some reason akin thereto. It has not been contended before us that there is any error apparent on the face of the record. To permit the review petitioner to argue on a question of appreciation of evidence would amount to converting a review petition into an appeal in disguise.

In [Lily Thomas, Vs. Union of India and Others](#), the decision of the Apex Court appearing in para 52 and 56 reads as follows:

52. The dictionary meaning of the word "review" is "the act of looking, offer something again with a view to correction or improvement". It cannot be denied that the review is the creation of a statute. This Court in *Patel Narshi Thakershi v. Pradyumansinghji Arjunsinghji* held that the power of review is not an inherent power. It must be conferred by law either specifically or by necessary implication. The review is also not an appeal in disguise. It cannot be denied that justice is a virtue which transcends all barriers and the rules or procedures or technicalities of law cannot stand in the way of administration of justice. Law has to bend before justice. If the Court finds that the error pointed out in the review petition was under a mistake and the earlier judgment would not have been passed but for erroneous assumption which in fact did not exist and its perpetration shall result in a miscarriage of justice nothing would preclude the Court from rectifying the error.

56. It follows, therefore, that the power of review can be exercised for correction of a mistake but not to substitute a view. Such powers can be exercised within the limits of the statute dealing with the exercise of power. The review cannot be treated like an appeal in disguise. The mere possibility of two view on the subject is not a ground for review. Once a review petition is dismissed no further petition of review can be entertained.

16. The upshot of the above discussions on facts and the law would lead me to the irresistible conclusion that the review orders impugned herein are without jurisdiction as the trial court has rewritten the judgment by disregarding the evidence and materials already on record. Both the review orders are thus liable to be set aside and quashed which I hereby do. It is made clear that the court cannot divide churches, it can only declare the right to hold office of a church or its properties which has been done in the original judgment and decree. Need-less to say the local churches shall have always the right to decide which faction they would join.

17. Mr. Zothankhuma has at this juncture placed for perusal of this Court a letter by Additional District Magistrate (j) to the Assistant Registrar (j) of this Court sending records of its court with copy to Rev. B. Beilua, General Secretary, Maraland Presbyterian Church, New Colony, Saiha and Rev. L. Mark, General Secretary, CCI(M) Serkawr Group, Serkawr for information. According to him this indicates that Rev. B. Beilua of the Saiha Group has already joined Maraland Presbyterian Church. In other words he is no longer in any faction of the CCI (M) Church. However, this Court finds no reason to make any comment on the said correspondence. The appeal is allowed. The judgment and decree in the title suit is restored.

No cost.