

A

SWAMY ATMANANDA

v.

SWAMI BODHANANDA AND ORS.

APRIL 13, 2005

B

[B.P. SINGH AND S.B. SINHA, JJ.]

C

Constitution of India, 1950—Article 226—Writ of mandamus seeking directions in view of decree passed by the Civil Court—Propriety of—Held: Decree passed by the Civil Court is to be executed in terms of the provisions of Code of Civil Procedure—Hence, Writ Petition is not the appropriate remedy—Code of Civil Procedure, 1908.

D

The writ petition was filed for issuance of a writ of or in the nature of mandamus directing the Respondents to give all assistance to the Appellant in taking over management of the institutions specified therein, as per decree passed by Civil Court. The petition was allowed by High Court. Hence the present appeal.

E

Allowing the appeal, the Court
Held : A decree passed by the Civil Court must be executed in terms of the provisions contained in the Code of Civil Procedure. The writ petition is not the appropriate remedy therefor. In that view of the matter, the impugned judgment cannot be sustained. It, however, goes without saying that the First Respondent shall be entitled to execute the decree in accordance with law. [579-C-D]

F

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 3058 of 2000.

From the Judgment and Order dated 13.10.99 of the Madras High Court in W.P. No. 15089 of 1998.

G

K. Sukumaran, K. Ramamoorthy, L.N. Rao, Dr. A. Francis Julian, Sumit Kumar, for M/s. Arputham Aruna & Co. M.A. Chinnasamy, Mrs. N. Shobha, Sriram Thalapathy, N.K. Arulmuruganandham, Vikas Mehta, Ms. Indu Malhotra, Ms. Mamata Choudhary, P. Nedu Chezian, C. Paramashivam, R. Ayyam Perumal, Sewa Ram, S. Vallinayagam, Satya Mitra Garg with them

H

for the appearing parties.

A

The Judgment of the Court was delivered by

S.B. SINHA, J. This appeal is directed against the judgment and order dated 13.10.1999 passed by a Division Bench of the Madras High Court in Writ Petition No.15089 of 1998 whereby and whereunder the writ petition filed by Swami Bodhananda had been allowed. The said writ petition was filed for issuance of a writ of or in the nature of mandamus directing the Respondents therein to give all assistance to the Appellant in taking over management of the institutions specified therein. The said writ petition was filed having regard to the judgment of the Civil Court.

B

C

A decree passed by the Civil Court must be executed in terms of the provisions contained in the Code of Civil Procedure. The writ petition is not the appropriate remedy therefor. In that view of the matter, the impugned judgment cannot be sustained, which is set aside accordingly. The Appeal is allowed. It, however, goes without saying that the First Respondent herein shall be entitled to execute the decree in accordance with law.

D

D.G.

Appeal allowed.