
(1986) 01 KL CK 0011
In the High Court Of Kerala
Case No : C. R. P. No. 1842 of 1982

Alavi @ Manu

APPELLANT

Vs

Aboobacker

RESPONDENT

Date of Decision : 17-01-1986

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 7 Rule 11, Order 7 Rule 11(c), Order 7 Rule 12, 17(1)
Court Fees Act, 1870 — Section 12, 12(2)
Kerala Court Fees and Suits Valuation Act, 1959 — Section 12, 12(2), 27(a)

Citation : (1986) 23 KLJ 410

Hon'ble Judges : K.P. Radhakrishna Menon, J

Bench : Single Bench

Advocate : P.K. Balasubramonian, S.V. Balakrishna Iyer and K. Jayakumar, for the Appellant; V.P. Mohankumar, K.P. Sreekumar, V. Ramkumar, P. Santhosh Kumar and N. Sankara Menon, for the Respondent

Final Decision : Dismissed

Judgement

K.P. Radhakrishna Menon, J.—Defendants are the revision petitioners. The respondents filed the suit for a permanent injunction restraining the petitioners from repairing the Cholakulam and the Cholas in item 1 of the plaint schedule property and also from obstructing the free flow of water therefrom to items 2 to 4.

2. The petitioners contended that the respondent has no title to the property. The respondent thereupon got the plaint amended. The suit thereafter was one on title also. In the additional written statement, the petitioners inter alia contended that the court fee paid was not correct. The additional issue, No. 7 pertains to this. The additional issue was considered and disposed of as preliminary issue.

3. The court below found that the respondent is liable to pay court fee u/s 27(a) of the Kerala Court Fees and Suits Valuation Act, on the market value of the

plaint item 1. The respondent took time to pay the additional court fee. Ultimately the time was extended till 11-1-82. As the court did not sit on 11-1-82 the case was adjourned for hearing to 15-2-82.

4. The respondent in the meantime on 20-1-82 filed a petition under Order 6 Rule 17 (1) and sought amendment of the plaint relinquishing his claim to title to plaint item 1. The court below entertained the said petition despite the opposition from the petitioners and allowed the amendment. This revision is against the said order.

5. The question arising for consideration is whether the court below is bound to reject the plaint for non-compliance with the direction to pay the additional court fee.

6. The learned counsel for the petitioner submits that in the circumstances of the case the plaint itself is liable to be rejected. In support of this plea he relied on the provisions contained in Order 7 Rule 11 (c) C. P. C. and section 12 (2) of the Kerala Court Fees and Suits Valuation Act, 1959. Order 7 Rule 11 (c) C. P. C. provides that the plaint shall be rejected where the relief claimed though properly valued, is written upon paper insufficiently stamped and the plaintiff on being required by the court to supply the requisite stamp paper within a time to be fixed by the court, fails to do so. Almost to the same effect is the provision contained in section 12 (2) of the Court Fees Act. Section 12, however has made imperative that in case the court fee is not paid within the time stipulated, the claim shall be rejected with or without costs. This section also contains a provision enabling the court to grant time to the party to pay the deficit court fee and only in case the party fails to pay the deficit court fee within the stipulated period, the plaint shall be rejected.

7. This in short is the scheme of the provisions. The learned counsel for the petitioners then submits that the authority conferred on a court under Order 7 Rule 11 can be exercised only at the initial stage of the proceedings. The learned counsel for the respondent on the other hand submits that the said power can be exercised not only at the initial stage but at any stage of the proceedings. For that matter it can be exercised even at the appellate stage; or even after a remand by the appellate court. I am of the view that the learned counsel for the respondent is well-founded in his submissions. The decisions reported in C.M. Maroof Sahib and Others Vs. Ayyakannu Naicker and Others, , Kiran Chandra Pramanik Vs. Purna Chandra Pramanik and Others, , Bibhas Mohan Mukherjee and Others Vs. Hari Charan Banerjee and Others, , We Build Private Ltd. v. C Kamaleswaran 1981 KLT 773 and Anantha Naicken Rama Naicken Vs. Vasudev Naicken and Others, , support the view expressed above.

8. Having understood the law thus, we have yet to tackle another aspect. The counsel for the petitioners in this connection submits that the plaint would automatically stand rejected in case the plaintiff fails to amend the plaint in compliance with the directions issued by the court in that regard. That is not the

position under law is evident from Order 7 Rule 12 which provides that "where a plaint is rejected, the Judge shall record an order to that effect with the reasons for such order". The section contemplates the passing of an order and in the said order the Judge shall record the reasons for rejecting the plaint. The above argument of the counsel is therefore rejected.

9. As already stated the respondent had filed an application for amendment of the plaint before any order rejecting the plaint was passed. In such circumstances could it be said that there was a valid plaint which could be amended under law. I do not think, I need go into this question at all in view of the decision of this court in *Parukutty Amma v. Ramanunni Nair* 1966 K. L. T. 199 where His Lordship Justice Vaidialingam has held thus:

A plaint which is insufficiently stamped, does not cease to be a plaint; at the most it is only an imperfect plaint, and it is not as if that no action can be taken by the court on such an imperfect plaint. The only limitation in respect of an imperfect plaint, is that the court is not entitled to enter into the merits of the suit or make an order by way of judgment.

It therefore follows that for all practical purposes except perhaps for the purpose of the trial of issues arising for consideration, there is a valid plaint. If that be the position, the amendment sought for by the respondent is sustainable. It is by now well established that till the plaint in fact is rejected by an order passed in exercise of the powers vested in the court under Order 7 Rule 12 or u/s 12 of the Court Fees Act the courts have ample jurisdiction to permit the amendment of the plaint. The fact that the amendment was sought after the court issued a direction to pay the deficit court fee which the plaintiff however, failed to pay, cannot stand in the way of the amendment being allowed because the court in exercise of the jurisdiction under Order 7 Rule 12 or section 12 of the Court Fees Act has not so far passed an order rejecting the plaint. I am fortified in this view by the decision of the Madras High Court in *A. I. R. 1949 Mad. 640*. In fact this court in the decision in *Parukutty Amma's* case has noted this decision with approval.

10. In view of the fact that suit is of the year 1977 the same shall be disposed of as expeditiously as possible in any event before 1-6-86. The petitioners however shall be given an opportunity to file an additional written statement. The records will be sent back to the court below immediately. For the reasons stated above, I am of opinion that the order allowing the amendment which is under challenge is unassailable.

C. R. P. therefore is liable to be dismissed. Accordingly I dismiss it.