
(2009) 06 KL CK 0096
In the High Court Of Kerala
Case No : Tr. P (C) . No. 199 of 2008

Dr. Selvin. J. Puthiyadam and Others	Vs	APPELLANT
Muraleedharan and Others		RESPONDENT

Date of Decision : 05-06-2009

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 16, 17, 18, 19, 20

Citation : (2009) 06 KL CK 0096

Hon'ble Judges : S.S. Satheesachandran, J

Bench : Single Bench

Advocate : Renjith Thampan, for the Appellant; M. Unnikrishna Menon, for the Respondent

Final Decision : Allowed

Judgement

S.S. Satheesachandran, J.—The transfer petition has been filed u/s 23 and 24 of the CPC, seeking transfer of O.S. No. 146/2008 of Sub Court, Palakkad, O.S. No. 70/2008 of Sub Court, Irinjalakuda and O.S. No. 122/2008 of Munsiff Court, Thrissur to the Sub Court, Thrissur for joint trial alongwith O.S. No. 1016/2005, O.S. No. 270/2005 and O.S. No. 63/2008 pending before that court. Respondents 5 to 8 in the petition are partnership firms, in which, it is stated the petitioners and also respondents 1 to 4 were erstwhile partners. An agreement was entered into, copy of which is produced as Annexure I, as between the 1st petitioner and respondents 1 to 4 for dissolving the firms subject to the terms and conditions stipulated therein. Pursuant thereto, as disputes continued even in respect of the enforcement of the terms of agreement, two suits were filed by the 1st petitioner as O.S. No. 270/2005 and O.S. No. 1016/2005 against respondents 1 to 4 before the Sub Court, Thrissur and four suits by respondents 1 to 4 as O.S. No. 146/2008 at Sub Court, Palakkad, O.S. No. 70/2008 at Sub Court, Irinjalakuda, O.S. No. 122/2008 at Munsiff Court, Thrissur and O.S. No. 63/2008 at Sub Court, Thrissur. Transfer of the suits pending before Sub Courts, Palakkad, Irinjalakuda and Munsiff court, Thrissur are sought to be transferred to

Sub Court, Thrissur, where three suits as mentioned above are pending for joint trial with those suits.

2. I heard the learned Counsel on both sides. It is submitted by the learned Counsel appearing for the petitioners that in all the seven suits the validity and enforcement of the terms covered by Annexure I agreement, is the main issue arising for consideration to determine the controversies arising for adjudication for the reliefs claimed by the respective plaintiffs in the suit, and, in the suits filed by the 1st petitioner against respondents 1 to 4 as O.S. No. 1016/2005 and O.S. No. 270/2005, both pending before the Sub court, Thrissur, the relief of decree of permanent injunction and declaration that respondents 1 to 4 have no right in the firms are sought for, and in the four suits filed by the respondents 1 to 4 pending before various Sub Courts as mentioned above settlement of accounts of the firms, which are dissolved under the agreement, is claimed as the main relief. So, essentially, all the suits stem up from Annexure I agreement entered into by the 1st petitioner and the respondents 1 to 4, and that being so, the consolidation of all the suits by ordering transfer to one court and their joint trial, according to the learned Counsel for the petitioner, is absolutely essential to advance the ends of justice. The request for transfer is vehemently opposed by the learned Counsel appearing for respondents 1 to 4, contending that such a course is not feasible nor practicable. The learned Counsel has also canvassed a preliminary objection challenging the entertainability of the transfer petition advancing a plea that the request for transfer made in respect of suits pending in various Sub courts to one Sub court would tantamount to violating the legislative mandate covered by Section 16 - 20 of the CPC. According to the learned Counsel, the institution of suits covered by Section 16 - 20 of the CPC also govern the place of trial as well and a transfer to a different court, where the suit could not have been instituted is not permissible. On merits also, according to the counsel, transfer of the suits pending in Sub courts other than Sub court, Thrissur to that court would cause inconvenience and hardship to the defendants. A further submission is also made that the suits pending in different Sub courts and Munsiff court, which are sought to be transferred to Sub court, Thrissur, have been filed at the place where the registered firms of the respective partnership firms are situated.

3. I find no merit in the preliminary objection raised by the learned Counsel for respondents 1 to 4 that the powers of transfer vested with this Court is whittled down in any way by Section 16 - 17 of CPC, which is applicable to the institution of the suits. Section 24 of CPC gives a general power of transfer of all suits, appeals and other proceedings pending before the Sub courts with High Court or District Court for trial and disposal to any court, subordinate to them. Whether such transfer or withdrawal of the case to any other court is necessary to advance the ends of justice is with the court which is empowered u/s 24 of CPC to pass such transfer and withdrawal. From the submissions made and the facts and circumstances presented, it is evident that the disputes in all the suits are interconnected and have something in common demanding their consolidation to

avoid loss of precious time of the courts, examination of common witnesses separately in all the suits, avoiding duplicity of evidence in the suits and lastly but most significantly, avoiding of conflicting decisions, which cannot be ruled out if the suits are separately tried in different courts. It appears that the agreement entered into by the 1st petitioner and respondents 1 to 4 on which those respondents have also raised their claim for the reliefs claimed in their respective suits has a decisive value in the adjudication of the disputes in all the suits. So much so, I find that transfer of the suits, O.S. No. 146/2008 at Sub Court, Palakkad, O.S. No. 70/2008 at Sub Court, Irinjalakuda and O.S. No. 122/2008 at Munsiff Court, Thrissur for consolidation and joint trial with O.S. No. 1016/2005, O.S. No. 270/2005 and O.S. No. 63/2008 at Sub Court, Thrissur, is necessary for a fair decision in accordance with law in all the suits. Transfer of the cases as indicated above is ordered accordingly, leaving it to the learned Sub Judge, Thrissur, to decide which suit among them has to be treated as the main case in which the parties have to lead evidence. Communicate a copy of this judgment to the Sub Court, Palakkad, Sub Court, Irinjalakuda and Munsiff Court, Thrissur, directing them to send the records of their respective cases pending in their courts forthwith to the Sub Court, Thrissur. Copy of this judgment may also to be communicated to Sub Court, Thrissur, which is directed to take expeditious steps for joint trial and disposal of the suits.

Petition is allowed.