

(1969) 11 KL CK 0007
In the High Court Of Kerala
Case No : S.A. 1525 of 1964

Educational Supplies Depot. Trivandrum

APPELLANT

Vs

Vithoba High School and others

RESPONDENT

Date of Decision : 27-11-1969

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 3 Rule 2, Order 30 Rule 1, Order 30 Rule 10, Order 30 Rule 30, Order 30 Rule 6

Citation : (1970) KLJ 43

Hon'ble Judges : P. Narayana Pillai, J; E.K. Moidu, J

Bench : Division Bench

Advocate : S. Narayanan Potti and N.K. Varkey, for the Appellant; T.M. Krishnan Nambiar and T.V. Ramakrishnan, for the Respondent

Final Decision : Dismissed

Judgement

E.K. Moidu, J.—The main question involved in this second appeal is whether a decree against a school is sustainable in law. It appears to us that such a decree cannot be passed against a school as it is not a juristic entity much less a person with the right to hold property. The answer to this question is also contained in a judgment of this court by Krishna Iyer, J. reported in *P. Vasudevan v. M. Appu* (1969 KLT 46) wherein the learned judge poses the question whether a maintenance grant payable to the manager of an Aided school can be attached in execution of a decree against the school. The question was answered in the following words: I do not really understand what is meant by a decree against the school. The school prima facie is not a juristic entity and cannot be treated as a person against whom a decree could be passed.....I do not know how the school as such can hold property not being a juristic person.

Raman Nayar, C.J., speaking for the Full Bench of this court expressed the same view regarding the status of a college which in legal concept would be the same as a school. The opinion is at page 769 in *Mother Provincial v. State of Kerala* (1969 KLT 749). It runs as follows: A college is not a legal person or even a

legal entity, and there is nothing in the Act which makes it one. That being so, it seems to us that no suit will lie by or against a college--there is nothing to show that the word, "college" is used in the sub-section as a label for some legal person. A college as such has no property--as we have already explained, the property of a college is really the property of the educational agency, used by it for running the college. It seems to us that a decree obtained in the kind of suit contemplated by the sub-section, namely a suit by or against a private college in the name of the manager, would be a useless decree binding on nobody unless it is held on the facts of the particular case that the college or the, manager is only a label for some other legal person.

2. It was then argued by the learned counsel of the appellant that he would be still entitled to sue the defendant-school as a person carrying on business in the name or the style other than its own name as it were a firm. The learned Counsel evidently based the analogy on account of the provisions contained in Order 30 Rule 10 C.P.C. We fail to see how such a contention is available to the appellant. On the face of it the contention appears to us as not sustainable.

3. It is necessary in this regard to state the facts of the case so far as it is necessary to appreciate the appellant's contention. The appellant sued the Vithoba High School as the 1st defendant and one Sri. A.G. Shenoy as the manager of the school being the 2nd defendant to recover certain sum of money from them on the basis that the appellant supplied books and appliances for the use of the school alleging that the 2nd defendant, manager, at the time of the purchase orally undertook to hold himself personally liable for the amount. The trial court gave a decree against the school, but the suit against the 2nd defendant was dismissed. Then the Managing Trustee of the Vithoba Devaswom which managed the school as its educational agency filed an appeal to the lower appellate court contending that the school not being a legal entity the decree against it could not be sustained. Accepting that contention the appeal was allowed and the decree against the school was also set aside. It is against the appellate judgment that the plaintiff has come up in second appeal.

4. It is clear that the suit was not instituted against the devaswom which managed the school. But, it was against the school it was laid. Under such circumstance a decree could not be passed against the devaswom which was a party to the suit even on the basis of the application of Order 30 Rules 10 C.P.C. In this connection, the decision reported in *Tulasidas Mulji v. Ebrahimjee* (1959 KLT 966) may be seen. It was a suit for damages directed originally against two defendants namely, "Tulsidas Mulji, son of Mulji Vishram trading under the name and style of Vishram Khimjee and tindal of Tulsidas Mulji". The plaint was subsequently amended and the 3rd defendant, described as follows, "Mulji Vishram, Son of Vishram Khimjee trading under the name and style of Vishram Khimjee". It was contended on the basis of rule 10 of Order 30 C.P.C. that there was nothing to prevent under that Rule being applicable to those cases where more persons than one carry on business in an assumed name though strictly

speaking they are not partners. But M.S. Menon, C.J., sitting in the Division Bench referred to above held:

We find it impossible to say that the suit either before or after the amendment was a suit against the trade carried on in the name and style of "Vishram Khimjee". The cause-title makes it clear that the suit before the amendment was against Tulsiram Mulji and his tindal and that the suit after the amendment was against him, the tindal of the vessel and his father Moolji Vishram who was brought on record as the 3rd defendant. The prayer before and after the amendment was not for a decree against Vishram Khimjee, but for a decree "directing the defendants jointly and severally to pay the plaintiffs the sum of Rs. 10,736-10-6.

5. It was, therefore, clear that the present appellant cannot get a decree against the school so long as the devaswom was not made a party to the suit. The fact that the managing trustee filed the appeal in the lower appellate court representating the school is not sufficient to make the devaswom liable for the plaint claim unless the suit was instituted to recover the amount from the assets of the devaswom. In the absence of such a suit, the appellant's contention for the recovery of the amount from the devaswom cannot be sustained.

6. It is contended on behalf of the appellant that even without making the devaswom a party to the suit, he would be still entitled to get a decree against the school on the basis that the school is deemed to be conducting its business in an assumed name on behalf of the devaswam. It is to be observed that the Order 30, Rule 10 does not enable a person carrying on business under the name and style other than his own to sue in that name as a plaintiff. All that it provides is that he can be sued in that name as a defendant, the reason being that persons who deal with him in his assumed name should not be debarred from suing in that name, because he has assumed that name in dealing with them. Therefore, it can be said that the above rule will also apply to a case where more persons than one carry on business in an assumed name though strictly speaking they are not partners. It was on the basis of the above proposition that the case reported in R.J. Mohammed Yakub Saheb Vs. Dipa Sahu Deoki Prasad and Others, was decided. The observation in that decision is as follows:

The position in law, therefore, is that a Hindu joint family trading concern, though not a firm in the legal sense, may be used in its assumed name of the business under the provisions of Order 30, Rule 10, Code of civil Procedure, but such a Hindu Joint family trading concern cannot sue as a plaintiff in the firm name under the provisions of Order 30, Rule 1. Such a suit must be brought either by the Karta of the family or by all the members of the joint family who are coparceners.

7. It is relevant in this regard to refer to the provisions of Rule 10 of Order 30 C.P.C. which runs as follows:--

Any person carrying on business in a name or style other than his own name

may be sued in such name or style as if it were a firm name; and, so far as the nature of the case will permit, all rules under this Order shall apply.

The expression "person" occurring in the above Rule cannot to our mind, in the circumstances of the case, be applied to a school which is not a person and much less juristic entity. The expression "carrying on business" under Sections 19 and 20 C.P.C. & Order 3, Rule 2 C.P.C. is interpreted as relating to commercial business applying to a corporate body or to a limited company who work, for gain in *Govindarajula Naidu v. Secretary of State* (A.I.R. 1927 Mad 689) and *Ellappa Naicker and Others Vs. Sivasubramania Maniaganan*, . There is nothing wrong to give the same meaning to the expression "carrying on business" in Rule 10 of Order 30 C.P.C. Those expressions cannot, therefore, be applied to a school which evidently cannot be run on a business proposition. Neither the provisions of the Kerala Education Act 1958 nor the Kerala Education Rules, 1959 envisage that a school is run as a business. Rule 8 of Chapter V of the Kerala Education Rules provides that the fee and other income of a school shall be utilised for educational purposes only. If that be so, Order 30, Rule 10 will have no application in respect of a suit against the school as the provisions of that Rule applies only to trade or business in which the sole determination is one of making profit. It can be seen from the scope of the above Rule that it relates only to business in a limited sense. That it applies only to business is held in a decision reported in *Harishankar Lath and Others Vs. General Merchants Ltd.*, . The observation is at page 190. It runs as follows:

Business is carried on usually from one part of the world to another through post and goods are supplied on such orders. The goods are generally supplied sometimes on credit. The correspondence is carried on in the firm name. Persons, residing in distant places and supplying goods on credit in the firm name which ordered the goods cannot be expected to know the names of the persons who are carrying on the business. It is to facilitate commercial transactions that O.30, R.10 is intended.

8. Again the above proposition is stated and explained in a detailed manner in another decision reported in *Jamunadhar Poddar Firm Vs. Jamunaram Bhakat and Others*, . The observation is at page 141. It runs as follows:

O. 30, R.10 enables a person to sue him as defendant in that assumed name. This distinction which has been made in O.30 itself has, in our judgment, been made in the interest of commerce. There is no inconvenience or injustice, if a person carrying on business under a firm name or any other assumed name is made to sue in his real name, but different and weighty considerations would apply when he is sued by another person in the assumed name which he carries or has carried on business. Business may be carried on by correspondence and orders may be, and are usually, placed from one part of the world to another through post and goods may be supplied on credit on such orders. A producer or merchant living in one part of the globe cannot be expected to know or to make enquiries and in some cases it is not possible, for him to know or to make

enquiries as to who is the owner of the business that is being carried on in an assumed name, and in most cases he would only know the name of the real owner after he had brought his suit, for the defendant must then appear in his own name (O.30, R.6). If it were to be held that decree obtained by such a producer or merchant in a suit instituted against the assumed name is a void decree, it would lead to manifest hardship, would open up a wide door to fraud and would sap the credit on which commercial dealings largely rest.

9. It is clear from these decisions that the Rules 1 to 9 of Order 30 C.P.C. deal with suits by a firm or against a firm as well as suits inter se among the members of the firm while Rule 10 is intended to meet cases where one or more persons conducting trade or business in an assumed name being sued as defendant. "Partner" in the Rules 1 to 9 of Order 30 C.P.C. means a partner by contract and not by personal law. It is for proceeding against a defendant who conducts trade or business in an assumed name that the provisions of Rule 10 is enacted to cover a case different from the cases which come within the purview of Rules 1 to 9 of Order 30 C.P.C. If Rules 1 to 9 apply only to cases of trade or business, we do not think that Rule 10 can be stretched to any length to bring in its ambit anything other than trade or business. In view of the foregoing reasons we find that there is no merit in this appeal and it has only to be dismissed. In the result, the appeal fails and the same is dismissed with costs of the Additional 3rd respondent.