
(1955) 11 KL CK 0002
In the High Court Of Kerala
Case No : Second Appeal No. 375 of 1955

Ezhumattoor N.S.S. Karayogam

APPELLANT

Vs

L. Janaki Amma and Another

RESPONDENT

Date of Decision : 14-11-1955

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 1 Rule 8, 29
Societies Registration Act, 1860 — Section 17, 6

Citation : (1955) 11 KL CK 0002

Hon'ble Judges : Nandana Menon, J

Bench : Single Bench

Advocate : P. Kochukrishna Pillai, for the Appellant; G. Sankaruarayana Pillai, for the Respondent

Judgement

Nandana Menon, J.—This Second Appeal is by the Plaintiff Ezhumattoor Karayogam represented by its President and is directed against the concurrent decisions of the lower Courts dismissing the suit filed for a declaration of the title of the Karayogam over the plaint schedule item and for a cancellation of the decree in O.S. No. 17 of 1111 of the Thiru-vella MunsifPs Court as far as the Karayogam is concerned on the ground that it was not a party to the said suit. The plaint schedule property was purchased by the Karayogam as per Ext. A dated 26-12-1107. O.S. 17 of 1111 was filed for setting aside the said assignment deed. Defendants 6 and 7 there were the President and the Treasurer of the said Karayogam. The 7di Defendant died and his legal representatives were not impleaded on the ground that the Karayogam was validly represented by the-6th Defendant himself. The suit was decreed in favour of the Plaintiff, a copy of the decree being Ext. C. The present suit was filed for the cancellation of die said decree on the ground that the Karayogam was not properly represented as Defendants 6 and 7 in O.S. were described by their "there being no statement that their, s .representatives of the Karayogam as the lower Courts have held that there anial representation and the ivarayogam "challenge die decree passed. Ext. A is die lent in favour of the Karayogam and it

is Jliat it was executed in favour of the Kara-Venresented by "the President Raman Pillai Ayyappan Pillai. These are the two sons wflta were impleaded as Defendants 6 and % in O.S. 17 of 1111. Their status"also is given as President and Treasurer of the Association. In the substance of the plaint given in Ext. C there is a reference to the effect that the assignment deed sought to be got vacated was one in favour of the Karayogam to which Defendants 6 and 7 belonged. Ext. D is the copy of the said deed. It shows that on 21-7-1115 the 7th Defendant put in a petition to ex parte decree passed as regards him.

passed as regards him. On 21-11-1115 the said petition was dismissed for default. Thus it is seen that one of the representatives Of ivarayogam at least had full knowledge of the proceeding in the suit. The aucstion for consideration under these circumstances is whether the omission to describe the Karayogam as such as "the Defendant vitiates the decree. On behalf of the Appellant what is urged is that an association like the one in question here is to figure as such in the suit and when it is not so described no decree can bind it. In the present plaint the Karayogam is described as the Ezhumattoor N. S. S. Karayogam, bearing No. 1190 aad is re- presented by its present President. In paragraph 6 of the plaint it is stated that the President is entitled to represent the Yogam. In Chitale's commentaries on Order 1, Rule 8, in Note 4 it is stated as follows:

Bodies of persons may be registered under the Company's Act and may be authorised under law to sue and be sued through one of their members or officers. But in the case of unincorporated associations like clubs etc., tire Secretary or other officers of the club cannot sue or be sued except by obtaining permission under this rule even though he or they may have been authorised by a resolution of the association to sue or to defend a suit. u/s 6 of the Societies Registration Act of 1860 a society registered under the Act can sue or be sued in the name of the President, Secretary or other proper officer of company.

So a Society like the present Plaintiff can be validly represented in a suit filed against it by its officebearers. In u/s 17 of 1111 Defendants 6 and 7 were clearly described as President and Treasurer of the society. In Radhe Lal and Another Vs. East Indian Railway and Others, , where the question was whether a suit brought against a railway company was vitiated because the company as such was not described as the Defendant but only its agent it was held that when the plaint made it clear that the suit was against the company the company cannot contend that it was vitiated by a technical defect. At page 46 it is observed as follows:

If a Plaintiff deliberately chooses to sue not the Company but the agent he cannot by a decree which he obtains in the suit bind the company. If, however, upon a fair reading of the plaint it is made out that the description of the Defendant is a mere error and the company is the real Defendant then the suit may proceed against the company.

Thus even in the case of companies the suits against which are governed by the provisions of Section 29, CPC when substantial and effective representations" is

proved a mere technical error in the description may not be fatal. As pointed out before, in the present case it is a Society. So it is clear that the Plaintiff Karayogam was validly represented in u/s 17 of 1111 and that the decree passed therein is binding on it. Hence no ground is made out to interfere with the concurrent decisions of the lower Courts.

2. In the result, the appeal is dismissed with