

(2009) 03 KL CK 0093
In the High Court Of Kerala
Case No : C.M.A. No. 25 of 2000

G. Ayyappan Pillai

APPELLANT

Vs

State of Kerala and Another

RESPONDENT

Date of Decision : 18-03-2009

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 27 Rule 5A, 19, 20, 21

Citation : (2009) 3 CivCC 677 : (2009) 2 ILR (Ker) 522 : (2009) 2 KLT 985 :
(2010) 7 RCR(Civil) 1315 : (2010) 6 RCR(Criminal) 845 : (2010) 28 VST 411

Hon'ble Judges : Thomas P. Joseph, J

Bench : Single Bench

Advocate : M.R. Rajendran Nair and M.R. Sudheendran, for the Appellant; P.K. Ravikrishnan, Government Pleader, A.K. Chinnan and Susal A. Chinnan, for the Respondent

Final Decision : Allowed

Judgement

Thomas P. Joseph, J.—Can the court within whose territorial jurisdiction the consequence ensued from the wrong done to movables beyond its territorial jurisdiction entertain a suit for compensation for the wrong done is the question for a decision in this civil miscellaneous appeal.

2. The appellant purchased 1.278 mt. of teak wood from Peechi depot of the Forest Department in the auction held on October 20, 1991 for his house construction and according to him, after complying with the legal formalities he was transporting the timber in a lorry to the site of house construction at Maradu in Kanayannur Taluk on April 26, 1992. It was intercepted by respondent No. 2 at Karukutty sales tax check-post alleging that the appellant had no valid documents. Respondent No. 2 refused permission to the appellant to proceed further with the timber to its destination. The appellant was allowed to proceed only on the next day on his paying Rs. 9,454. On August 26, 1992 the Sales Tax Officer at Ernakulam ordered refund of the said amount. Alleging that the said mala fide act of respondent No. 2 caused loss to him including travelling

expenses to go to different places including Ernakulam and additional payment made to the owner of the lorry for transporting the timber (to Ernakulam), the appellant sued the respondents for compensation to the tune of Rs. 50,000. The appellant stated in the plaint that cause of action for the suit arose when respondent No. 2 stopped the lorry with the timber on April 26, 1992 (at Karukutty) and detained the same till the next day and when the Sales Tax Officer allowed refund of the amount at Ernakulam on August 26, 1992. The suit was filed in the sub-court, Ernakulam. The respondents, among other things, contended that the said court has no territorial jurisdiction to try the suit (as the alleged incident occurred at Karukutty, beyond its territorial jurisdiction). The learned Sub-judge did not frame an issue regarding territorial jurisdiction but, an issue "whether the suit is maintainable" was framed. Parties went for trial. The appellant examined P. Ws. 1 to 3 and marked his documents. The respondents examined D. W. 1 in part. At that stage, the learned Sub-judge considered the question of alleged lack of territorial jurisdiction and by the impugned order found that the said court has no territorial jurisdiction to entertain the suit. The learned Sub-judge was of the view that refund of the amount by the Sales Tax Officer, Ernakulam, did not create any cause of action for the appellant and directed that the plaint be returned for presentation before the proper court. That order is under challenge in this appeal.

3. The learned Counsel for the appellant contended that u/s 20 of the CPC (for short, "the Code") it is sufficient that a part of cause of action arose within the local limits of the court before which the proceeding is initiated. According to the learned Counsel the order of refund passed by the Sales Tax Officer, Ernakulam, formed part of cause of action for the suit which is sufficient to confer territorial jurisdiction for the Sub-court, Ernakulam, to try the suit. The learned Government Pleader appearing for the respondents maintained the stand that since the cause of action arose at Karukutty which is beyond the territorial jurisdiction of the Sub-court, Ernakulam the suit was not maintainable in that court.

4. The learned Sub-judge has proceeded on the assumption that Section 20 of the Code applied to the facts of the case. The place of suing when compensation is claimed for wrongs to person or movables is dealt with u/s 19 of the Code. Section 19 of the Code reads thus:

Section 19. Suits for compensation for wrongs to person or movables.- Where a suit is for compensation for wrong done to the person or to movable property, if the wrong was done within the local limits of the jurisdiction of one court and the defendant resides, or carries on business, or personally works for gain, within the local limits of the jurisdiction of another court, the suit may be instituted at the option of the plaintiff in either of the said courts.

5. As per Section 19 of the Code, the suit could be filed either in the court having territorial jurisdiction over the place where the "wrong was done" or where the defendant resides or carries on business, or personally works for gain.

Respondent No. 1 is the State of Kerala impleaded as defendant in view of the provisions of Order XXVII, Rule 5A of the Code. Respondent No. 2 who allegedly wronged the appellant by stopping movement of the timber has his office outside the territorial jurisdiction of the Sub-court, Ernakulam. Then the question is whether the "wrong was done" within the territorial jurisdiction of the Sub-court, Ernakulam.

6. What is meant by the phrase "wrong done" ? Is it confined to the mere wrongful act alone ? In Words and Phrases, permanent edition, volume 46, page No. 483 the word "wrong" is given the following meaning:

"Wrong" means any deprivation of right, breach of contract, or injury done by one person to another." (O'Connor v. Dils 26 S.E. 354, 355).

"Wrong" in law means a violation of the legal rights of another; an invasion of right to the damage of the parties who suffer it, especially a tort." (Donelen v. Denser 134 S.W. 2d. 132, 133).

7. A "wrong" involves the violation of one's right. "Wrong done" includes the effect of the act and the resultant damage. If the act does not lead to any consequence or damage, such act may not be actionable. Therefore the phrase "wrong done" occurring in Section 19 of the Code should be understood as including the effect of the act. This view gets support from the decisions of the learned single judges of the Bombay and Gauhati High Courts, in The State of Maharashtra Vs. Sarvodaya Industries, and State of Meghalaya and Others Vs. Jyotsna Das, . In The State of Maharashtra Vs. Sarvodaya Industries, movement of movables belonging to the plaintiff to its factory at Akola was stopped by the defendant outside the territorial jurisdiction of the Akola court. The resultant damage to the plaintiff took place at Akola. It was held that the court at Akola had jurisdiction to entertain the suit.

8. In this case it is stated in the plaint that it was for the house construction (at Ernakulam) that the appellant purchased timber from the Forest Department. It is also sated that the timber was being transported by road to Ernakulam. Exhibits A3, A5 and A14 produced along with the plaint state that the destination was Maradu, Ernakulam. Since exhibits A3, A5 and A14 are produced along with the plaint, these also have to be considered along with the plaint averments for determining territorial jurisdiction. As movement of the timber was stopped at Karukutty on April 26, 1992 it could not be brought to Ernakulam that day. The appellant alleged that due to the illegal stoppage of movement of the timber, he had to travel to Ernakulam incurring expense, make additional payment to the owner of the lorry and thus suffered loss. The effect of the alleged wrongful act of respondent No. 2 was felt at Ernakulam as well. In such a situation in my opinion Section 19 of the Code would apply and the court within whose jurisdiction such effect was felt also has jurisdiction to entertain the suit.

9. Section 21 of the Code mandates that every objection as to the place of suing has to be taken (in the court of first instance) at the earliest possible opportunity

and in all cases where issues are settled at or before such settlement. In this case the respondents raised a contention that the court has no territorial jurisdiction. The issue framed is "whether the suit is maintainable". Assuming that the issue framed is as to the alleged lack of territorial jurisdiction the court should have decided the issue before the parties went into trial of the suit. In this case the order to return the plaint for presentation in the proper court was passed after the appellant produced his evidence and part of the evidence of the respondents was recorded. This in my view is not in accordance with the message contained in Section 21 of the Code. The proper course to be followed is that if objection as to the place of suing is taken before the court of first instance as required u/s 21, it is decided at the earliest point of time to avoid hardship to the parties. Unlike in a case of lack of inherent jurisdiction, an objection as to territorial jurisdiction can be waived which can be express or implied. An implied waiver can be gathered by the conduct of the person who is said to have waived the right. In this case though the respondents raised a contention regarding lack of territorial jurisdiction, they cross-examined the appellant and his witnesses and even examined their witness in part. Hence the respondents can be deemed to have waived their objection as to territorial jurisdiction.

10. In view of the interpretation given to the phrase "wrong done" occurring in Section 19 of the Code and the factual situation stated above, I am of the view that the Sub-court, Ernakulam has jurisdiction to try the suit.

11. This appeal succeeds. The order under challenge is set aside. The learned Sub-judge is directed to proceed with the trial and dispose of the case as expeditiously as possible.

12. Parties are directed to appear in the sub-court, Ernakulam on May 27, 2009. No costs.