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(2016) 06 KL CK 0085

In the High Court Of Kerala

Case No : O.P. (C).No. 1222 of 2016 (O)

Holicross Hospital — APPELLANT

Vs

E.T. Suresh — RESPONDENT

Date of Decision : 27-06-2016

Acts Referred:
Civil Procedure Code, 1908 (CPC) — Order 7 Rule 10A

Citation : (2017) 1 CivCC 419 : (2016) 4 KLT 635

Hon'ble Judges : Mr. K. Harilal, J.

Bench : Single Bench

Advocate : Sri. K. Siju and Sri. Pratheesh P., Advocates, for the Respondent; Sri. Joseph Sebastian (Kollam) and Sri. Liju. M.P., Advocates, for the Petitioner

Final Decision : Disposed Off

Judgement

Mr. K. Harilal, J. - The petitioner herein is the defendant in O.S.No.779/15 on the files of the Principal Munsiff''s Court, Kollam. The above suit was filed by the respondent herein for an injunction restraining the petitioner from forcefully evicting him from the plaint schedule building and to interfere with the peaceful conduct of the canteen, which is being run by the respondent. Originally, the above suit was filed before the Munsiff''s Court, Kollam, as O.S. No. 779/15 and I.A. No. 4096/15 was filed seeking an order of temporary prohibitory injunction against the petitioner and the same was allowed by the Munsiff''s Court, Kollam.

2. Thereafter, on receipt of the summons and temporary injunction order, the petitioner entered appearance before the Munsiff''s Court, Kollam, and filed an objection contending that the Munsiff''s Court, Kolla,m has no territorial jurisdiction to entertain the suit and the suit ought to have been filed before the Munsiff''s Court, Paravoor, within the limits of whose jurisdiction the subject matter of the suit is situated. After considering the objection filed by the petitioner, the Munsiff''s Court, Kollam, found that the said court has no territorial jurisdiction to try the suit and on that reason, the suit was transferred to the Munsiff''s Court, Paravoor, having jurisdiction to try the case and directed

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the parties to appear before the Munsiff''s Court, Paravoor, on 19.12.2015. Both parties entered appearance before the Munsiff''s Court, Paravoor, and the proceedings are going on before that court.

3. The grievance of the petitioner is that though the Munsiff''s Court, Kollam, has returned the plaint so as to file the same before the Munsiff''s Court, Paravoor, the Munsiff''s Court, Kollam, failed to recall and vacate Ext.P4 temporary injunction order, which was passed, without jurisdiction, and the said order is still continuing in force. Hence, this original petition is filed seeking an order setting aside Ext.P4 order passed by the Munsiff''s Court, Kollam.

4. Heard the learned counsel for the petitioner and the learned counsel for appearing the respondent.

5. The question to be considered is, what is the legal validity and enforceability of an interim order passed earlier in a suit wherein the plaint was later returned, due to lack of jurisdiction, for filing before the proper court, having jurisdiction. It stands admitted that the Munsiff''s Court, Kollam, erroneously entertained the suit and later transferred the same to the Munsiff''s Court, Paravoor, the court within the local limits of whose jurisdiction the subject matter of the suit is situating and having jurisdiction to try the suit. But, the court below failed to note the pendency of Ext.P4 order passed, without jurisdiction. According to the petitioner, the Munsiff''s Court, Kollam, ought to have recalled and vacated the said order before returning the plaint to the plaintiff, so as to file the same before the proper court, having jurisdiction, to try the case. In support of the above argument, the learned counsel cited the decision reported in Budhia Swain and Others v. Gopinath Deb and Others [1999 KHC 1168].

6. In Budhia Swain''s case (supra), the Apex Court held that a court may recall an order earlier made by it, if (i) the proceedings culminating into an order suffer from the inherent lack of jurisdiction and such lack of jurisdiction is patent, (ii) there exists fraud or collusion in obtaining the judgment, (iii) there has been a mistake of the court prejudicing a party, or (iv) a judgment was rendered in ignorance of the fact that a necessary party had not been served with summons or notice at all and was shown as served in ignorance of the fact that the necessary party had died and the estate was not represented.

7. Further, in Harshad C.L. Modi v. DLF Universal Ltd. [2006 (1) KLT SN 82], the Apex Court held that where plaint returned for proper presentation to the proper court on the ground of want of jurisdiction, on presentation in the proper court, it cannot be treated as continuation of proceedings. It is not transfer of a suit; but, of lack of jurisdiction of the court. It cannot be permitted to be tried from the stage at which it was transferred.

8. An order passed without jurisdiction is a nullity in law. So, this Court is of the view that the court which passed such an interim order, without jurisdiction, must recall and vacate the interim order, which was passed, without jurisdiction, before returning the plaint to the plaintiff, to enable the plaintiff to obtain a valid

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order from the proper court having jurisdiction.

9. The Munsiff''s Court, Kollam, itself later found that the said court had no territorial jurisdiction to try the case and rightly returned the plaint to the plaintiff in order to file before the proper court having jurisdiction over the subject matter. In view of the above analysis, this Court finds that Ext.P4 order was passed in nullity and therefore, the same has no legal validity or enforceability at all.

10. Consequently, Ext.P4 will stand set aside. It is made clear that the respondent is at liberty to file a fresh application under Order 39 Rules 1 and 2 of the C.P.C. before the Munsiff''s Court, Paravoor, and this judgment will not stand in the way of such proceedings. The parties are directed to maintain status quo for a period of forty five days from today. The respondent has to move the said court within the aforesaid period and obtain the order, if he desires so.

11. This original petition is disposed of accordingly.

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