

(1957) 03 KL CK 0027
In the High Court Of Kerala
Case No : C.M.A. No. 85 of 1956

Jusinge Thresiamma

APPELLANT

Vs

Jusinge Jerome and Others

RESPONDENT

Date of Decision : 26-03-1957

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 1 Rule 10

Citation : AIR 1958 Ker 304

Hon'ble Judges : K.T. Joshi, C.J.;Varadaraja Iyengar, J

Bench : Division Bench

Advocate : K.P. Abraham and E.P. Varghese, for the Appellant; N. Viswanatha Iyer, for Respondent 1, C.K. Sivasankara Panicker, for Respondents 2 and 3, for the Respondent

Final Decision : Dismissed

Judgement

K.T. Koshi C.J.

1. This appeal is directed against an order im-pleading an additional defendant in an interpleader suit. The Bishop of Alleppy who happened to be the stake holder in respect of a sum of Rs. 37,000/- instituted the suit out of which the appeal arises. Defendant 1 won a lottery prize for the value of Rs. 40,000/- & as per the rules of the lottery she was entitled to receive Rs. 37,000/-. Defendants 2 and 3 claimed Rs. 12,000/- out of it under an arrangement with defendant 1, but defendant 1 disputed it and claimed the full amount. As directed by defendant 1 the authorities conducting the lottery sent the full amount of Rs. 37,000/- to the Bishop. From the latter while defendant 1 claimed the entire amount, defendants 2 and 3 claimed Rs. 12,000/- out of it. Hence the interpleader suit by the Bishop.

2. Prima facie the appeal is incompetent as Order 43, Rule 1 C. P. C. contemplates no appeal from an order made under Order 1, Rule 10 C. P. C. Presumably the appellant was misled as the party who sought to be im-pleaded as additional defendant had mentioned besides Order 1, Rule 10, Rule 4 of Order

35 also in his application to the lower court. No doubt orders under Order 35, Rule 4 are appealable, but no such order has been made in the case. The order under appeal is therefore made under Order 1, Rule 10 against which an appeal is incompetent. The appellant's learned counsel conceded the soundness of the preliminary objection and requested that the appeal may be treated as a revision.

3. We do not, however, think it necessary to do so as in our opinion no interference with the order is called for. No doubt the stake-holder when he brought the suit was only aware of the disputes between defendant 1 on the one hand & defendants 2 and 3 on other, but during the pendency of the suit respondent 1 to this appeal came on the scene claiming a share of the fund for himself and also stating that there were other members of the family interested in its distribution and who were also entitled to claim shares. Section 88, C. P. C which lays down where interpleader suit may be instituted enjoins that it shall be "against all the claimants for the purpose of obtaining a decision as to the person to whom the payment or delivery shall be made and". In view of this we cannot find fault with the order the lower court passed in the matter and we are afraid that the plaintiff (the Bishop) will have to seek to implead the other persons mentioned in the application made by respondent 1, also defendants to the suit before he can claim discharge under Rule 4 of Order 35. The truth or maintainability of the claim put forward by the newly added defendant will have to be enquired into and determined by the court just in the same way as the claim of defendants 2 and 3.

4. The appellant's counsel invited our attention to the decision in *Official Receiver of South Kanara Vs. Bastiao Souza and Others*, *Jeramdas Jethanand v. Tikamal Mulchand* AIR 1935 Sind 194 (B), *Appu v Parameswaran Namburipad* (1950) 5 DLR Trav Co. 192 and an unreported decision of the Travancore Cochin High Court in C. R. P. 461 of 1953 (C). Not one of these cases is concerned with an interpleader suit and the decisions made there cannot therefore give us any guidance in the matter. Further the first among the cases referred to was dissented from in *Secretary of State v. Murugesu Mudaliar* AIR 1929 Mad 443 (D). Counsel for respondent 1 invited our attention to the decision in *Rabbaba Khanum v. Noorjehan Begum* ILR Cal 90 (E) which contains observations criticising the view that no person should be added as a defendant to an interpleader suit unless the plaintiff recognises some right in the party who seeks to be added to share in the thing in respect of which the interpleader suit is brought. No doubt in that case the learned Judges did not set aside the order of the lower court refusing to add an additional defendant, but that was on the ground that interference with it would be unwarranted under the court's revisional jurisdiction. If we may say so, the view expressed by the learned Judges there to the applicability of Order 1, Rule 10 (then Section 32) to an interpleader suit accords with the inference to be drawn from Section 88.

5. The appeal must in the result be dismissed both on the ground that it is incompetent and also on the ground that there is no need to convert it into a

revision as the order impugned does not call for interference. The appellant will pay the contesting respondents their costs in the appeal. Advocate's fee one set only.