
(2017) 03 KL CK 0012
In the High Court Of Kerala
Case No : OP(C).No. 1337 of 2010

K.K. Balakrishnan

APPELLANT

Vs

Diety Sree Kammoth Maha Vishnu Temple

RESPONDENT

Date of Decision : 10-03-2017

Acts Referred:

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

Citation : (2017) 2 KerLJ 401

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

Bench : Single Bench

Advocate : Sri. Jacob Sebastian, Advocate, for the Petitioner; Sri. B. Krishnan and Sri. R. Parthasarathy, Advocates, for the Respondent No. 1

Final Decision : Dismissed

Judgement

Mr. K. Ramakrishnan, J.—The supplemental 3rd defendant in O.S.No.42 of 2007 on the file of the Sub Court, Quilandy, has filed this petition challenging Ext.P3 order passed by the court below under Article 227 of the Constitution of India. It is alleged in the petition that the 1st respondent herein filed O.S.No.42/07 originally against the 1st defendant alone, who is the 2nd respondent herein, for recovery of possession on the strength of title. Subsequently, on the basis of the Commissioner's report when it was found that certain portion of the plaint schedule property was in the possession of some other persons also, the 1st respondent herein filed I.A.No.1766/08 to implead the petitioner and respondents 3 and 4 as supplemental defendants 2 to 4 and also made amendment of the schedule of properties showing the respective plots in the, possession of the respective defendants. The plaint so amended, incorporating the supplemental defendants and separate schedule, is produced and marked as Ext.P1. The petitioner filed Ext.P2 written statement contending inter alia that the suit is bad for misjoinder cause of action and multifariousness and prayed for dismissal of the suit. The court below had raised additional issues on the basis of the written statement filed by the supplemental defendants and

issue No.8 was raised regarding the fact as to whether the suit is bad for misjoinder cause of action and misjoinder of parties. The court below tried that issue as preliminary issue and by Ext.P3 order found that the suit is maintainable and the suit is not bad for misjoinder cause of action and misjoinder of parties. Aggrieved by the same, the present petition has been filed by the petitioner.

2. Heard Sri. Jacob Sebastian, learned counsel appearing for the petitioner and Sri. B. Krishnan, learned counsel for the 1st respondent and others remained absent.

3. Learned counsel for the petitioner submitted that on a reading of Ext.P1 amended plaint will go to show that the suit was originally filed against the 1st defendant alone and thereafter, on the same cause of action, the supplemental defendants including the petitioner were impleaded. It will not come under Order 1, Rule 3 of Code of Civil Procedure (hereinafter referred to for short as "the Code"). Order 1, Rule 3 will apply only in a case where there is some connection between the transactions of defendants and plaintiff, and cause of action arose on the same set of transaction or series sets of transactions between the plaintiff and the defendants, and common question of fact and law arises for consideration in the trial of the suit and if these two conditions are not satisfied, the supplemental defendants cannot be tried in a same suit. The trial of these defendants in a single suit will cause prejudice and that will affect their defences as well. He had relied on a decision reported in Vasavan v. Balakrishnan (1986 KLT 988) and Ayyappan Chellappan v. Ayyappan Thankappan (1995 KHC 224) in support of his case.

4. On the other hand, learned counsel for the 1st respondent submitted that the case of the plaintiff in the plaint was that the plaint schedule property belongs to the 1st respondent temple and they came to know that the defendants have trespassed into the property and reduced the property into their possession and when they came to know about the same, originally they were under the impression that only the 1st respondent had trespassed in the entire property, but when the Commission was taken out, it revealed that the supplemental defendants were in possession of portion of the plaint schedule property which have been separately shown on the basis of Commissioner's report in the amended plaint. So, the common question that has to be tried in this case is whether the defendants are entitled to be in possession of the property and whether the plaintiff is entitled to get recovery of possession on the strength of their title. So, under such circumstances, the court below was perfectly justified in recording the findings in favour of the plaintiff that the suit is maintainable and not hit by Order 1, Rule 3 of the Code.

5. It is an admitted fact that O.S.No.42/07 on the file of the Sub Court, Quilandy, was originally filed by the 1st respondent temple represented by a Committee through its Secretary against the 2nd respondent herein alone for recovery of possession on the strength of title. The 1st respondent had taken out a Commission and Commissioner found that plaint item no.1 comprised in

Resurvey No.36/3 and identified the same as plots A, B, C and D in the plan. The Commissioner found plots B and C are in the possession of the plaintiff and the 1st defendant is in possession of plot A and supplemental 2nd defendant is in possession of plot B. The Commissioner identified item No.2 of the original plaint schedule comprised in Survey No.36/6 as plots K, L1, L2, M and N in the plan and plots L1 and L2 were found to be in possession of the plaintiff temple. Plot K was in the possession of the 1st defendant, plot M is in the possession of supplemental 3rd defendant and plot N is in the possession of 4th defendant. On the basis of the Commissioner's report, plaintiff filed I.A.No.1766/08 for impleadment of supplemental defendants 2 to 4 and amendment of the plaint corresponding to the portions in the possession of the defendants showing those plots separately in the plaint as separate schedules and seeking recovery of possession of those plots from the unauthorised possession of the defendants on the strength of title of the plaintiff. Item No.1 in the amended plaint corresponds to plot A and item No.1A in the amended plaint corresponds to plot D and relief of recovery of possession is confined to plots A and D in the plan alone in Resurvey No.36/3, as plots B and C comprised in item No.1 were found to be in possession of the plaintiff. Item No.2 of the amended plaint corresponds to plot K and item No.2A of amended plaint corresponds to plot M and item No.2B corresponds to plot N, which were found to be in possession of the defendants 1, 3 and 4 respectively.

6. As per the revenue records, the property comprised in Re-survey Nos.36/4 and 36/5 are in the name of Koothali Moothavar and properties comprised in Survey Nos.36/4 and 36/5 also belong to the plaintiff temple. The property in Re-survey No.36/4 is identified as plots E and F in the plan, wherein plot E is in the possession of the plaintiff and plot F is in the possession of the 1st defendant. Item no.3 in the amended plaint corresponds to plot F which is found to be in the possession of the 1st defendant. Properties comprised in Re-survey no.36/5 are identified as plots G, G1, H, H1, J1, J2 and J3 and plots H and H1 are in the possession of the plaintiff. Plots G, G1 are in the possession of the 1st defendant and J, J2, J3 are in the possession of the 3rd defendant. Item no.4 of the amended plaint corresponds to plots G and G1 which are found to be in the possession of the 1st defendant and item no.4A of the amended plaint corresponds to plots J1, J2 and J3 which were found to be in possession of the 3rd defendant.

7. It is alleged in the plaint that the plaintiff has got absolute title over the entire plaint schedule property which were shown in the amended plaint and defendants have no right over the same and they are trespassers and as such the plaintiff is entitled to recover possession of the respective portions from respective defendants on the strength of their title. It is also mentioned that plaintiff will be initiating independent proceedings with respect to other properties belonging to the temple said to be in the possession of the defendants and others. So, the plaintiff wanted recovery of possession of the properties in the possession of the defendants on the strength of their title.

8. Order 1, Rule 3 of the Code deals with joinder of defendants which reads as follows :

"Who may be joined as defendants.- All persons may be joined in one suit as defendants where-

(a) any right to relief in respect of, or arising out of, the same act or transaction or series of acts or transactions is alleged to exist against such persons, whether jointly, severally or in the alternative; and

(b) if separate suits were brought against such persons, any common question of law or fact would arise."

It is clear from the above provision that all persons may be joined in one suit as defendants, if a) any right to relief in respect of or arising out of the same act or transaction or series of acts or transactions is alleged to exist against such persons either jointly, severally or in the alternate, and b) if separate suits were brought against such persons any common question of law or facts would arise. So, what is required to be ascertained is as to whether plaintiff can proceed against the defendants on the basis of the pleadings raised by them in the plaint in a single suit. The nature of defence is irrelevant for this purpose. If the court is satisfied that the set of transaction between the plaintiff and defendants by which the plaintiff claims or plaintiff has a right to claim a relief against the defendants, either jointly, severally or in the alternate and if a common question of fact and law arise for consideration, then all those persons can be joined as defendants in one suit filed by the plaintiff seeking the relief.

9. The dictum laid down in the decision reported in *Vasavan v. Balakrishnan* (1986 KLT 988) and *Ayyappan Chellappan v. Ayyappan Thankappan* (1995 KHC 224) are not applicable to the facts of this case. There is no dispute regarding the fact that if transaction is different and nature of relief claimed is also different and joinder of those parties is likely to cause complicity of trial of procedure, then the court can disallow such impleading under amendment, in view of the Order 1, Rule 3 .

10. But in the decision reported in *Joseph alias Kochu v. Makkaru Pillai* (AIR 1960 Kerala 127) = 1959 KLT 1110, it has been held that in a suit for ejectment against trespassers, it cannot be said that the suit is bad for multifariousness. The determination of the question as to whether the suit is bad for multifariousness, depends solely on the allegation made in the plaint. In a suit for ejectment against the trespassers, what concerns the plaintiff is that another is wrongfully in possession of what belongs to him, and that fact gives him his cause of action. So far as the plaintiff's cause of action is concerned, it is a matter of indifference to him upon what grounds the different persons in possession may seek to justify the wrongful detention of what is his. What he is entitled to claim is the recovery of possession of his land as a whole and not in fragments, and all persons who oppose him in the enforcement of that right, are concerned in his cause of action and ought, accordingly, to be made parties to a

suit in which he seeks to give effect to it. Such a suit is not bad for misjoinder of parties or causes of action. So, it is clear from the above dictum that if the plaintiff wants to recover possession on the entire property which is in the possession of different persons, according to whom they are trespassers, then he can brought a suit against all such persons in one suit by adding them as defendants. What is required to be considered is whether, according to the plaintiff, the defendants are in wrongful possession and whether he is entitled to get recovery of possession on the strength of his title of those properties from the persons in wrongful possession of the property and not the manner in which the defendant is going to claim his right or justify his possession in such suit.

11. The same principle has been reiterated in the decision reported in *Kamala Prosad Gupta v. Chaman Lal Agarwalla & Ors.* (1966 Calcutta Weekly Note 391) and *Shew Narayan Singh v. Brahmanand Singh and other* (AIR 1950 Calcutta 479). That was the case where A suing B on breach of contract to supply certain number of bricks. Later he came to know that C, D and E conspired with B to bring about the breach of the contract and so he joined them as defendants in the suit along with B and alleging conspiracy, claimed the same amount of damages jointly and severally against them also. It was held in the decision that as the relief arose out of the acts of causing breach of contract, right to relief was available against all the defendants jointly, severally or in the alternative and the same question namely breach of contract would be common to all the suits if they were separately filed. It is further held that Order 1, Rule 3 is not confined to joinder of parties only but that it also embraces joinder of causes of action against different parties and that Order 2, Rule 3 must not be interpreted so as to override or render nugatory the provisions of Order 1, Rule 3 . It is, therefore, permissible to join different causes of action against different defendants in one suit as long as the stipulations set out in Order 1, Rule 3 are complied with.

12. Therefore, it is clear from the above dictum that if there are different cause of action for the plaintiff to sue against different persons on the ground of trespass on different dates or on the same date or actual date of trespass is not certain and if, according to the plaintiff, it is a common concert on the part of the defendants in committing the act of trespass, then all these persons can be jointly tried in the same suit and the plaintiff is entitled to claim either jointly, severally or in the alternative against the defendants and a common question of fact and law is to be considered while trying the suit if they were tried separately, then it will squarely fall under Order 1, Rule 3 of the Code and in order to avoid multiplicity of suits, the plaintiff can bring one action against all the trespassers in respect of the property mentioned in the plaint. So, here the question to be considered is whether the plaintiff has got title to the property and the defendants are entitled to be in possession of the property denying the relief of recovery possession of the plaintiff on the strength of title and even if these cases are tried separately, the documents to be produced and the nature of evidence to be adduced by the plaintiff will be the same. Hence, the court below was perfectly justified in coming to the conclusion that the suit is perfectly

maintainable and the same is not bad for misjoinder of parties or cause of action and it is not bad for multifariousness. This finding of the court below do not call for any interference as no illegality has been committed by the court below warranting interference of this Court invoking Article 227 of the Constitution of India. So, this petition lacks merits and the same is liable to be dismissed.

13. In the result, this original petition is dismissed.

14. Interim order of stay granted is hereby vacated. Registry is directed to communicate this judgment to the concerned court at the earliest.