

(1977) 08 KL CK 0031
In the High Court Of Kerala
Case No : C.R.P. No. 92 of 1975-H

Nanikutty Amma Devaki Amma and Others	APPELLANT
Vs	
Krishnan Kochunarayanan Nair and Others	RESPONDENT

Date of Decision : 03-08-1977

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 6 Rule 17, Order 7 Rule 10(2)
Limitation Act, 1963 — Section 14

Citation : AIR 1978 Ker 3

Hon'ble Judges : G. Viswanatha Iyer, J

Bench : Single Bench

Advocate : T.S. Venkiteswara Iyer and P.K. Balasubramanyan, for the Appellant;
K.N. Narayan Pillai, for the Respondent

Final Decision : Dismissed

Judgement

G. Viswanatha Iyer, J.—The plaintiffs in a suit for partition are the revision petitioners. The suit was filed in 1969. Pending suit some of the plaintiff schedule properties were acquired under the Land Acquisition Act for some public purpose. Thereafter the plaintiff was amended so as to include a prayer for declaration of the plaintiffs' right to a share in the compensation amount. Some of the defendants had filed a written statement to the original plaintiff in which one of the contentions was that proper court-fee has not been paid for the plaintiff. But this contention was not pressed for consideration either before or after the amendment of the plaintiff. Both parties let in evidence on the issues raised on the pleadings and the case was posted for final hearing. One of the issues raised in the case was whether the court-fee paid is not sufficient. After the final hearing the learned Munsiff entered a finding on this issue alone by holding that the valuation for the purpose of court-fee and for the purpose of jurisdiction is not

correct and that the plaint if properly valued for purpose of jurisdiction will exceed the pecuniary jurisdiction of the Munsiff's Court. Consequently

the lower court held that the plaint should be returned for presentation to the proper court having jurisdiction over the subject-matter. He did not

enter a finding as regards the exact court-fee payable on the valuation. Time to re-present the plaint in the proper court was fixed as one month.

Before the expiry of this period of one month the plaintiffs filed an application to amend the plaint by withdrawing the declared relief in respect of

the compensation amount awarded for some of the plaint properties acquired pending suit. This was rejected by the learned Munsiff stating that

after the earlier order directing return of the plaint for presentation to the proper court having jurisdiction over the subject-matter no plaint is there

to amend. This is objected to in this revision petition.

2. According to the learned counsel for the revision petitioner the view of the lower court that there is no plaint before that Court to amend after

the order for return of the plaint to the proper court having jurisdiction, is not correct. In support of his contention he referred to Order VII Rule 10

(2), C.P.C. which is in the following terms:--

10. Return of plaint.

(1) x x x x

(2) On returning a plaint the Judge shall endorse thereon the date of its presentation and return, the name of the party presenting it, and a brief

statement of the reasons for returning it.

and contended that since such an endorsement has not been made in the plaint by the Munsiff at the time when or before the amendment

application was filed the learned Munsiff is still in seisin of the plaint. He also referred to Explanation I to Section 14 of the Limitation Act and the

decision in Brij Mohandas Gokulchand Vs. Narsinghdas Manoharilal and Others, where it has been held that the civil proceeding can be deemed

to have ended only by the endorsement made as per Order VII Rule 10 (2), C.P.C. No doubt Rule 10 (2) of Order VII provides that the Judge

must endorse on the plaint the date of its presentation and return and the brief statement of the reasons for the return of it and this is a judicial act to

be performed by the Court. But the absence of such an endorsement is a mere irregularity and it cannot be said that the court is in seisin of the

plaint, after the order for return, to enable it to make any amendment in the plaint. Even if the suit is to be deemed pending until such an endorsement, that is only for the purpose of calculating the period of exclusion u/s 14 of the Limitation Act. Once the plaint has been ordered to be returned, there is nothing remaining to be done by the court except to make an endorsement and the omission in making such an endorsement is only irregular and does not make the order for return ineffective or incomplete. An order for return is final so far as that court is concerned and such an order is also appealable as an appealable order. In this case the learned Munsiff has passed an order directing the return of the plaint and the time for re-presentation is also fixed. That effectively makes the court functus officio in all matters except for the limited purpose of making an endorsement. Again the reasons for the return as provided for in Rule 10 (2) of Order VII need not be on the back of the plaint itself. The order for return containing the reasons serves the purpose of an endorsement as required u/s 10(2).

3. The learned counsel next submitted that even after the order for return is passed, the court can consider an application for amendment and in

support of this position he relied on the decisions of the Madras High Court in Ponnappundan v. Authimoola Ponnappundan ILR (1910) Mad 262

Kommareddi Ramachandrayya and Others Vs. Vodury Venkataratnam, and Chendrayya v. Seethanna (AIR 1939 Mad 397). In Ponnappundan v.

Authimoola Ponnappundan ILR (1910) Mad 262 there was an enquiry as to the value of the subject-matter and the suit was found undervalued and

so the plaint was returned for presentation to the proper court. The plaintiff amended his plaint by correcting the valuation and striking off some of

the properties so as to leave the case in the jurisdiction of the District Munsiff. The District Munsiff thereupon re-admitted the plaint and the

question for decision was whether this was right. In the Letters Patent appeal the court held that he has the power. This is followed in the other

cases referred to. But there is a line of cases which takes the view that once the Court finds that it has no jurisdiction over a suit it cannot pass any

valid order in such a suit except the orders which the statute expressly empowers to pass such as the order to return the plaint to be presented to

the proper court and orders as to costs -- See Kannuswami Pillai v. Jagathambal AIR 1919 Mad 1071 . After the order for return of the plaint if

any amendment is made by the plaintiff in the plaint and re-presents it, it is really a fresh plaint which the court has always power to receive. This is

different from saying that a court which has held that it has no jurisdiction over the the suit can thereafter amend it so as to make it a suit within its

jurisdiction. This is also the view taken in the Single Bench decision of the Bombay High Court in Shobha Venkat Rao Vs. K.R. Mahale, . The

principle is stated thus at page 372, para. 7:--

As long as the Court has not given a finding that it had no jurisdiction and the plaint should be returned for presentation to the proper court it is

seized of the matter because the Court has the right to decide the question of its own jurisdiction even if the decision ultimately be that it has no

jurisdiction. As long as the Court is seized of the matter, it is open to a party at any time to abandon a part of the claim by a unilateral act by

making a statement to that effect which the Court must record, if thereafter the suit is within its jurisdiction, the Court should proceed to hear it.

I respectfully agree with this principle and I hold that the court has no power to order an amendment of the plaint after it has passed an order

directing return of the plaint for presentation to the proper court having jurisdiction.

In the result I do not find any reason to interfere with the order passed by the learned Munsiff. The Civil Revision Petition is dismissed, but in the

circumstances I make no order as to costs.