

(2012) 11 KL CK 0031
In the High Court Of Kerala
Case No : Tr. App. (C) . No. 2 of 2012

Navabharat Vignan Trust and Others

APPELLANT

Vs

Nasihudeen and Others

RESPONDENT

Date of Decision : 02-11-2012

Acts Referred:

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

Citation : (2013) 1 KLJ 230

Hon'ble Judges : K.M. Joseph, J;K. Harilal, J

Bench : Division Bench

Advocate : M.R. Rajesh and K.M. Alexander, for the Appellant; R.S. Kalkura, M.S. Kalesh, A.V. Priya and Harish Gopinath, for the Respondent

Judgement

K. Harilal, J.—What are the circumstances which are requisite for transferring a suit from one court to another court wherein another suit is pending, so as to try both cases jointly? This is the question that emerges for our decision in this appeal. This intra court appeal is directed against the order in Tr. P(C) No. 223 of 2012 of this Court passed by the learned single Judge of this Court. The appellants are plaintiffs in O.S. No. 242 of 2011 on the file of the Munsiff Court, Attingal, a suit for permanent prohibitory injunction, restraining the 1st respondent herein, who is the defendant in the original suit, from entering into the plaint schedule Trust properties and causing any obstruction with running of the school which is functioning in the Trust property. The 1st appellant/ 1st plaintiff is a Trust, constituted and registered under the Travancore Cochin Literary, Scientific and Charitable Societies Act. 2nd appellant/ 2nd plaintiff is the Chairman and 3rd appellant is the Secretary of the 1st appellant Trust and Manager of the school. The 1st respondent/ defendant is the younger brother of the 3rd appellant herein. According to plaint averments, the 1st respondent was working in the school as temporary Office Assistant on contract basis and he was terminated on 04.05.2011 on the allegation of misappropriation of Rs. 2.5 lakhs. Consequently, he began to create problems in the school and obstructed the smooth running of the school, which culminated in filing of a suit for injunction.

Copy of the plaint in O.S. No. 242 of 2011 of the Munsiff Court, Attingal was marked as Annexure A in the Tr. P.C. The 1st respondent herein resisted the said suit contending that he is not a temporary Assistant in the school and that he is a member of the Trust which runs the school.

2. The 1st respondent as 2nd petitioner along with his wife Lubina, Dr. S. Gopalakrishnan and one Kolammal filed O.P. No. 433 of 2011 before the District Court, Kollam u/s 25 of the Travancore Cochin Literary, Scientific and Charitable Societies Act, 1955 for removing appellants 2 and 3 as office bearers of the Trust and replacement of these posts from among the members including 1st respondent. The copy of that original petition was produced and marked as Annexure B in the transfer petition.

3. The contention raised in the transfer petition is that in both Annexure A suit and Annexure B petition, the disputed questions are common vis-a-vis, bonafides of the contentions of the 1st respondent regarding the constitution, composition and management of the first appellant Trust. If these cases are tried by two different courts, the possibility of rendering, conflicting Judgments cannot be ruled out and the same will cause considerable hardships, confusions and injuries to the parties. Hence prayed for, to withdraw O.S. No. 242 of 2011 on the file of the Munsiff Court, Attingal and to transfer the same to the District Court, Kollam, enabling to be tried jointly along with O.P. No. 433 of 2011 before the District Court, Kollam.

4. The learned single Judge of this Court rejected the transfer petition on the ground that the cause of actions are distinct and the nature of reliefs are different in both the proceedings. There cannot be a joint trial of both the proceedings especially when the personal right is adjudicated in one and a public right in another. Aggrieved by the impugned order, this transfer appeal is filed on various grounds.

5. The 1st respondent entered appearance and filed a counter affidavit contending, inter alia, that the cause of actions of the suit and original petition are different. AH parties in O.P.No. 433 of 2011 are not parties in O.S.No. 242 of 2011 on the file of the Munsiff Court, Attingal. The subject matter of the suit and original petition are totally different and are not identical. The claim raised in both the cases are totally different and have no relation to one another. One is a case of misappropriation of money by the 1st respondent, an alleged employee. The other is for removal of 2nd and 3rd appellants from the office bearership of the Trust. Thus the scope of two litigations are different.

6. In view of the contentions in the counter affidavit, the appellants have taken steps to implead all the parties in O.P. No. 433 of 2011 as additional defendants 2 to 5 and the impleadment was allowed. Thus all parties in both the suits are present before us.

7. We heard Sri. M.R. Rajesh, the learned counsel for the appellant and Sri. R.S. Kalkura, the learned counsel for respondents. The learned counsel for the

appellant submitted that though the cause of actions are different, the issue involved in both the suits are common. In Annexure A suit, the appellants have to prove that the 1st respondent was only a temporary Office Assistant to get a decree of injunction and the 1st respondent has to prove that he is a member of Trust itself and no injunction can be ordered against him. Thus the basic fact is the status of the appellants and the respondents and also the constitution of the Trust. In such circumstance the cause of actions in both the proceedings are basically and substantially same.

8. Per contra, the learned counsel for respondents submitted that the cause of actions of the suit and original petition are different. Both the cases are totally different and have no relation to one another. The evidence to be tendered in both the cases are different and have no bearing with one another. The suit is dealt with misappropriation of money, but the other original petition is dealt with removal of existing Trustees. Therefore, even if the case pending before the Munsiff Court, Attingal is transferred to the District Kollam wherein O.P. No. 433 of 2011 is pending, no joint-trial can be allowed. Therefore the question of transfer of O.S. No. 242 of 2011 on the file of the Munsiff Court, Attingal to the District Court, Kollam is impermissible under law.

9. We have given our anxious considerations to the rival submissions made at the Bar. The questions that emerged for consideration are:-

1. What are the circumstances which are requisite for transferring a case to another court wherein another case is pending, so as to try both cases jointly?
2. Whether the impugned order passed by the learned single Judge is justifiable?

10. In *Prem Lala Nahata and Another Vs. Chandi Prasad Sikaria*, the Supreme Court held that the court has power to consolidate suits in appropriate cases. Consolidation is a process by which two or more causes or matters are by order of the court combined or united and treated as one cause or matter. The main purpose of the consolidation is to save costs, time and effort and to make conduct of several actions, more convenient by treating them as one action. The jurisdiction to consolidate arises where two or more causes or matters are pending in different courts and it appears that some common questions of law or fact arises in both or all suits or the right to relief claimed in both suits are in respect of or arises out of the same transaction or series of transaction.

11. Going by Order 1 Rules 1 and 3 of C.P.C., it could be seen that the circumstances required to sue or be sued by more than one person or against more than one person in a single suit are that the right to relief must arise from same act or transaction or series of acts or transactions and if separate suits are brought, common question of law or fact would arise. This is a matter to be borne in mind of the plaintiffs before the institution of a suit. But the question is what would be the remedy if several persons instituted different separate suits against the same person before the same court or different courts and the right to sue of all such suits arises from same transaction or act and a common

question of law or fact would arise from all the suits? Similarly what would be the remedy where the defendant in a suit institutes another suit against the plaintiff and the right to sue arises from the very same act or transaction from which plaintiff earlier filed suit. In both occasions a common question of law or fact may arise and if the suits are allowed to proceed separately, conflicting decisions may arise. To save such situations judicial precedents propounded consolidation of all such suits by way of "joint-trial". That apart, Order II Rule 3 permits unification or joinder of several cause of actions in one suit against same defendant jointly. Therefore, suits arising from several causes of actions can be tried jointly. Thus, the principle underlying Rules 1 and 3 of Order I and Rule 3 of Order II is the basis of joint trial also.

12. In the light of the discussions made above, it can be held that the circumstances requisite to allow joint-trial are (1) A common question of law or common question of fact must arise from all such suits and (2) In all such suits, the right to relief must be in respect of or arising out of same act or transaction or same series of act or transactions (3) All parties in the suit which is sought to be transferred must be present in the suit with which joint trial is sought for. Therefore, the questions to be considered in an application for joint-trial are whether there is any common question of law or fact in all such suits and whether the act or transaction which gives rise to a right to relief is common in all such suits.

13. In the case on hand, if the 1st respondent is a member of the Trust, he cannot ordinarily be interdicted from entering into the Trust schedule property and the school which is being run by the 1st appellant Trust, in which he is also a member. O.P. No. 433 of 2011 is filed by the 1st respondent also as 2nd petitioner, claiming that he is a member of the Trust and sought for removal of appellants as office bearers and replacement of these posts from other members including him. A common question of fact that emerges from both cases is whether the 1st respondent is a member of the Trust? Likewise in O.S. No. 242 of 2011 the allegation is that the 1st respondent has misappropriated an amount of Rs. 2.5 lakhs from the fund of the Trust; whereas in O.P. No. 433 of 2011 also, one of the allegations is misappropriation of Trust fund and consequently sought for rendition of accounts. Here also arises another common question of fact whether there is any misappropriation of Trust fund? The evidence to be let in both cases appears to be common. All parties in O.S. No. 242 of 2011 on the file of the Munsiff Court, Attingal are parties in O.P.No. 433 of 2011 on the file of the District Court also. The right to relief in both cases arises out of the constitution, composition and management of the Trust. The transfer of O.S.No. 242 of 2011 on the file of the Munsiff Court, Attingal to the District Court, Kollam wherein O.P.No. 433 of 2011 is pending will not cause any kind of prejudice to the respondents and it may be more convenient for respondents. Therefore we find that in the above said circumstance joint-trial of both cases in the same court will be more convenient and effective for the proper adjudication of the question in controversy involved in both cases. The possibility of conflicting findings

regarding these common question of facts also can be avoided. Common question of law or fact may arise from different reliefs. Similarly, different reliefs may arise from same act or transaction. The impugned order passed by the learned single Judge of this Court is, not justifiable under law. Consequently, we are inclined to set aside the same and allow the Transfer Appeal.

In the result,

(1) the impugned order is set aside.

(2) O.S. No. 242 of 2011 of the Munsiff Court, Attingal is transferred to the District Court, Kollam enabling to be tried along with O.P. No. 433 of 2011, on the application of either of the parties.