

(2006) 08 KL CK 0070

In the High Court Of Kerala

Case No : C.R.P. No's. 211 and 213 of 2003

Navabharath Kuries and Trading Co.

APPELLANT

Vs

C.E. Job and Others

RESPONDENT

Date of Decision : 30-08-2006

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 41 Rule 27
Partnership Act, 1932 — Section 69(2)

Citation : (2008) 1 KLJ 22

Hon'ble Judges : K.S. Radhakrishnan, J

Bench : Single Bench

Advocate : T.O. Xavier, for the Appellant; Babu Karukapadath and M.A. Vaheeda Babu, for the Respondent

Final Decision : Dismissed

Judgement

K.S. Radhakrishnan, J.—Common questions arise for consideration in both the revision petitions and hence I am disposing of these cases by a common order.

2. Revision petitioners herein filed two suits, O.S. Nos. 87 and 91 of 1999 before the Principal Munsiff's Court, Kochi for recovery of Rs. 6,500/- each from the defendants towards subscription to prized chitty transactions. Plaintiff is a firm registered under the Indian Partnership Act with its Head Office at Karuvelipadi, Kochi. Firm was stated to be represented by its Managing Partner by name Joseph Kunjaprambil. Contention was raised before the trial court that the suits are not maintainable on the ground that the signatory to the plaint has no right to represent the firm being not the Managing Partner. Objection was raised on the footing of Section 69(2) of the Indian Partnership Act. The trial court found that the plaintiff firm had failed to prove the Managing Partner who had filed the suits was the Managing Partner at the time of filing the suits. Holding so both the suits were dismissed against which appeals were preferred before the lower appellate court. Appeals were also dismissed. Hence these revision petitions have been filed.

3. Revision petitioner have stated that the trial court was not justified in dismissing the suit on the ground that the firm was not properly represented. Referring to Exts. A1 and A20 it was pointed out that from the very beginning Joseph Kunjamparambil was the Managing Partner of the firm. Counsel therefore submitted that the suits ought to have been proceeded with by the trial court.

4. Counsel appearing for the respondent Sri. Babu Karukapadath, contended that the trial court was justified in dismissing both the suits since Joseph Kunjamparambil was not the Managing Partner at the time of filing both the suits. Counsel placed reliance on the decision of a learned single Judge of this Court in Bharat Trust v. P. Divakara Rao 1999 (2) KLJ 661 and the decision of the apex court in Shreeram Finance Corporation Vs. Yasin Khan and Others, . Counsel also submitted that the lower appellate court was justified in rejecting the photo copy of the Ext. A1 since it was not supported by any petition. Counsel submitted that no leave was also obtained for production of the photostat copy of A1. Counsel submitted that the mere production of additional evidence in the appellate court without separate petition stating sufficient cause for the same would not satisfy the requirements of Order XLI Rule 27 of the Code of Civil Procedure. Counsel made reference to the decision of a Division Bench of this Court in New India Assurance Co. Ltd. v. Rajan 1995 (1) KIT Short Notes page 3.

5. I find that the defendants have raised a specific contention before the trial court that Joseph Kunjamparambil was not the Managing Partner of the firm when the suit was instituted. Burden is on the plaintiff to show that it was not so. No reliable document was produced before the trial court or before the appellate court to show that he was the Managing Partner of the firm at the time of institution of the suit. Ext. A1 certificate would only show that Joseph Kunjamparambil joined the partnership on 19-8-1988. Ext. A1 is dated 24-7-1996 and the suit was filed on 6-2-1999. No reliable evidence was produced to show that he was Managing Partner at the time of institution of the suit. The apex court in Shreeram Finance Corporation Vs. Yasin Khan and Others, applying Sub-section (2) of Section 69 of the Partnership Act, 1932 held that since two partners who filed the suit were not shown as partners in the Registrar of Firms suit filed by a firm after change in the constitution of the firm but before it was notified to the Registrar is not maintainable. Law is well settled that firm could be represented by a person who is a partner under the partnership deed and if it is not so the suit would be hit by Section 69(2) of the Act. Learned single Judge of this Court in Bharath Trust's case, supra, has also taken the same view following the apex court judgment. Going by the aforementioned principles, I am in agreement with the courts below that Joseph Kunjamparambil was incompetent to maintain the suits since no evidence was adduced to show that he was the Managing Partner of the firm at the time of institution of the suits. Further no evidence was produced to show that his name was registered with the Registrar of Firms.

6. The appellate court was also justified in not accepting the documents

produced at the appellate stage. First of all, no petition was filed in terms of Order XLI Rule 27 of the C.P.C. to establish that notwithstanding the exercise of due diligence such events were not within its knowledge and therefore the documents could not be produced by it at the time when the suit was decreed against him. Separate petition with affidavit was not filed. The mere production of the documents along with the appeal memorandum may not be sufficient to meet the requirements of Order XLI Rule C.P.C.

7. I am therefore of the view that the appellate court is justified in not accepting the documents in evidence. In such circumstances, the revision petitions lack merits and they are accordingly dismissed.