

(1989) 07 KL CK 0021
In the High Court Of Kerala
Case No : C.R.P. No. 960 of 1987-E

Order of the Holy Cross

APPELLANT

Vs

Lonnappan Thattil and Another

RESPONDENT

Date of Decision : 31-07-1989

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 23 Rule 1(4)

Citation : AIR 1990 Ker 215

Hon'ble Judges : K.P. Radhakrishna Menon, J

Bench : Single Bench

Advocate : Joseph J. Theratti, for the Appellant; P. Jacob Verghese, for the Respondent

Final Decision : Allowed

Judgement

K.P. Radhakrishna Menon, J.—The sixth additional de fendant in O. S. 300 of 1983 before the Sub Court, Ernakulam, a suit instituted by the respondents for the following reliefs, is the revision petitioner :

"(a) declaring that the 1st plaintiff is the Trustee of the 2nd plaintiff organisation and is the Director, Superior and Rector of the institutions in the plaint schedule property and to hold and possess the plaint scheduled property as such and to live in the building in this property and carry on the religious and charitable functions in the institutions in this property, in accordance with the bye-laws and memorandum of associations relating to the same.

(b) Granting a decree of permanent injunction restraining the defendants from interfering in any way with the 1st plaintiff's rights stated above and from trespassing into the plaint scheduled property and the buildings therein.

(c) Granting a decree for all the costs of the plaintiff in connection with the suit from the defendants".

The defendants pleaded in their written statements and counter-affidavits to the

following effect:--

"The suit itself is not maintainable since the first petitioner plaintiff had filed an earlier suit O.S. 598 of 1983, before this Hon"ble Court and he had withdrawn the suit by his petition dt. 2-1-1983. This Hon"ble Court dismissed the suit O.S. No. 598 of 1982. In accordance with Order 23, the plaintiff who withdraws the suit has to be given specific liberty to institute a fresh suit in respect of the subject matter of such suit or a part of the claim. In allowing withdrawal of O.S. No. 598 of 1982 this Hon"ble Court had not given any such specific permission to institute a fresh suit and the subject-matter of the fresh suit is identical with the earlier suit and reliefs claimed are also identical. Hence the plaintiff has no right to institute a fresh suit. On this ground alone the fresh suit O.S. No. 300 of 1983 has to be rejected."

2. On these pleadings the following issue was framed :

"Is the suit hit by the provisions of Order 23; C.P.C. on account of withdrawal of earlier suit i.e. O.S. 598/82"?

The trial court has answered the issue against the petitioner and hence the revision by him.

3. From the statements in the plaint, it is clear that the plaintiffs have not set up any independent right over the property in question. They concede that the properties belong to the trust of which the first plaintiff is a trustee.

4. That the earlier suit, O.S. 598/82 was filed by the first plaintiff in the present suit in his capacity as a trustee is clear from the pleadings in the said suit. A reference in this connection to para 10 of the plaint as also the prayers is relevant. It reads :--

"The 1st plaintiff constituted the Trust with , the objects aforesaid among others and established the Mar Thoma Bhavan and expanded the same with voluntary contributions from abroad and supplemented from resources he could command locally also. The 1st plaintiff himself became the Trustee and hold the properties which are described in the plaint schedule herein and also the institutions established there The plaintiffs-therefore prays that this Hon"ble Court may be pleased to summon the defendants and grant the decree in the following terms :--

(a) granting a decree of permanent injunction restraining the defendants from interfering in any manner with the function of the 1st plaintiff as Director, Superior, Trustee, Rector and Provinces and also of the day to day working of the Second Plaintiff Society by the 1st plaintiff and with the 1st plaintiff's possession and peaceful enjoyment of the plaint scheduled properties and restraining the defendants from entering upon the plaint schedule properties and from doing any act connected with the institutions established in the plaint schedule properties and from com-milling any waste therein.

(b) to award the cost of this suit to the plaintiffs;

(c) and such other reliefs as the plaintiffs pray for and this Hon"ble Court deem fit to grant".

The earlier suit also must therefore be held to be one filed on behalf of the trust, again by the first plaintiff in the present suit. The earlier suit was for an injunction restraining the defendants therein who from the descriptions given in the cause title, are persons representing the religious congregation opposing the right of the first plaintiff in the present suit to manage the properties in dispute. The cause of action stated in the said suit reads :--

"The cause of action for the suit has arisen in Thrikkakara North Village which is within the jurisdiction of this Hon"ble Court and from 11-9-1982, the date of the attempt to oust the 1st plaintiff by force and threat and ever since the same continuously".

5. On a perusal of the pleadings in both the suits it is clear that the parties and the reliefs sought for in both suits are virtually the same. But to make it appear that the present suit is different from the earlier suit, the plaintiffs have made certain statements in the plaint and also impleaded certain new parties, which under the circumstances, in my view, are of no consequence. They are nothing but a camouflage to make it appear that the subject-matter of this suit is different from the subject-matter of the earlier suit. It is in this backdrop the issue requires to be considered.

6. We will now consider as to whether the present suit is hit by the provisions contained in Order 23, Rule 1, Sub-rule (4), C.P.C. This Order, leaving out unnecessary portions, reads :--

"Where the plaintiff..... withdraws from a suit or part of a claim without the permission referred to in Sub-rule (3), he shall be precluded from instituting any fresh suit in respect of such subject-matter or such part of the claim".

Sub-rule (3) reads:--

"Where the Court is satisfied,.....

(b) that there are sufficient grounds for allowing the plaintiff to institute a fresh suit for the subject-matter of a suit or part of a claim, it may, on such terms as it thinks fit, grant the plaintiff permission to withdraw from such suit or such part of the claim with liberty to institute a fresh suit in respect of the subject-matter of such suit or such part of the claim".

Construing this provision the Supreme Court in a recent decision in Sarguja Transport Service Vs. State Transport Appellate Tribunal, M.P., Gwalior and Others, has held thus (at p. 91 of AIR) :--

"In order to prevent a litigant from abusing the process of the court by instituting

suits again and again in the same cause of action without any good reason the C.P.C. insists that he should obtain the permission of the Court to file a fresh suit after establishing either of the two grounds mentioned in Order 23, Rule 1(3)".

We have in this connection, to bear in mind the meaning of the terms "subject-matter of the suit" employed in this provision. The terms "subject-matter of the suit" means the plaintiff's cause of action in the suit and if that be so a suit on a different cause of action is not barred under this Rule, although the suit may relate to the same property. From the facts discussed above, it is clear that the cause of action for the earlier suit is the same as the cause of action for the present suit from out of which this revision arises. But to make it appear that the present suit is different from the earlier suit, the plaintiffs have made certain statements in the plaint which as already noted, are of no consequence. On a perusal of the pleadings of the plaintiffs in both suits, it is clear that the subject-matter of the present suit is the same as the subject-matter of the earlier suit. Remove the camouflage, introduced in the pleadings in the present suit, then it could be seen that the present suit is based on the same cause of action as the one on which the earlier suit is based. The issue therefore requires to be answered in favour of the petitioner.

7. Nevertheless, relying on a decision of the Supreme Court in Vallabh Das Vs. Madan Lal and Others, , the court below has held that the subject-matter of the second suit is different from the subject-matter of the earlier suit. The facts of the case before the Supreme Court disclose that the causes of action were different. In the earlier suit, to quote the words of the Supreme Court "it is true that both in the previous suit as well as in the present suit the factum and validity of adoption of Dr. Madan Lal came up for decision. But that adoption was not the cause of action in the first nor is it the cause of action in the present suit. It was merely an antecedent event which conferred certain rights on him. Mere identity of some of the issues in the two suits do not bring about an identity of the subject-matter in the two suits". The "previous suit" mentioned in the Supreme Court ruling was a suit for partition and separate possession whereas the second suit was one for recovery of property from a trespasser on the basis of title. The said decision therefore has no application to the facts of this case.

8. The learned counsel for the respondents however contended that in the present suit there are pleadings to the effect that the agreement between the first plaintiff and defendants brought about under coercion etc., subsequent to the withdrawal of the earlier suit, is likely to tell upon the right of the trustee, first plaintiff to manage the trust properties. It is true that there are certain statements in that regard but there is no prayer in the suit that the said agreement shall be declared null and void. On the other hand, going through the pleadings in both the suits it could be seen that the one and only prayer sought for, is for the issuance of a permanent injunction against the defendants. As already observed the case of the plaintiffs in the present suit is the same as the case they had set up in the previous suit namely that the first plaintiff being a

trustee in management of the trust properties is entitled to an injunction restraining the defendants from interfering with the said right of the first plaintiff. The properties, going by the pleadings in both the suits, are owned by the trust which is represented by the first plaintiff. The plaintiffs withdrew from the earlier suit, that is, O.S. 598/82 without obtaining liberty to institute a fresh suit. There is no dispute about it. If that be the position the present suit is hit by Sub-rule (1) of Order 23, Sub-rule (4) of Rule 1 C.P.C.

The C.R.P. under the circumstances is allowed with costs which I fix at Rs. 1,000/-.

The suit from out of which this revision arises, therefore is liable to be dismissed. Accordingly the suit, O.S. 300/1983 is dismissed.

Issue photostat copy on usual terms.