

(1980) 08 KL CK 0004
In the High Court Of Kerala
Case No : C.M.A. No. 29 of 1980

Pazhukkamattom Devasom and Others	APPELLANT
Vs	
Lakshmikutty Amma and Others	RESPONDENT

Date of Decision : 19-08-1980

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 15, 24, 24(1), 37, 38
Kerala Civil Courts Act, 1957 — Section 11, 17
Travancore-Cochin Civil Courts Act, 1951 — Section 12, 28

Citation : (1980) 08 KL CK 0004

Hon'ble Judges : Viswanatha Iyer, J;Narendran, J

Bench : Division Bench

Advocate : M.R. Parameswaran, for the Appellant; P.K. Kesavan Nair and K.N. Narayana Pillai for 1st Respondent and Mani J. Meenattoor and M.M. Abdul Aziz for 2nd Respondent, for the Respondent

Final Decision : Allowed

Judgement

Narendran, J.—The Appellants filed the suit before the District Court, Ernakulam u/s 92 of the Code of Civil Procedure, for short, the Code. The 2nd Defendant, who is the 1st Respondent in this appeal, entered appearance and moved a petition before the District Court for the return of the plaint for presentation to the proper Court. The stand taken by the 1st Respondent was that in view of Notification G.O. (MS) 384/66/Home, dated 24th October 1966 empowering Courts of Subordinate Judges in Kerala to try and dispose of cases u/s 92 of the Code within the limits of their respective jurisdiction, u/s 15 of the Code, the suit ought to have been instituted in the Subordinate Judge's Court having territorial jurisdiction over the subject-matter. The learned District Judge allowed the petition and directed the return of the plaint for presentation to the proper court. The learned District Judge in her order said:

It follows that on the date of institution of the suit the Subordinate Judge who was having local jurisdiction over the subject-matter in this suit, viz., the

Subordinate Judge of Parur was competent to entertain this suit. It is true that as submitted by the Plaintiffs' Counsel, by the above notification, jurisdiction of this Court in entertaining this suit or suits of this nature is not ousted and that after, the publication of the notification the position is that this Court and the Subordinate Judge's Court, Parur, are having concurrent jurisdiction over the subject-matter. The question that arises for decision is, under such circumstances, whether as submitted by the Counsel for the Plaintiffs this suit which is instituted in this Court is to be tried and disposed of by this Court? According to the Counsel for the Petitioner in view of Section 15 of the CPC the proper course for this Court is to return the plaint for presentation to the proper Court. Section 15 of the CPC enjoins that every suit shall be instituted in the court of lowest grade competent to try it.

The Plaintiffs 1 to 12 have challenged the order of the District Judge in this Civil Miscellaneous Appeal. The short point that arises for consideration is whether Section 15 of the Code has any application to a suit filed before a District Court u/s 92 and can the District Judge return the plaint for presentation to the Subordinate Judge's Court in view of the Government notification u/s 92 empowering Subordinate Judges to try and dispose of cases filed u/s 92.

2. Section 92 of the Code reads:

92. Public Charities.--(1) In the case of any alleged breach of any express or constructive trust created for public purposes of a charitable or religious nature, or where the direction of the Court is deemed necessary for the administration of any such trust, Advocate General, or two or more persons having an interest in the trust and having obtained the leave of the Court, may institute a suit, whether contentious or not, in the principal Civil Court of original jurisdiction or in any other Court empowered in that behalf by the State Government within the local limits of whose jurisdiction the whole or any part of the subject-matter of the trust is situate to obtain a decree--

....

Section 15 of the Code reads:

15. Court in which suits to be instituted.--Every suit shall be instituted in the Court of the lowest grade competent to try it.

Sections 11 and 17 of the Kerala Civil Courts Act, 1957 reads:

11. Jurisdiction of District Court and Subordinate Judge's Court in original suits.--(1) The jurisdiction of a District Court or a Subordinate Judge's Court extends, subject to the provisions of the Code of Civil Procedure, 1908 (5 of 1908), to all original suits and proceedings of a civil nature.

(2) The jurisdiction of a Munsiff's Court extends to all like suits and proceedings not otherwise exempted from its cognisance of which the amount or value of the subject-matter does not exceed five thousand rupees.

17. District Judge to control Civil Courts of district.--Subject to the other provisions of this Act and to the rules for the time being in force and prescribed by the High Court in this behalf the general control over all the civil courts under this Act in any district is vested in the District Judge.

A District Court is the principal Civil Court of original jurisdiction in a district. It is true that a Subordinate Judge also has unlimited pecuniary jurisdiction as the District Judge. But at the same time, a Subordinate Judge's Court is a court lower in grade to a court of a District Judge. Section 15 of the Code which is a rule of procedure insists that a suit shall be instituted in the court of the lowest grade competent to try it. Section 15 can take in only ordinary civil suits and the courts where they are to be instituted are determined by their pecuniary and territorial jurisdictions. But there are other suits, suits of a special nature, suits which are governed by the special provisions contained in Part V of the Code which provides for special proceedings. Such suits can be instituted in the Courts specified in the special provisions providing for their institution and trial. If such a suit is instituted in any one of the Courts specified in the special provision it cannot be said that the institution of the suit is hit by Section 15 of the Code simply because there is a Court lower in grade competent to try and dispose of the suit than the Court where the suit was instituted. The suit in question is one u/s 92 of the Code and it was instituted before the District Court, Ernakulam. In view of the Government Notification, dated 24th October 1966 the suit could have been instituted before the Subordinate Judge's Court, Parur also. But the suit is not an ordinary civil suit. It is a suit of special nature coming under the special provisions of Section 92. In such a case, if the suit is filed in any one of the courts specified in the Section the court cannot order the return of the plaint invoking Section 15 simply because the suit could have been filed before a court of lower grade also. In no case where the court before which the suit is to be instituted is specified by a special provision in the code, Section 15 can be invoked and the plaint ordered to be returned for representation before another court. But at the same time it cannot be said that the District Court is powerless if it does not want to try the suit. The District Court can transfer the suit u/s 24(1)(a) of the Code to the Subordinate Judge's Court, Parur because u/s 92 the Subordinate Judge's Court is also competent to try and dispose of the suit in view of the notification, dated 24th October 1966.

3. We will now refer to the decisions cited at the bar. In *Maryarul Nadar v. Nanu Pillai* AIR 1957 T.C. 69 it is said:

Section 28 of the Civil Court Act also provides for the general control over all the Civil Courts constituted under that Act in any district being vested in the District Judge. There can therefore be no doubt of the fact that the Subordinate Judge's Court is lower in grade than the District Court: and it is quite clear from Section 12 of the T.C. Civil Courts Act read with Section 15 of the CPC that, when a new Subordinate Judge's Court is established in a particular area over which a District Court was exercising jurisdiction till then, all original suits arising

thereafter from that area will have to be filed in the new Subordinate Judge's Court and not in the old District Court.

Therefore even though the notification establishing the new Subordinate Judge's Court does not in terms take away or abrogate the jurisdiction which the District Court had till then over the area for which the Subordinate Judge's Court is established, the effect of the establishment of the new court would be to terminate the ordinary original civil jurisdiction of the District Court in the area and to transfer that jurisdiction to the new Subordinate Judge's Court. The Subordinate Judge's Court, Padmanabhapuram, and the District Court of Nagercoil do not, therefore have concurrent jurisdiction in the same area.

The question that came up for consideration before the Travancore-Cochin High Court in the above case was whether it was the District Court, Nagercoil or the Subordinate Judge's Court, Padmanabhapuram which had the jurisdiction to execute a decree passed by the District Court before the establishment of the Subordinate Judge's Court for the local area where the decree schedule properties were situated. On the strength of Section 38 of the Code the T.C. High Court held that the District Court, Nagercoil continued to have jurisdiction to execute the decree it passed. In the impugned order the learned District Judge has relied on the above decision of the T.C. High Court. In *Drohovajjula v. Vallabhajosyula* AIR 1958 A.P. 218 it is said:

What Section 15 provides is that every suit shall be instituted in the court of the lowest grade competent to try it. Competency contemplated by the section, is only pecuniary competency and there is no lack of jurisdiction for the superior court to try the suit.

In the above case the Andhra Pradesh High Court has referred to a decision of the Madras High Court in *V. Ramamirtham, Sole Proprietor, Glorious Pictures Vs. Rama Film Service*, wherein Viswanatha Sasthri, J. in his concurring judgment held:

The object of Section 15, CPC is to prevent superior courts being flooded or overcrowded with suits triable by courts of inferior grade. The Section merely regulates procedure and not jurisdiction. It does not deprive courts of superior pecuniary grade of their jurisdiction to try suits which should ordinarily be tried by courts of inferior grades. Sections 12 and 13, Madras Civil Courts Act (III of 1873) do not fix the lower limit of the pecuniary jurisdiction of District Munsiff's, Subordinate Judges and District Judges. Section 6, CPC merely deprives a court of an inferior grade of jurisdiction to try a suit the subject-matter of which exceeds the pecuniary limit of its jurisdiction, this limit being imposed under the Madras Civil Courts Act and the Madras City Civil Court Act. Section 15 itself recognises that courts of more than one grade would have jurisdiction to try a suit by the use of the expression "Court of the lowest grade" which would have no meaning if only one court had exclusive jurisdiction to try the suit. Consequently it has been held that a court of a superior grade does not act

without jurisdiction in trying a suit which, u/s 15 might and ought by reason of its valuation, to have been tried by an inferior court.

In *J.K. Sharma v. Ramachandra Setty* AIR 1965 Mys. 248 the question that arose was whether a suit to which the summary procedure of trial and the ordinary procedure are both applicable can be instituted before the District Court which alone had the power to invoke Order XXXVII of the Code and whether the District Judge was right in returning the plaint to the City Civil Court in view of Section 15 of the Code. The Mysore High Court said:

It also follows that the suit is of a nature which can be tried in the ordinary way, which means the nature of the suit is the same whether the Plaintiff chooses to claim its being tried in the summary way or permits it to be tried in the ordinary way. Secondly, it is obvious that the choice is between two modes of procedure and not between two courts. Further, a choice between two modes of procedure can arise only if the court before which that choice is proposed to be made is empowered to adopt either the one or the other mode of procedure. If that court is not so empowered but is obliged to follow only one mode of procedure, there is no scope for a choice of procedure at all at the hands of the Plaintiff. So far as the choice between two courts is concerned, it is exercisable only as between courts of the same grade because if the choice is between courts of different grades, Section 15 of the code obliges the Plaintiff to choose the court of the lowest grade. Although the court of higher grade is also competent to try the suit, the Plaintiff cannot, in view of Section 15, compel that court to entertain his suit; that court may either entertain the suit and try it or require the Plaintiff to obey Section 15 and return the plaint.

In *Dakor Temple Committee Vs. Shankerlal*, it is said:

The suit being one u/s 92, at the date of the application both the District Court as well as the First Class Subordinate Judge's Court at Nadia would be competent to try the suit. The First Class Subordinate Judge's Court has been empowered under the amendment of Section 92 to entertain and try suits u/s 92. But that cannot have the effect of giving it exclusive jurisdiction, i.e., to the exclusion of the District Court. The jurisdiction originally existing in the District Court cannot be said to be affected by its having been further conferred (by the amendment) on the First Class Subordinate Judge's Court. Both the District Court and the First Class Subordinate Judge's Court therefore would have, under the said section, a concurrent jurisdiction to try the suit.

In the above decision the court further said:

Section 15 lays down in which court a suit shall be instituted and it contemplates a state of things in which more courts than one are competent to try the suit i.e., have jurisdiction to try the suit.... Section 15, which relates to procedure alone cannot affect the question of the jurisdiction of courts to entertain and try suits as laid down in Section 92 or as contemplated in Section 37 of the code.... The intention seems clearly to be that both the District Court and any other court

empowered by the Provincial Government should have concurrent jurisdiction to entertain and try suits u/s 92.

In Dhoribhai Dadabhai Patel Vs. Pragdasji Bhagwandasji Mahant, the High Court of Bombay construed a notification similar to the one issued by the Kerala Government on 24th October 1966 and held that as per the notification a First Class Subordinate Judge can only try and dispose of a case filed u/s 92 of the Code and the notification does not deal with the institution of such suits. The court further held that a District Judge cannot transfer a suit filed u/s 92 to a Subordinate Judge u/s 24 of the code. With respect we venture to point out that the above decision of the High Court of Bombay cannot be considered as correct. If a Subordinate Judge has power to try and dispose of a suit u/s 92 of the code it goes without saying that such a suit can be instituted also before a Subordinate Judge's Court. We should not forget that the notification is u/s 92 of the code. Not only that u/s 24(1)(a) of the Code the District Judge can transfer the suit to the Subordinate Judge because his court is one subordinate to the District Court and competent to try and dispose of the suit.

4. In the result, the order impugned in this Civil Miscellaneous Appeal is set aside. I.A. No. 1179 of 1979 will stand dismissed. The Civil Miscellaneous Appeal is allowed. There will be no order as to costs.