
(2014) 10 KL CK 0259
In the High Court Of Kerala
Case No : O.P. (Civil) No. 1505 of 2011 (O)

R. Ramakrishnan

APPELLANT

Vs

Mother Superior

RESPONDENT

Date of Decision : 10-10-2014

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 22, Order 21 Rule 97

Citation : (2014) 10 KL CK 0259

Hon'ble Judges : B. Kemal Pasha, J

Bench : Single Bench

Advocate : Saju S.A. and K.C. Kiran, Advocate for the Appellant; K. Jaju Babu, Dhanya Chandran and Shyam Prasanth, Advocate for the Respondent

Judgement

B. Kemal Pasha, J.—The decree-holder in O.S.84/1972 of the Subordinate Judge's Court, Sulthan Bathery has come up by challenging the common order passed by the execution court in E.A. 10/2011 and E.A. 11/2011 in E.P. 7/2006 in O.S. 84/1972.

2. O.S. 84/1972 is a suit for recovery of possession. Initially, the court below dismissed the suit. The decree was reversed by this Court in A.S. 654/1993 vide judgment dated 24.05.2005. E.P. 7/2006 was filed in the matter on 23.12.2005. As the E.P. was filed within two years, notice under Rule 22 of Order XXI C.P.C. was dispensed with, and it seems that the court below had ordered delivery on 03.01.2006. When delivery was attempted, the same was obstructed by the respondent herein. Consequently, the petitioner as decree-holder filed Ext. P5 E.A. 89/2010 before the court below in the E.P. for the removal of the obstruction under Order XXI Rule 97 C.P.C. It seems that all the judgment-debtors and the legal representatives of some of the deceased judgment-debtors were arrayed as respondents in the said E.A. At that juncture, the respondent has pointed out before the court below that the legal representatives of most of the judgment-debtors, who had died, were not brought on record and, therefore, the E.P. is not maintainable. On such submission, the court below has passed order dated

16.11.2010 as follows:-

"Counsel for R14, 53 in the Execution Petition and respondents in E.A. 89/2010 submitted that R29 is no more. From E.A. 89/2010 it could be seen that R4, 5, 10, 19, 25, 26, 28, 40, 44, 47, 53, 57 and 58 in the Execution Petition are also no more. So the petitioner shall take steps to implead their legal heirs. Call with E.A. 89/2010. Posted to 17.12.2010."

3. Dissatisfied with the aforesaid order dated 16.11.2010, the petitioner filed review petition as E.A. 11/2011 along with E.A. 10/2011 for getting the delay of 36 days in filing E.A. 11/2011, condoned. The court below has dismissed both the E.As. through the impugned order. The said order is under challenge.

4. Heard the learned counsel for the petitioner/deGREE-holder and the learned counsel for the respondent.

5. The learned counsel for the petitioner/deGREE-holder has pointed out that when notice under Order XXI Rule 22 C.P.C. was dispensed with as the E.P. was filed within two years, the junction of the legal representatives of those judgment-debtors, who are no more, is not necessary. It has also been argued that the legal representatives of deceased 4th respondent and 10th respondent are already there in the party array. Further, respondents 19, 26 and 47, who are also no more, were earlier removed from the party array in the appeal itself. It has also been argued that E.A. 89/2010 was one filed under Order XXI Rule 97 C.P.C. and the decree-holder is expected only to implead those persons, who are actually obstructing the delivery, alone in the party array in such an application. It has also been pointed out that respondents 25, 28, 29, 40, 44, 53 and 58 had not contested the appeal, as is evident from the decree. Therefore, according to the learned counsel for the petitioner, the legal representatives of the said respondents need not be brought on record at this stage. Per contra, the learned counsel for the respondent has argued that the E.P. is not maintainable as the legal representatives of deceased judgment-debtors, who were impleaded in the E.P., were not brought on record.

6. As the legal representatives of deceased 4th respondent and 10th respondent are already in the party array, any further proceedings for impleading their legal representatives are not called for. Further, respondents 19, 26 and 47 were removed from the party array even in the appeal as is evident from Ext. P2 decree. Therefore, the legal representatives of respondents 19, 26 and 47 also need not be brought on record. Further, it seems that respondents 25, 28, 29, 40, 44, 53 and 58 had not contested the appeal and, therefore, their death is also of no consequence at all. The legal representatives of those respondents also need not be impleaded. What remains is the case with regard to respondents 5 and 57 alone. Of course, for maintaining the E.P., the legal representatives of respondents 5 and 57 have to be impleaded, in case their death is prior to the filing of the E.P. and after the passing of Ext. P2 decree. In case respondents 5 and 57 have died after the decree and prior to the filing of

the E.P., their legal representatives are to be brought on record. If their death is after the filing of the E.P., any legal representatives of respondents 5 and 57 need not be brought on record. Matters being so, it seems that the order dated 16.11.2010 passed by the court below in the E.P. has to be modified to that effect. The dismissal of E.A. 10/2011 and E.A. 11/2011 without considering the said aspects has resulted in substantial miscarriage of justice and, therefore, the said order is liable to be set aside.

7. In the result, this Original Petition (Civil) is allowed and the impugned order is set aside. The order dated 16.11.2010 passed by the execution court in the E.P. is modified as follows:-

In case the death of respondents 5 and 57 is prior to the filing of the E.P., their legal representatives shall be brought on record. As such legal representatives of respondents 5 and 57 are not obstructing the execution of the decree, their participation is not required in the adjudication under Order XXI Rule 97 C.P.C. The adjudication with regard to the obstruction to the delivery in the execution is only a matter between the decree-holder and the present respondent. The court below shall not entertain any other obstruction from any other quarters except obstruction, if any, from the part of the legal representatives of respondents 5 and 57. In case the death of respondents 5 and 57 had occurred before the filing of the E.P., the court below shall adjudicate such obstruction, if any, under Order XXI Rule 97 as expeditiously as possible, at any rate, within three months from the date of receipt of a copy of this judgment. In case the death of respondents 5 and 57 had occurred prior to the filing of the E.P., the decree-holder shall take steps to implead their legal representatives as expeditiously as possible, for enabling the court below to adjudicate the application for removal of obstruction within the said time limit. It is made clear that any further notice under Order XXI Rule 22 C.P.C. is not required as against the legal representatives of deceased respondents 5 and 57 even if they are brought on record.