

(2010) 11 KL CK 0146

In the High Court Of Kerala

Case No : Writ Petition (C) No. 2757 of 2010 (O)

Raghavendran @ Reghu and Jyothi

APPELLANT

Vs

Murali Ramachandran and Priya

RESPONDENT

Date of Decision : 03-11-2010

Acts Referred:

Citation : (2010) 11 KL CK 0146

Hon'ble Judges : Thomas P. Joseph, J

Bench : Single Bench

Advocate : S. Sreekumar, for the Appellant; T. Madhu, for the Respondent

Final Decision : Allowed

Judgement

Thomas P. Joseph, J.—This petition is filed by the defendants in O.S. No. 518 of 2008 of the court of learned Principal Sub Judge, Ernakulam. Petitioner No. 1 is also defendant No. 1 in O.S. No. 358 of 2009 of the same court. O.S. No. 518 of 2008 is filed by the respondents for dissolution of an unregistered partnership firm, settlement of accounts and other reliefs. According to the respondents, an unregistered partnership firm was formed with petitioner No. 1 for conducting a hotel business. Respondent No. 1 has filed O.S. No. 358 of 2009 for a decree for recovery of money from petitioner No. 1 on the allegation that petitioner No. 1 borrowed certain money from respondent No. 1 in connection with the hotel business which is allegedly run by the unregistered partnership firm referred to in O.S. No. 518 of 2008. Petitioners filed I.A. No. 104 of 2010 in O.S. No. 518 of 2008 for joint trial of the two suits. Application was opposed by the respondents. Learned Sub Judge on 07.01.2010 passed the following order,

Heard. Counter Petitioner opposes the I.A.

I.A. dismissed. No Costs.

That order is under challenge in this petition. It is contended by learned Counsel for petitioners that common question of fact is involved in both the suits and

hence learned Sub Judge ought to have allowed I.A. No. 104 of 2010 and ordered joint trial of the suits. Learned Counsel for respondents contend that no common question of fact or law is involved to order joint trial. It is submitted that if this Court finds that learned Sub Judge has not considered the application on merit the matter may be remitted to that court for proper decision.

2. The fact that learned Sub Judge has not given reasons for dismissal of I.A. No. 104 of 2010 is not a ground for remand. For, the decisions on the point inform me that a remand should as far as possible be avoided if the matter could be decided on merit in this Court. Therefore, I proceed to consider the application on merit notwithstanding that the learned Sub Judge has not taken the pains to look into the contentions raised by parties and instead, dismissed the application merely for the reason that it is opposed by the respondents.

3. It is not disputed that in O.S. No. 518 of 2008 the subject matter is the alleged partnership which allegedly was running hotel business and dissolution of that partnership firm and settlement of accounts is sought for in O.S. No. 518 of 2008. Respondent No. 1 who is one of the plaintiffs in O.S. No. 518 of 2008 would allege in O.S. No. 358 of 2009 that for the purpose of running the said hotel business petitioner No. 1 borrowed certain amount from him and that amount is liable to be recovered from petitioner No. 1. Certainly the alleged borrowal has some nexus with the alleged partnership business which is the subject matter of O.S. No. 518 of 2008 and if O.S. No. 518 of 2008 is allowed and accounts are to be settled between the parties and if ultimately O.S. No. 358 of 2009 is also decreed, possibly, the amount allegedly payable by petitioner No. 1 to respondent No. 1 could also be taken into account while settling the accounts in O.S. No. 518 of 2008. May be that even if ultimately the allegation of partnership is found against but case of borrowal in O.S. No. 358 of 2009 is accepted, a decree may have to be passed in O.S. No. 358 of 2009. I am not pronouncing final verdict on those matters. That is a matter which the court below has to consider. I only state that on the allegations in the plaints it is not as if the alleged borrowal in O.S. No. 358 of 2009 has absolutely no nexus with the alleged transaction in O.S. No. 518 of 2008. The Supreme Court in *Prem Lala Nahata v. Chandi Prasad* 2007 (1) KLT 910 has stated that if it appears to the court that some common question of law or fact arises in both the suits or the court finds that it is desirable to make an order consolidating the suits it is within the power of court to do so. Having regard to the contentions raised by parties in the respective suits, I am persuaded to think that it is desirable to have consolidation of the suits and the same are disposed of jointly.

4. True that in O.S. No. 518 of 2008 proceedings has progressed much and the evidence has been recorded. But that suit is now kept pending on the strength of the order of stay passed by this Court. Learned Counsel for petitioners submits that in O.S. No. 358 of 2009 written statement is filed and that suit is ripe for trial. In that situation nothing prevents O.S. No. 358 of 2009 being tried along with O.S. No. 518 of 2008 treating O.S. No. 518 of 2008 as the main case and

parties being permitted to adduce further evidence if any in O.S. No. 518 of 2009 and as regards disputed issue in O.S. No. 358 of 2009 treating them as plaintiffs and defendants as in O.S. No. 518 of 2008.

Resultantly this petition is allowed and Ext.P7, order dismissing I.A. No. 104 of 2010 is set aside. I.A. No. 104 of 2010 is allowed and, it is directed that O.S. Nos. 518 of 2008 and 358 of 2009 be tried and disposed of jointly in the light of the observations made above.

I.A. No. 10657 of 2010 will stand dismissed.