
(2013) 07 KL CK 0024
In the High Court Of Kerala
Case No : F.A.O. No. 265 of 2008

Rimi Albi

APPELLANT

Vs

Kerala State Co-operative Bank

RESPONDENT

Date of Decision : 19-07-2013

Acts Referred:

Citation : (2013) 3 KHC 587 : (2013) 3 KLJ 834 : (2013) 3 KLT 769

Hon'ble Judges : Thottathil B. Radhakrishnan, J; Babu Mathew P. Joseph, J

Bench : Division Bench

Advocate : D. Kishore, for the Appellant; Nagaraj Narayanan, K. Ravikumar and Suman Chakravathy, for the Respondent

Judgement

Thottathil B. Radhakrishnan, J.—This appeal under O. XLIII, R. 1(a) of the Code of Civil Procedure, for short "C.P.C." is against an order returning a plaint. Heard.

2. The grounds recognised for returning of plaint in terms of O. VII R. 10 of CPC are pecuniary jurisdiction and territorial jurisdiction. The clear terms thereof provides only for the plaint being returned to be presented to the court in which the suit should have been instituted. A suit of civil nature under S. 9 of C.P.C., can be instituted only in a civil court. The words "courts", "suits", and "plaint" in O. VII R. 10 of C.P.C. do not provide any room to devise a mechanism to return of plaint for its presentation before any other Forum, after holding that the suit is barred by any provision of law. Therefore, the impugned order returning the plaint is not sustainable. Learned counsel for appellants is also justified in criticising the impugned order, as one by which the court below has essentially decided on an issue as to the maintainability of the suit. Such a question could have been gone into only in the suit after registering the plaint. If grounds are made for rejection of the plaint on any of the grounds referable to O. VII, R. 11 C.P.C., that could follow. That is a different matter. If none of those grounds exists, the court has to decide the suit on its merits, even on a ground of jurisdiction or maintainability. Even such an issue can be considered as a preliminary issue, only if it is a pure question of law and not one which is a

mixed question of law and fact.

For the aforesaid reasons, we set aside the impugned order without expressing anything on the contentions of the parties on merits. Court below is directed to take back the plaint on record and proceed with it, in accordance with law, untrammelled by anything stated in the order impugned in this appeal. Parties are directed to mark appearance before the court below on 30th August, 2013. Interim order granted by this Court will continue to operate till 27th September, 2013 to enable the parties to seek further appropriate orders from the court below, if required.

Appeal is ordered accordingly.