

(2015) 06 KL CK 0145
In the High Court Of Kerala
Case No : C.R.P. No. 253 of 2013

S.K. Pandit and Others

APPELLANT

Vs

Sreekrishna Swamy Devaswom and Others

RESPONDENT

Date of Decision : 29-06-2015

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 2 Rule 2, 21

Citation : (2015) 4 ILR Ker 821 : (2015) 3 KHC 895 : (2015) 3 KLJ 401 : (2015) 3 KLT 628

Hon'ble Judges : A. Hariprasad, J

Bench : Single Bench

Advocate : G. Krishnakumar, M.P. Rethnam and P.M. Naseema, for the Appellant; N. Ratheesh and Suma Ratheesh, Advocates for the Respondent

Final Decision : Allowed

Judgement

A. Hariprasad, J.—When a suit is instituted before a court having no jurisdiction over the subject matter, is it possible, by act of the parties subsequent thereto, to validate its institution? This is the question of law arising in this revision petition.

2. Heard Sri. G. Krishna Kumar, learned counsel for the petitioners and Sri. S. Sreekumar, learned Senior Counsel for the contesting respondents.

3. Defendants 2, 4 and 5 are the petitioners herein. Plaintiff and other defendants are the respondents, of which the plaintiffs are the contesting respondents. For clarity and convenience, the parties are referred to as the defendants and plaintiffs hereinafter.

4. Brief facts:

Plaintiffs contended that Sree Krishna Swamy Devaswom, the subject matter of the dispute, was founded in 1879 by Maharashtra Brahmins, settled in Mattancherry. It is also contended that the temple was being managed by

managing trustees nominated from among the members of the community from time to time. On 27th Makaram 1122 M.E, the general body had taken a decision relating to the day to day administration of the temple and thereafter Sri. Vishnu Pandit was appointed as Adhikari of the temple for a period of one year. He managed to be at the helm of affairs of the temple for a period of 30 years. Thereafter, members of the community detected misappropriation of assets of the temple and mismanagement of its affairs. It was revealed in an enquiry conducted by the first defendant Cochin Devaswom Board (in short "the Board") that Sri. Vishnu Pandit continued in office as Adhikari without any authority and he committed utter mismanagement. On 26-09-1977, the Board directed Sri. Vishnu Pandit to vacate the management and also directed the committee to conduct an election for constitution of a new management committee. As directed by the first defendant Board, ten member management committee was constituted from among the members of Maharashtra Brahmin Community settled in Mattancherry. The committee submitted an audited accounts before the Board as the temple is a "controlled institution" within the meaning of Travancore - Cochin Hindu Religious Institutions Act, 1950 (in short "the Act"). On 01-01-1980, the then managing committee prepared a scheme for management and administration of the temple and the same was submitted before the Board. The affairs of the temple are now being run on the basis of the scheme. According to the plaintiffs, they are entitled to manage and administer the temple as trustees. Hence, the suit with following prayers:

"a. Declaring that the affairs of the 1st plaintiff is to be managed and administered by the trustees selected from the members of the Maharashtra Brahmin community members permanently settled in Mattanchery in terms of the proceedings of the 1st defendant dated 10.04.1978 and that the 1st plaintiff has no hereditary trustees for administration of the 1st plaintiff-temple and defendants have no manner of right to interfere with the administrative affairs of 1st plaintiff-Devaswom.

b. To set aside the proceedings of the 1st defendant dated 27-01-2009 as unauthorized and unwarranted.

c. Declare that the chattapathram dated 5.1.1075 M.E. is a concocted/fabricated and therefore unenforceable in law or in the alternative set aside the same.

d. Restraining the first defendant by a permanent injunction from including any person to the managing committee of the plaintiff.

e. Directing the defendants to pay the plaintiffs all costs of the suit.

d. Granting the plaintiffs such further and other incidental reliefs as the plaintiffs may ask for and that this Hon"ble Court may deem fit to grant."

5. Contesting defendants (petitioners) contended that the suit is not maintainable before the trial court as it lacks inherent jurisdiction to try the suit in view of the provisions under the Act. According to the contesting defendants, if

at all the plaintiffs had any legally recognizable grievance, they should have approached the District court having jurisdiction over the area in accordance with the provisions in the Act. The point in question and debate is whether the trial court is incompetent to entertain the suit, as it lacks jurisdiction over the subject matter. No subsequent change, either made by the parties or happened in the course of time, would make the suit maintainable before such a court is the contention.

6. Learned Senior counsel for the plaintiffs submitted that after institution of the suit, the Board withdrew the order under challenge in the suit and therefore prayers (a), (b) and (d) in the plaint have become redundant and superfluous. It is therefore contended that as those prayers, which directly touch upon the provisions in the Act, have gone by subsequent act of the first defendant Board, the suit will be one falling within the jurisdiction of the court. Per contra, the learned counsel for the defendants contended that in spite of this development, the suit cannot be maintained before the court below as it lacked jurisdiction at the time of institution of the suit. The question germane for consideration is whether in such a situation the court which had no jurisdiction over the subject matter at the time of institution of the suit can gain jurisdiction by subsequent act of the parties.

7. I have no doubt, the above question can only be answered in the negative for multifarious reasons. I shall expatiate them below.

8. Learned counsel for the defendants relying on various law dictionaries contended that the meaning of the term "jurisdiction" has to be considered as a first point. Black's Law Dictionary (6th Edition) defines "jurisdiction" in following terms:

"A term of comprehensive import embracing every kind of judicial action. The power of the court to decide a matter in controversy and presupposes the existence of a duly constituted court with control over the subject matter and the parties. Jurisdiction defines the powers of courts to inquire into facts, apply the law, make decisions, and declare judgment. The legal right by which judges exercise their authority. It exists when court has cognizance of class of cases involved, proper parties are present, and point to be decided is within powers of court. Power and authority of a court to hear and determine a judicial proceeding; and power to render particular judgment in question. The right and power of a court to adjudicate concerning the subject matter in a given case. "

9. Stroud's Judicial Dictionary (5th Edition) Volume 3 contains the following definition for "jurisdiction":

(1) In its narrow and strict sense, the "jurisdiction" of a validly constituted court connotes the limits which are imposed upon its power to hear and determine issues between persons seeking to avail themselves of its process by reference (1) to the subject-matter of the issue or (2) to the persons between whom the issue is joined or (3) to the kind of relief sought, or to any combination of these

factors. In its wider sense it embraces also the settled practice of the court as to the way in which it will exercise its power to hear and determine issues which fall within its "jurisdiction" (in the strict sense) or as to the circumstances in which it will grant a particular kind of relief which it has "jurisdiction" (in the strict sense) to grant, including its settled practice to refuse to exercise such powers, or to grant such relief in particular circumstances (Garthwaite v. Garthwaite [1964] P. 356)

10. Wharton's Law Lexicon, based on the judgment of the Supreme Court in Raja Soap Factory and Others Vs. S.P. Shantharaj and Others, AIR 1965 SC 1449 : (1965) 2 SCR 800 states that by "jurisdiction", it is meant the extent of the power which is conferred upon the court by its constitution to try a proceedings.

11. In my legal research, I came across a lucid exposition of law on the subject in Halsbury's Laws of India (Volume 7: Civil Procedure). The meaning of the term "jurisdiction" is elucidated as follow:

"The word "jurisdiction" is derived from "juris" and "dicto". It refers to the right of administering justice by means of law and includes every act from taking of cognisance in a matter to the final disposal of a suit. Thus, jurisdiction means the power or authority of a court to inquire into the facts, to apply the law, and to pronounce a judgment and to carry it into execution.

Juridically, the concept "jurisdiction of a court" comprises territorial jurisdiction, pecuniary jurisdiction and jurisdiction as to subject matter, and implies the authority by which a court decides the matters that are litigated before it or the authority by which it takes cognisance of matters presented in a formal way for its decision. The limits on the jurisdiction of a court are imposed by the statute, charter or commission under which the court is constituted and may be extended or restricted by similar means. A limitation may either be as to the kind or nature of the matters that may be filed before a court or as to the area over which jurisdiction extends or both. Where no restriction is imposed jurisdiction, is said to be unlimited.

A court or tribunal cannot confer jurisdiction on itself by deciding a jurisdictional fact wrongly."

12. On the topic "jurisdiction as to subject matter" following narrations are made in the said treatise:

"Jurisdiction as to subject matter - Jurisdiction as to subject matter refers to the authority of a court to decide matters litigated before it on the basis of the nature of the subject matter. Jurisdiction over the subject matter is a sine qua non, without which a court is incompetent to try the cause, and where there is an inherent lack of jurisdiction a decree or order made by the court will be a nullity. However, to render a decree null and void, the court which passed it must lack inherent jurisdiction in the sense that it could not have seisin of the case

because the subject matter was wholly foreign to its jurisdiction."

13. Now, I shall refer to the statutory provision, viz; Section 21 of the Code of Civil Procedure, 1908 (in short "CPC"). It reads as follows:

"21. Objections to jurisdiction. - (1) No objection as to the place of suing shall be allowed by any Appellate or Revisional Court unless such objection was taken in the Court of first instance at the earliest possible opportunity and in all cases where issues are settled, at or before such settlement, and unless there has been a consequent failure of justice.

(2) No objection as to the competence of a Court with reference to the pecuniary limits of its jurisdiction shall be allowed by any Appellate or Revisional Court unless such objection was taken in the Court of first instance at the earliest possible opportunity, and, in all cases where issues are settled, at or before such settlement, and unless there has been a consequent failure of justice.

(3) No objection as to the competence of the executing Court with reference to the local limits of its jurisdiction shall be allowed by any Appellate or Revisional Court unless such objection was taken in the executing Court at the earliest possible opportunity, and unless there has been a consequent failure of justice."

Sub-Section 1 of Section 21 CPC shows that objection as to the place of suing shall not be entertained by any appellate or revisional court unless such objection was taken in the court of first instance and that too at the earliest possible opportunity. The time limit for raising such objection is also set in the provision. Therefore, the question as to lack of territorial jurisdiction should be raised by the opposing party at the earliest point. Sub-Section 2 of the said provision shows that all disputes relating to lack of pecuniary jurisdiction shall be raised in the court of first instance and at the earliest possible opportunity. As in the case of objections relating to territorial jurisdiction, time for raising the objection regarding pecuniary jurisdiction is also limited in the provision. Sub-Section 3 to Section 21 CPC deals with objection regarding the competence of the executing court in similar lines as in the cases of pecuniary and territorial jurisdictions. It is very important to note that Section 21 CPC does not deal with the subject matter jurisdiction.

14. A division of the Supreme Court consisting of four Hon"ble Judges in Seth Hiralal Patni Vs. Sri Kali Nath, AIR 1962 SC 199 : (1962) 2 SCR 747 held as follows:

"It is well settled that the objection as to local jurisdiction of a court does not stand on the same footing as an objection to the competence of a court to try a case. Competence of a court to try a case goes to the very root of the jurisdiction, and where it is lacking, it is a case of inherent lack of jurisdiction. On the other hand an objection as to the local jurisdiction of a court can be waived and this principle has been given a statutory recognition by enactments like S.21 of the Code of Civil Procedure."

15. The Supreme Court in *Harshad Chiman Lal Modi Vs. DLF Universal and Another*, AIR 2005 SC 4446 : (2006) 101 CLT 5 : (2005) 5 CTC 133 : (2005) 8 JT 561 : (2005) 7 SCALE 533 : (2005) 7 SCC 791 : (2005) AIRSCW 5369 : (2005) 6 Supreme 634 laid down the law in following terms:

"The jurisdiction of a court may be classified into several categories. The important categories are (i) Territorial or local jurisdiction; (ii) Pecuniary jurisdiction; and (iii) Jurisdiction over the subject matter. So far as territorial and pecuniary jurisdictions are concerned, objection to such jurisdiction has to be taken at the earliest possible opportunity and in any case at or before settlement of issues. The law is well settled on the point that if such objection is not taken at the earliest, it cannot be allowed to be taken at a subsequent stage. Jurisdiction as to subject matter, however, is totally distinct and stands on a different footing. Where a court has no jurisdiction over the subject matter of the suit by reason of any limitation imposed by statute, charter or commission, it cannot take up the cause or matter. An order passed by a court having no jurisdiction is nullity."

Later, this decision was followed by the apex court in *Hasham Abbas Sayyad Vs. Usman Abbas Sayyad and Others*, (2007) 1 JT 616 : (2006) 14 SCALE 131 : (2007) 2 SCC 355 : (2006) 10 SCR 740 Supp .

16. From the above discussion, it is crystal clear that a decree passed by a court having inherent lack of jurisdiction over the subject matter is a nullity and incapable not only of execution, but also producing any legal result.

17. We shall now directly deal with the question involved. For that, the provisions of the Act may be relevant. Section 61 in Chapter VII falling under Part II deals with "Definitions". Section 61(1) of the Act defines "Board" as the Cochin Devaswom Board constituted under the Act. Section 61(2) of the Act defines the term "Court" as follows:

""Court" shall mean the District Court within the local limits of which the principal temple, shrine, samooham or sammoha madhom or sabha madhom, sannyasi madhom, yogam or brahmaswom madhom of the institution is situate;

Explanation. - Where an institution has not a temple, shrine, samooham or samoocha madhom or sabha madhom attached to it, the court in relation to such an institution shall mean any one of the District Courts within whose jurisdiction the institution is functioning.

18. Section 61(5) defines the terms "incorporated and unincorporated Devaswoms". Likewise, Section 61(6) defines "institution" meaning thereby a Hindu Religious Institution other than an incorporated or unincorporated Devaswom. The temple in question is admittedly an "institution" as defined under Section 61(6) of the Act. Chapter IX of the Act deals with management of "Institution in General". Chapter X is pertaining to "Assumption of Management". Section 98 of the Act says that the Board may assume the management of an

institution under the circumstances described therein. Sub-Section 2 of Section 98 of the Act is relevant for our purpose. It is quoted hereunder:

"Any person deeming himself aggrieved by an order of assumption passed on any of the grounds mentioned in clauses (c), (d) and (e) of sub-section (1) of this section may, within a period of six months from the date of the publication of the order of assumption in the Gazette institute in the District Court within whose jurisdiction the subject-matter is situate a suit to set aside such order:

Provided that subject to the result of the suit, if any, the order of assumption shall be final."

19. On a reading of the above provision, it is beyond any doubt that the dispute raised by the plaintiffs in the suit can only be agitated before the District Court having jurisdiction over the area, where the subject matter is situated. None of the parties has a case that the court of Subordinate Judge is clothed with the jurisdiction to deal with disputes arising under the Act. In this context, Section 124 of the Act is also relevant. It says that no suit shall be instituted against the Board until the expiration of two months after a notice in writing has been delivered or left at the office of the Board stating the cause of action, the relief sought, and the name and place of abode of the intending plaintiff, and the plaint shall contain that such notice has been so delivered or left. The plaintiffs in this case have not complied with the conditions in Section 124 of the Act is an indisputable fact. That is yet another legal infirmity. For that reason also the suit is incompetent. As mentioned above, the Subordinate Judge's Court lacked inherent jurisdiction to entertain such a suit is a fact evident from the unambiguous provisions in the statute. Therefore, the suit was laid before an incompetent court is a fact established.

20. Now the question that falls for decision is whether on account of the subsequent developments is it possible for the court to continue with the suit although it lacked jurisdiction on the date of its institution? Law on the point is well settled. The suit laid before an incompetent court cannot be rectified or altered so as to maintain it within its jurisdiction. Learned counsel for the defendants contended that the principles in Order II Rule 2 CPC cannot be invoked in this case. Order II Rule 2 C.P.C says that a plaintiff may relinquish any portion of his claim in order to bring the suit within the jurisdiction of any court. Certainly, this provision is not applicable in this case. In order to apply that provision, the relinquishment of any portion of the plaintiff's claim should have been made before the institution of the suit. It has no application after instituting a suit, that too before a court without jurisdiction. Most importantly, this provision can have no application if the suit is laid before a court having no inherent jurisdiction over the subject matter. It is well settled that by no act of the parties, jurisdiction can be conferred on a court.

21. Sum and substance of the above discussion is that a suit instituted before a court having no jurisdiction over the subject matter or a court lacking inherent

jurisdiction to entertain a suit cannot receive the plaint, maintain it on its record and proceed with the matter irrespective of the subsequent developments or changes occurred. It is trite law that for determining whether a court has jurisdiction or not, the entire averments in the plaint, the legal rights set up in the plaint, the source of the legal rights - whether they emanate from any statute or under the common law - mentioned in the plaint, the reliefs claimed in the plaint, the valuation shown in the plaint for the purpose of jurisdiction etc. are relevant factors, although the list is not exhaustive. It is equally settled that maintainability of the suit and the rights of parties are to be determined with reference to the date of institution of the suit. Viewing from any angle, I am of the opinion that the suit is not maintainable before the Court of Subordinate Judge for the aforementioned reasons.

In the result, the petition is allowed. The impugned order is set aside. The court below shall return the plaint to be presented before appropriate court. The parties shall bear their respective costs.

All pending interlocutory applications will stand dismissed.