

(1989) 01 KL CK 0071
In the High Court Of Kerala
Case No : C.R.P. No. 2546 of 1988

Sreekumaran

APPELLANT

Vs

Ardhanareeswara Devaswom and Others

RESPONDENT

Date of Decision : 06-01-1989

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 1 Rule 8, 151
Societies Registration Act, 1860 — Section 10, 3, 4, 5, 8

Citation : (1989) 1 KLJ 163

Hon'ble Judges : K.P. Radhakrishna Menon, J

Bench : Single Bench

Advocate : C.V. Vasudevan and K.G. Devarajan, for the Appellant; P. Sukumaran Nair, for the Respondent

Final Decision : Dismissed

Judgement

K.P. Radhakrishna Menon, J.—The plaintiff in a suit for damages is the revision petitioner. The first respondent (the first defendant) admittedly is a Society registered u/s 5 of the Travancore-Cochin Literary, Scientific and Charitable Societies Registration Act, 1955, Act 12 of 1955, for short The Societies Registration Act. Respondents 2 and 3 respectively are the President and Secretary of the Society. They have been impleaded in the suit (as defendants 2 and 3) as persons competent to represent the Society

2. The petitioner filed 1. A 423/88 under Order 1 Rule 8 read with Section 151 C. P. C. seeking permission to give notice of the institution of the suit to the members of the managing committee by public advertisement as personal service on them, it is said, was not reasonably practicable. This application has been dismissed by the order under challenge.

3. The short question arising for consideration is, Is it necessary at all to have notice of institution of the suit given, either to the members of the managing committee or to the members of the Society registered under The Societies Registration Act, the first defendant also leave alone notice by public

advertisement within the meaning of Order 1 Rule 8 C.P.C. so as to say that the suit is properly instituted.

4. The answer to the question depends upon the construction of some of the relevant provisions of The Societies Registration Act as also the provisions contained in order 1 Rule 8 C.P.C. A reference in this connection to Sections 3,4,5,8,9 and 10 of The Societies Registration Act is relevant. Section 3 provides that any seven or more persons associated for any literary; scientific or charitable purpose, or for any such purpose as is described in Section 32 can by subscribing their names to a memorandum of association and filing the same with the Registrar, form themselves" into a society. The memorandum of association shall contain the details regarding the name of the society, the objects of the society, the names, addresses and occupations of the governors, council, directors, committee or other governing body to whom;, by the rules of the society, the management of its affairs is entrusted. A copy of the rules and regulations mentioned above and certified to be a correct copy by not less than 3 members of the governing body, shall be filed with the memorandum of association (See Section 4). Upon such memorandum and certified copy of the rules and regulations being filed, the Registrar shall certify that the society is registered under The Act. So says Section 5; The property, Movable and immovable, belonging to the society, if not vested in trustees, shall be deemed to be vested, for the time being, in the governing body of the society, and in all proceedings, civil and criminal, may be described as the property of the governing body of such society by their proper title. (See Section 8). Section 9 provides that every "society may sue or be sued in the name of the president, chairman, or principal secretary, "or trustees, as shall be determined by the rules and regulations" of the society, and in default of such determination, in the name of such person as shall be appointed by the governing body for the occasion; provided however, it shall be competent for any person having a claim" or demand against the society, to" sue the president or chairman, or principal secretary or the trustees therefore, if, on application to the governing" body, some other officer or person be not nominated to" be the defendant. It is provided for u/s 10 that a suit or proceedings by or against a society will not abate or discontinue by reason of the person by or against whom such suit or proceedings" shall have been brought or continued; dying or ceasing to fill the character in the name whereof he shall have sued, or been sued but the same suit or proceeding shall be continued in the name of or against the successors of such" person.

5. The cumulative effect of these provisions is that when" once a" society" is registered With the Registrar, such a registered" society enjoys" the status" of a legal entity apart from" the members who constitute it. That means" the society registered under The Societies" Registration Act, being a legal entity is capable of suing - and being - sued in its own name I am "fortified in this view by two rulings; one of the Bombay High Court in Satyavart Sidhantalankar Vs. The Arya Samaj, and the other of the House of Lords, in Bonsor v. Musicians" Union (1955

(3) All E.R. 518) As a legal entity capable of suing and being sued the society represents the cause of the members who constitute it; and as such any judgment, decree or order passed by the court in such suit or a civil proceeding with the society on the party array, is binding not only on the society but the members of the society also.

6. It is in this background the point whether it is necessary to give notice of the institution of the suit to all members of the society by public advertisement requires to be considered.

7. It is true that the general rule is that all persons interested in a suit or proceeding in a civil court should be joined as parties to it because, without their junction the points arising in the said suit or proceeding cannot finally and effectively be adjudicated upon. The provisions contained in Order 1 Rule 8 C. P. C. constitute an exception to this general rule. The conditions that should be satisfied to apply this rule (Order 1 Rule 8) are (a) the parties must be numerous, (b) they must have the same interest in the suit, (c) permission from the court shall be obtained and notice to the parties who will be impleaded as representatives, must be given. As already noted the judgment, decree or order in a suit or civil proceedings with the legal entity on the party array will be binding not only on the legal entity but on the members who constitute the legal entity, also although the legal entity is not an incorporated body. If that be the position Order 1 Rule 8 has no relevance in a case where the suit or civil proceeding is initiated by or against a legal entity although the same is not an incorporated body. In other words a registered society like the first respondent herein though not an incorporated body, can sue or be sued without recourse to Order 1 Rule 8 C. P. C. In the light of what is stated above I am of the opinion (hat the court below has rightly rejected the application. There is, therefore, little scope to interfere with the order under attack.

The C. R. P. fails. Accordingly the same is dismissed.