

(2024) 05 KL CK 0076

In the High Court Of Kerala

Case No : Civil Revision Petition No. 235 Of 2022

Travancore Devaswom Board

APPELLANT

Vs

State Of Kerala

RESPONDENT

Date of Decision : 20-05-2024

Acts Referred:

Code of Civil Procedure, 1908 — Order 1 Rule 1, Order 1 Rule 3

Citation : (2024) 05 KL CK 0076

Hon'ble Judges : Dr. Kauser Edappagath, J

Bench : Single Bench

Advocate : G.Santhosh Kumar, Gopalakrishna Kurup, P.Haridas, M.Gopikrishnan Nambiar, K.John Mathai, Joson Manavalan, Kuryan Thomas, Paulose C. Abraham, Raja Kannan, Biju Hariharan, Shijimol M.Mathew, P.C.Shijin, Rishikesh Haridas, Greeshma T.G.

Final Decision : Dismissed

Judgement

Dr. Kauser Edappagath, J

1. This revision petition has been filed against the dismissal of an application filed by the Travancore Devaswom Board under Order 1 Rule 3 of the Code of Civil Procedure (for short, "the C.P.C.") to implead it as the supplemental defendant in OS No.72/2019 on the file of the Sub Court, Pala (for short, the trial court).

2. The 1st respondent, State of Kerala, filed a suit for declaration of title, recovery of possession and permanent prohibitory injunction against the respondents 2 to 5. In the plaint, the 1st respondent alleged that the plaint schedule properties belong to the State and that respondents 2, 4 and 5 illegally possess the same. Respondents 2, 4 and 5 filed written statements resisting the suit contending that the plaint schedule properties belong to the 2nd respondent trust and are in its exclusive possession and the 1st respondent does not have any title or possession over the same. During the pendency of the suit, the petitioner Travancore Devaswom Board filed IA No.30/2020 under Order 1 Rule 3

to implead it as the supplemental defendant. The trial court dismissed the application as per the impugned order holding that the petitioner failed to satisfy the conditions mentioned in Order 1 Rule 3 of C.P.C. It is challenging the said order, the petitioner has preferred this revision petition.

3. I have heard Sri.G.Santhosh Kumar, the learned counsel appearing for the revision petitioner, Sri.Gopalakrishna Kurup, the learned Advocate General representing the State, Sri.Gopikrishnan Nambiar, the learned counsel appearing for the 3rd respondent, and Sri.P.Haridas appearing for respondents 2, 4 and 5.

4. The application has been filed invoking Order 1 Rule 3 of C.P.C. According to the petitioner, a portion of the plaint schedule properties belongs to it and if the decree is granted in favour of the plaintiff/1st respondent, it will affect its right over the plaint schedule properties. It is also alleged that if a separate suit is instituted, a common question of law and facts would arise. Order 1 of C.P.C deals with parties to suits. It contains provisions for addition, deletion and substitution of parties, joinder, misjoinder and non-joinder of parties. Rule 1 of Order 1 governs the joinder of plaintiffs, while Rule 3 governs the joinder of defendants. The underlying object of Rules 1 and 3 is to avoid multiplicity of suits. Rule 3 provides that all persons may be joined as defendants in a single suit where (a) any right to relief arises out of the same act or transaction or series of acts or transactions, and (b) there is a common question of law of fact. The word "and" between clauses (a) and (b) makes it clear that both conditions must be satisfied before joining several persons as co-defendants in the same suit. The requirements in clause (a) and (b) are cumulative and not alternative. Two conditions must exist together. It is not necessary that all the defendants should be interested in all the reliefs, or that liability should be the same. However, there must be some common link or nexus so that conditions as to same act or transaction or series of acts or transactions may be satisfied.

The suit for declaration of title and recovery of possession of the plaint schedule properties was filed by the 1st respondent on the premises that the title of the plaint schedule properties vested with the State of Kerala and the respondents 2, 4 and 5 are in illegal occupation and possession of the same. The case of the petitioner is that it has title over a portion of the plaint schedule properties. The petitioner has absolutely no case that any right to relief in respect of or arising out of the same transaction is existing against it. As stated already, the provisions under Rule 3 of Order 1 would be attracted only when the right to relief against the defendants is said to be in respect of the same act(s) or transaction(s) and common questions of law or facts would arise if separate suits were brought against them. The 1st respondent in the plaint admits that the respondents 2, 4 and 5 are in possession of the plaint schedule properties. However, the petitioner does not have a case that the respondents 2, 4 and 5 are in possession of the property. The case of the 1st respondent is that the State of Kerala has title over the properties whereas the case of the petitioner is that a portion of the petition schedule properties belongs to it. Thus, even if the

petitioner is impleaded, the right to relief against the petitioner and against the respondents 2, 4 and 5 cannot be said to be in respect of the same act or transaction. There is nothing common among them to be agitated in the suit. Moreover, no common question of law or fact would arise between the 1st respondent and the respondents 2, 4 and 5 on one hand and the 1st respondent and the petitioner on the other. So, both conditions mentioned in Order 1 Rule 3 of C.P.C have not been satisfied as rightly held by the trial court. That apart, it is settled that the plaintiff is dominus litis having dominion over his suit. He has the right and prerogative to choose and implead in his suit as defendant the person against whom he seeks relief. He is not obliged to implead a person as the defendant in the suit against whom no relief is sought. The 1st respondent has no case that the petitioner has any title or possession over any portion of the petition schedule properties. It is equally settled that any decree passed by the court would not affect the person who is not a party to the suit. Thus, the apprehension of the petitioner that if a decree is granted in favour of the 1st respondent, it will affect its right over the plaint schedule property is unfounded. The remedy open to the petitioner is to institute a separate suit to establish its right, if any, over the properties. The trial court has rightly dismissed the application. I find no illegality or impropriety in the impugned order. The Civil Revision Petition is accordingly dismissed.