

Thomas Vs. George and anr.

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Court : Kerala

Decided On : Apr-07-1972

Reported in : AIR1973Ker94

Judge : N.D.P. Namboodripad, J.

Acts : [Code of Civil Procedure \(CPC\) , 1908](#) - Order 30, Rule 1

Appeal No. : Second Appeal No. 180 of 1969

Appellant : Thomas

Respondent : George and anr.

Advocate for Pet/Ap. : Sankara Menon, Adv.

Disposition : Appeal allowed

Judgement :

N.D.P. Namboodripad, J.

1. Against the dismissal of his suit by the lower appellate court the plaintiff has come in appeal.

2. The appellant sued the respondents for recovery of the value of timber and allied reliefs. On 6-5-1962 the plaintiff who was the partner of a firm by name 'Pulikal Saw Mill' sold to the first defendant a Kadumkozhu log for Rs. 84/-. The

plaintiff's case is that the first defendant surreptitiously removed another log belonging to the category called Mylellu and much more costly than the timber actually sold on 6-5-1962. The plaintiff set the criminal law in motion against the first defendant without success. The suit was therefore laid for recovery of the value of Mylellu log and for certain ancillary reliefs. The first defendant resisted the suit on various grounds while the second defendant contended that he is an unnecessary party to the litigation. The trial court gave a decree to the plaintiff for Rupees 91/- with interest at 6 per cent from 7-5-1962. On appeal by the first defendant at A. S. No. 29 of 1967 of the Court of the Subordinate Judge, Ernalculam, the appellate court while confirming the decision of the trial court on merits dismissed the plaintiff's suit on the ground that the suit is not maintainable due to non-compliance with the provisions of Order XXX, Rule 1 of the Code of Civil Procedure.

3. The short point that falls for decision is whether the suit as framed is bad being violative of Order XXX, Rule I of the Code of Civil Procedure. The relevant statutory provision may be read as follows:

'1. Any two or more persons claiming or being liable as partners and carrying on business in India may sue or be sued in the name of the firm (if any) of which such persons were partners at the time of the accruing of the cause of action, and any party to a suit may in such case apply to the Court for a statement of the names and addresses of the persons who were, at the time of the accruing of the cause of action, partners in such firm, to be furnished and verified in such manner as the Court may direct.' In paragraph 6 of its judgment the lower appellate court found that the suit transaction was with the partnership firm of which the plaintiff and his wife were partners and in paragraph 7 it is further found that the firm was continuing on the date when the suit was instituted. I am proceeding on the basis that these findings are correct. In paragraph 8 of its judgment the court came to the conclusion that this is a case where one of the partners alone has filed the suit in his own name on a cause of action in favour of the firm and thereby the provision of Order XXX, Rule 1 was offended. This finding is seriously challenged both on facts and on law.

4. In the cause title the plaintiff is described as Thomas, Partner, 'Pulikkal Saw Mill'. In paragraph 1 of the plaint it is distinctly alleged that the plaintiff as partner is running a saw mill in Power house Road in the name 'Pulikkal Saw Mill.' In paragraph 2 it is further stated that the first defendant purchased a log from the aforesaid mill. In view of these averments in the plaint it is rather difficult to infer that the plaintiff was suing only in his individual capacity. The addition of the name of the partner in the cause title can be taken to be a mere surplusage. An analogous position came up for consideration by this Court in A. A. K. Mohammed v. Nara-yana Ramachandra Mallayya & Co., 1961 Ker LT 878. There the firm was arrayed as defendant and the court observed:

'The name of the defendant should be the name of the firm only without the addition of the name of the partners, although addition of such names does not matter in the least and can be treated as mere surplusage.'

The position cannot be different simply because the firm figures as the plaintiff to the action.

5. Even assuming that in view of the averments in the plaint the plaintiff must be taken to have laid the suit in his individual capacity it is very doubtful whether the suit is bad for non-compliance with Rule 1 of Order XXX. From the wording of the provision it can be seen that it is only permissive, and it does not prevent a partner from suing or being sued in his individual name. The object and the scope of this provision was considered by the Supreme Court in Purushotham Umed Bhai and Co. v. Mani-lal and Sons, AIR 1961 SC 325. The Court held:

'It is clear therefore that the provisions of Order XXX, Rule 1 and Rule 2 are enabling provisions to permit several persons who are doing business as partners to sue or be sued in the name of the firm. Rule 2 would not have been in the form it is if the suit instituted in the name of the firm was not regarded as, in fact, a suit by the partners of the firm. The provisions of these rules of Order XXX, being enabling provisions, do not prevent the partners of a firm from suing or being sued in their individual names.'

The conclusion of the lower appellate court that the suit offends Order XXX, Rule 1 is therefore incorrect and the dismissal of the plaintiff's suit on that account cannot be sustained. Whether a suit of this nature offends any other provision of law does not arise for consideration since no such contention has been raised by the defendants.

6. In the result the decree passed by the lower appellate court is hereby set aside and the decree passed by the trial court is restored. The appeal is allowed with costs to the appellant in the courts below. Since there is no appearance for the respondents in this court. I make no order as to costs in this court.

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