

Soman and ors. Vs. Apputty and ors.

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Court : Kerala

Decided On : Jun-15-1987

Reported in : AIR1988Ker212

Judge : S. Padmanabhan, J.

Acts : [Code of Civil Procedure \(CPC\) , 1908](#) - Sections 11 and 152 - Order 1, Rule 8, 8(4), 8(5) and 8(6)

Appeal No. : C.R.P. No. 2700 of 1986

Appellant : Soman and ors.

Respondent : Apputty and ors.

Advocate for Def. : V.P. Mohan Kumar and; M.N. Sukumaran Nayar, Advs.

Advocate for Pet/Ap. : Govind Bharathan,; Lekh Suresh and; P. Chandrasekharan

Disposition : Petition dismissed

Judgement :

ORDER

S. Padmanabhan, J.

1. Defendants are the revision petitioners. The revision petition is directed against an order of the trial court allowing amendment of the decree on the application of respondents 1 and 2 (plaintiffs), in order to make it in conformity with the judgment.

The suit property is a temple and its premises. Plaintiffs claimed that it is a private temple belonging to their family and first plaintiff is the uralan in possession and management. Second plaintiff claimed to be in possession of the premises under a lease arrangement with the first plaintiff. Though it is a private temple plaintiffs admitted the right of defendants and other Hindus of the locality to worship in the temple, but disputed their right to interfere with the possession and management. The suit was for permanent injunction to restrain the defendants and the Hindus of the locality, whom they represent, from trespassing and interfering with the management. Defendants were sued in a representative capacity and publication under Order 1, Rule 8 was made. No interested person got himself impleaded pursuant to the publication.

3. Revision petitioners contended that it is a public temple managed by a public committee in which the predecessor of the first plaintiff was only a member. Defendants claimed to be the office-bearers in management and possession.

4. Though the trial Court held that it is a public temple, the further finding was that the first plaintiff is in possession and management and hence he is entitled to a decree for injunction as prayed for. Accordingly a decree for injunction was passed. But by mistake or oversight it was not specified in the judgment that the decree against the defendants is in their representative capacity. Consequently the decree also was drafted as if it is against the defendants alone.

5. Without applying for amendment of the judgment the plaintiffs sought amendment of the decree alone in order to specify that it is against the defendants in their representative capacity. The trial court which passed the judgment was convinced that it is an accidental omission in the decree and hence the prayer was allowed and the decree corrected. Revision is against that order.

6. The main contention of the revision petitioners was that the decree which is in conformity with the judgment ought not have been allowed to be amended without amending the judgment itself. The general rule is that all person may be joined as plaintiffs in whom any right to relief in respect of or arising out of, the same act or transaction or series of acts or transaction is alleged to exist, where if such persons brought separate suits, any common question of law or fact would arise and all persons may be joined as defendants against whom any such relief is claimed, where, if separate suits were brought against them any common question of law or fact would arise, though it is not necessary that every defendant should be interested in all the reliefs claimed in the suit. But where there are numerous persons having the same interest in one suit, one or more of such persons may, with the permission of the court, sue or be sued, or may defend such suit, on behalf of or for the benefit of, all persons so interested. When such permission or direction is given by the Court to sue or be sued in a representative capacity the court will have to issue notice at the expenses of the plaintiff of the institution of the suit to all persons so interested. It may be by personal notice or where it is not reasonably practicable, by public advertisement.

7. In this case the plaintiff sued the defendants in a representative capacity representing the Hindus of the locality having common interest so far as the temple and premises are concerned. Court granted permission for that purpose and as per orders of court public advertisement was made as provided in Order 1, Rule 8. Order 1, Rule 8(3) provides that any person on whose behalf, or for whose benefit, a suit is instituted, or defended, may apply to the court to be made a party to such suit. It is true that no interested person got himself impleaded as a defendant pursuant to the publication. But there is no case that the defendants were not defending the suit in a representative capacity. Sufficient safeguards are made in Order 1, Rule 8(4) and (5) to safeguard the interest of such persons who do not join as parties in response to the publication. Sub-rule (6) of Order 1, Rule 8 says that decree passed in such a suit shall be binding on all persons on whose behalf, or for whose benefit, the suit is instituted or defended, as the case may be. To such a suit explanation VI to Section 11 of the Civil P.C. will apply. That explanation says that where persons litigate bona fide in respect of a public right claimed in common for themselves and others, all persons interested in such right

shall be deemed to claim under the persons so litigating. A decision in a representative suit after notice or publication under Order 1, Rule 8, as in any other case, operates as *res judicata* against all the interested persons when it is given on the merits in so far as the rights litigated are common to the persons suing or being sued and those, whom they represent. This result is statutory even if the judgment does not specify in so many words that it is rendered against the defendants in a representative capacity unless there are indications in the judgment to show that the decision is personal against the defendants alone and not against anybody else having common interest. Otherwise the very object and purpose of the formalities observed under Order 1, Rule 8 and the very purpose of the litigation itself will be defeated. Here nobody has any case that the suit was not prosecuted against the defendants or not defended by them in a representative capacity or that in deciding the suit the court only considered the rights of the defendants and not of other persons whom they represented. In such a situation even if the judgment does not specify in the decretal portion that the suit is decreed against the defendants in their representative capacity, the statutory effect in view of Order 1, Rule 8(6) is that it is binding on all persons for whose benefit the suit was defended.

8. In this case the court which passed the decree has specified in so many words in the impugned order that the decree was passed in a representative capacity against the defendants and what happened in the decree is only an accidental omission. Plaintiffs also take the same stand. No person whose interest was represented by the defendants came forward to contend that the decree is not binding on them. The objection is only by the defendants who are at any rate bound by the judgment and decree. The mala fide object is evident. It is only to see that the decree is flouted through somebody who is interested but not an *eo nomine* defendant in the case.

9. There cannot be any dispute regarding the fact that the court has not only the right but also the duty to amend the decree so as to bring it in conformity with the judgment. That is necessary in the interest of doing justice to the parties. It may also be true that if the decree is in conformity with the judgment it cannot be amended even in cases of clerical or arithmetical mistakes or omissions or

errors arising therein from any accidental slip or omission in the judgment unless the judgment is also corrected. At the same time in spite of the errors or omissions if the factual and statutory effect of the judgment is otherwise that effect must reflect in the decree. So far as this case is concerned there was no error or mistake in the judgment. The omission in the decretal portion of the judgment to specify that it is against the defendants in their representative capacity was against the scope of the suit and the discussions and conclusions in the body of the judgment. In spite of such an omission, in the absence of anything to the contrary in the judgment, by the operation of Order 1, Rule 8(6) the judgment was against all persons on whose behalf the suit was defended. The decree ought to have been drafted accordingly. It is only an accidental slip or omission arising from a clerical mistake which the court was entitled to correct under Section 152 of the Civil P.C.

10. The decision in *Master Construction Co. (P) Ltd. v. State of Orissa*. AIR 1966 SC 1047 was relied on by the counsel in this respect. That decision said :

'An arithmetical mistake is a mistake of calculation; a clerical mistake is a mistake in writing or typing. An error arising out of or occurring from an accidental slip or omission is an error due to a careless mistake or omission, unintentionally made. There is another qualification, namely that such an error shall be apparent on the face of the record, that is to say. it is not an error which depends for its discovery, on elaborate arguments on questions of fact or law. The accidental slip or omission is an accidental slip or omission made by the court. The obvious instance is a slip or omission to embody in the order something which the court in fact ordered to be done. This is sometimes described as a decretal order not being in accordance with the judgment. But the slip or omission may be attributed to the Judge himself. He may say something or omit to say something which he did not intend to say or omit. This is described as a slip or omission in the judgment itself. The cause for such a slip or omission may be the Judge's inadvertence or the Advocate's mistake. But however wide the said expressions are construed, they cannot countenance a reargument on merits on questions of fact or law, or permit a party to raise new arguments which he has not advanced at the first instance.'

Even though that judgment was rendered on different provisions the principles could be accepted for our purpose also. Even then it will not in any way advance the contention of the revision petitioners. As held by the Supreme Court the obvious slip or omission made by the court in this case is the slip or omission to embody in the decree something which the court statutorily ordered to be done by the judgment. Therefore, the amendment is competent under Section 152 Civil P.C. and no error of jurisdiction, illegality or material irregularity is involved.

11. Then the attempt was to contend that it was illegal or at least improper on the part of the trial court to have amended the decree when an appeal is pending against the same. There was no stay. Even taking for granted that there was stay against execution of the decree the pendency of an appeal will not in any way disentitle the trial court in amending the decree to make it in conformity with the judgment. It is true that the appellate Court can also amend the lower court's decree. Till that is done or till the trial court decree is superseded by or merged in the appellate decree the right of the trial court in amending the decree is not fettered. The position may be different when the appeal is disposed of and the decree of the trial court was superseded by or merged in the appellate decree. Such a contingency has not arisen here.

12. Decrees passed in suits coming under Order 1, Rule 8 may be binding even on persons who were not born then. But the contention was that injunction decrees are exceptions to the rule. Order 1, Rule 8(3) provides that any person on whose behalf the suit is instituted or defended may apply to be made a party. A party to such a suit is one who is impleaded as a party or who on an application is brought on record as an 'eo nomine' party. Others who are not brought on record can be only deemed to be parties and will not be parties as such. Section 47 Civil P.C. cannot therefore be a bar to a fresh suit against them. Though a decree obtained in a suit instituted in accordance with the provisions of Order 1, Rule 8 will be binding on all members that belong to the class sought to be represented by operation of the principle of 'res judicata' embodied in Explanation VI to Section 11 Civil P.C. it may not be enforceable in an injunction suit personally against persons who are not 'eo nomine' parties as held on *Kodia Gounder v. Velandi Gounder*, AIR 1955 Mad 181, in order to make them liable for disobedience of the decree. For

that purpose the injunction may have to be revived as against them by a separate suit in case such necessity arises. But they are also persons bound by the decree. But that aspect of the matter is also not relevant for our purpose because we are only at the question of amendment of the decree and not now concerned with enforcement of the amended decree as against anybody who is not 'eo nomine' party. No such person has raised any contention also.

As the order is not tainted with any error of jurisdiction, illegality or material irregularity and the revision petition which is evidently mala fide and with an ulterior purpose is hereby dismissed with costs.

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