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Thankamma Vs. John

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Court : Kerala

Decided On : Mar-08-2006

Reported in : AIR2006Ker237; 2006(2)KLT221

Judge : K.T. Sankaran, J.

Acts : Code of Civil Procedure (CPC) , 1908 - Sections 11

Appeal No. : C.R.P. Nos. 57 and 438 of 1994

Appellant : Thankamma

Respondent : John

Advocate for Def. : Subhash Cyriac, Adv.

Advocate for Pet/Ap. : K.C. John, Sr. Adv. and; K.K. John, Adv.

Disposition : Petition dismissed

Judgement :
ORDER

K.T. Sankaran, J.

1. C.R.P. No. 57 of 1994 is filed by the judgment debtors 2 and 3 while C.R.P. No. 438 of 1994 is filed by some of the legal representatives of the deceased decree holder, the challenge in both the revisions being against the order in E.P. No. 95 of

1991 in O.S. No. 182 of 1977, on the file of the Munsiff's Court, Punalur.

2. The suit was filed by one Maria Nadanial for declaration of title and possession over the plaint schedule property and for consequential injunction restraining the defendants from interfering with the peaceful possession of, and enjoyment of the property by, the plaintiff or from trespassing upon the property or destroying its boundaries or committing any waste therein. The trial court decreed the suit declaring the plaintiffs possession over the plaint schedule property. A decree for injunction was also granted as prayed for. However, the prayer for declaration of title was not granted by the trial court on the ground that the plaintiff was not the absolute owner of the property and that there are other persons having co-ownership rights. The defendants challenged the judgment and decree of the trial court in appeal and Second Appeal unsuccessfully.

3. The legal representatives of the decree holder filed E.P. No. 95 of 1991 to execute the decree. The reliefs prayed for in the execution petition include the arrest and detention of defendants 2 and 3, to compel them to obey the decree, and to detain them in civil prison till they obey the decree. There is also a prayer to remove defendants 2 and 3 from the decree schedule property and to attach the properties of defendants 2 and 3 in order to compel them to obey the decree; and to sell the said properties, in case they fail to obey the decree.

4. The judgment debtors contended that the execution petition is not maintainable. It was also contended that an earlier execution petition, namely, E.P. No. 4 of 1986, was dismissed on the merits and also on the ground that all the legal representatives of the deceased decree holder were not impleaded. Therefore, the present execution petition is not maintainable. The description of the decree schedule property is incorrect. The decree holders have no manner of right over the decree schedule property. The second judgment debtor is residing in the property for the last several years and she has effected improvements worth Rs. 50,000/- in the property.

5. The executing court rejected the contentions raised by the judgment debtors and directed removal of judgment debtors 2 and 3 from the property, who refused to vacate the decree schedule property. The prayer for detaining the judgment

debtors in civil prison was not allowed by the executing court, which is the subject of challenge in C.R.P. No. 438 of 1994, by some of the legal representatives of the decree holder.

6. Sri. K.C. John, Senior Advocate, appearing for the judgment debtors contended that the decree is inexecutable against the revision petitioners in C.R.P. No. 57 of 1994. It is contended that the property belongs to C.S.I. Church. The Church was not made a party to the suit and no decree was passed against the Church. The C.S.I. Trust Association is the owner of the properties and only the trustees can represent the Church. The trustees were not-made parties to the suit and, therefore, the decree cannot be executed in respect of the properties belonging to the Church. It was also contended by Sri. K.C. John, Senior Advocate, that in view of the dismissal of E.P. No. 4 of 1986, the present execution petition is barred by res judicata.

7. Sri. Subash Cyriac, learned Counsel appearing for the decree holders, contended that the Church is bound by the decree as the Church was represented by its Vicar and Bishop in the suit. He contended that E.P. No. 4 of 1986 was dismissed on the ground that all the legal representatives of the deceased decree holder were not impleaded and on the ground that no evidence was adduced. The order in E.P. No. 4 of 1986 was not on the merits of the case and it is not a bar to the present execution petition, in which all the legal representatives of the decree holder were impleaded.

8. The cause title of the suit, in respect of the defendants, is extracted below, for a proper consideration of the contentions:

1. Mathai, Varuthundil Veedu, Cheeyodu, Pirvanthoor Village, Pathanapuram Taluk.

2. Thankamma, wife of 1st defendant of-do- ,

3. Vikary Rev: Father John, residing at S.T. Steephn C.S.I. Church Compound Puthuval, Palhanapuram Village, Pathanapuram Taluk, represented by C.S.I. Church, Piravanthoor.

4. Bishop Rev: Joseph, residing at Kottayam C.S.I. Bishop Palace, represented by the C.S.I. Church, Pirvanthoor.

The first defendant is the husband of the second defendant. The contention raised by the defendants in the suit is that the property belongs to the Church and that the Church is in possession and enjoyment of the property. It was also contended that the first defendant is the 'Upadesi' and the third defendant is the Vicar of the Church. The relevant portion of the judgment dealing with the contention raised by the defendants reads as follows:. While Mariya Rahal was in possession of the above 5 acres 41 cents, she gifted 50 cents from the western portion of it to Rev: P.K. Chandy for Adoor C.M.S. Mission as per document No. 580 dated 21st Annee 1090. There a building was put up where Church and School were functioning and while so on the eastern side and adjacent to the above 50 cents, C.M.S. Mission purchased 2 acres of land from Mariya Rahal. A convenient Church building was also constructed and the building in 50 cents dismantled and the 50 cents and 2 acres were annexed together as a single property putting up common boundaries and it is known by the name 'C.M.S. Mission Compound' and they are in enjoyment of the whole property. The rights and liabilities of C.M.S. Mission devolved on C.S .1. And thus the plaint schedule property and other properties belonging to C.M.S. Mission are with the absolute possession and enjoyment of C.S.I. Mission. Third defendant and defendants one and two together are residing in two buildings in the C.S.I. Mission Compound with the permission of the C.S.I. Mission. First defendant is the Upadesi and third defendant is the Vicar of C.S.I. mission Church at Piravanthoor. Messa William or plaintiff's son John or her deceased husband Nathanial had never enjoyed the plaint schedule property. Document No. 914 relied on by the Plaintiff is not pertaining to the plaint property. Document No. 2292 was created fraudulently including the plaint item, which document did not confer any right on the plaintiff....

9. The trial court held that the identity of the plaint schedule property was established and that the parties put forward rival claims in respect of the property identified by the Commissioner in the plan. The trial court also held that the plaintiff has established her possession over the property.

10. C.R.P. No. 57 of 1994 is filed by Thankamma, the second defendant, and C.S.I. Church, Piravanthoor, Pathanapuram Taluk, represented by Rev. Fr.Felix Mathew. The description of the defendants in the judgment and decree would indicate that C.S.I. Church was a partv to the suit and the Church was represented by the Vicar and Bishop, who put forward the title and possession of the Church in respect of the properties.

11. The question is whether the C.S.I. Church, who is the second petitioner in C.R.P. No. 57 of 1994, can raise a contention that the decree is inexecutable in the facts and circumstances mentioned above. For dealing with this contention, let us assume that the Church was not a party to the suit. Explanation VI to Section 11 of the Code of Civil Procedure provides that where persons litigate bona fide in respect of a public right or of a private right claimed in common for themselves and others, all persons interested in such right shall, for the purposes of Section 11, be deemed to claim under the persons so litigating. Explanation VI explains the expression 'between parties under whom they or any of them claim' occurring in Section 11 of the Code of Civil Procedure. If Explanation VI is attracted, the bar of res judicata under Section 11 would apply. If the Church cannot put forward the contentions raised by the defendants in the present suit, in a suit instituted by or against the Church subsequently, on the ground that the bar of res judicata applies, it is a sure indication that the Church is bound by the decree and that the decree is executable against it. The contention of non-executability raised is only on the ground that the Church was not a party to the suit.

12. The other question which arises for consideration is whether Explanation VI to Section 11 would be attracted if the Church as such was not made a party to the suit, but only the Vicar and Bishop were the parties to the suit, who put forward the title and possession of the Church in respect of the suit property. In Singhai Lal Chand Jain v. Rashtriya Swayam Sewak Sangh, Panna and Ors. : [1996]2SCR739 , the Supreme Court dealt with a case where the decree passed in a suit for eviction on title filed against the Rashtriya Swayam Sewak Sangh through its Manager, President and Headmaster of a School, which is also a member of the Sangh, was contended to be a nullity and inexecutable. That contention was raised at the instance of the RSS Sangh, on the ground that the

defendants in the suit were not competent to represent the Sangh, the Sangh being not a registered body, but composed of several members. The suit was not filed in a representative capacity against the defendants. The Supreme Court held thus:

10. Therefore, the respondents now claim under the same title in the previous suit and thereby they are bound by the decree. The doctrine of res judicata evolved the public policy to prevent trial of an issue twice over. It clearly applies to the facts of the case. Accordingly, they are precluded to raise objections on behalf of the Sangh by filing the objections.

xxx xxx xxx.13. Thus it could be held that the Sangh having been duly represented in the previous proceedings and conducted the litigation on behalf of the Sangh bona fide and were unsuccessful in the suit, no one on behalf of the Sangh can lay any objection in the execution nor plead nullity of the decree. The doctrine of res judicata prohibited the members of the Sangh to obstruct the execution of the decree. The decree of ejectment binds every member of the Sangh and, therefore, the appellant is entitled to have the decree executed and possession taken.

The Supreme Court in RSS Sangh's case relied on the decision in Surayya Begum (Mst.) v. Mohd, Usman : [1991]2SCR517 , wherein it was held:

The principle of representation of the interest of a person, not impleaded by name in a judicial proceeding, through a named party is not unknown. A karta of a Joint Hindu Family has always been recognised as a representative of the other members of the Joint Hindu Family, and so has been a trustee.

13. In Amrit Sagar Gupta and Ors. v. Sudesh Behari Lal and Ors. : [1969]3SCR1002 , the Supreme Court held:

6. It is not necessary, in order that a decree against the manager may operate as res judicata against coparceners who were not parties to the suit that the plaint or written statement should state in express terms that he is suing as manager or is being sued as a manager. It is sufficient if the manager was in fact suing or being sued as representing the whole family. See Lalchand v. Sheogobind ILR 8 Pat.

788 : AIR 1929 pat. 141); Ram Kishan v. Ganga Ram ILR 12 Lah 428 : AIR 1931 Lah. 559; Pirthipal Singh v. Rameshwar ILR 2 Luck 288 : AIR 1927 Oudh 27; Surendranath v. Sambhunath ILR 55 Cal. 2l0 : AIR l927 Cal 870.

7. The suit by or against the manager will be deemed to be one brought by him or against him as representing the family if the circumstances of the case show that he is the manager of the family and the property involved in the suit is family property, see Mulgund Co-operative Credit Society v. Shidlingappa Ishwarappa ILR (1941) Bom. 682 : AIR 1941 Bom. 385. See also Venkatanarayana v. Somaraju AIR 1937 Mad. 610. It is not necessary, where the manager is the plaintiff, that the plaint should state in distinct terms that he is suing as manager or where he is the defendant that he is being sued as manager. A Karta can represent, the family effectively in a proceeding though he is not named as such, see Mani Sahoo v. Lokanath Mishra : AIR1950 Ori140 .

14. To apply Explanation VI to Section 11 of the Code of Civil Procedure, as held in RSS Sangh's case, it is necessary that the interest of the person concerned has really been represented by the other persons who were made parties to the suit and that the former's interest has been looked after in a bonafide manner by the other. If there is any conflict of interest between the persons who litigate and the persons on whose behalf they litigate or if there is fraud or collusion or if there is any malafide neglect to defend the case, the person who litigated on behalf of the other cannot be considered as a person who litigated a claim in common for himself and another. There is no case for the judgment debtors in C.R.P. No. 57 of 1994 that they were not putting forward the rights of the Church. On the other hand, the stand taken by the judgment debtors would clearly indicate that they even now claim the property in question to be the property of the Church. There is no case for the second petitioner in C.R.P. No. 57 of 1994, namely, the C.S.I. Church represented by Rev. Fr. Felix Mathew, that there was any collusion between the plaintiff in the suit and the Vicar and Bishop of the C.S.I. Church, who were shown as defendants 3 and 4 in the suit. There is also no case for the contesting respondents in the execution petition that the right, title and interest put forward by the defendants in the suit are different from those being put forward by the Church. There is no conflict of interests between the defendants in the suit and

the Church. There is also no case that the defendants in the suit were negligent in prosecuting the suit. It is to be noted that an Appeal and Second Appeal were filed by the defendants challenging the judgment and decree of the trial court, which would clearly indicate that there was no neglect on the part of the defendants in the litigation. The irresistible conclusion is that Explanation VI to Section 11 is attracted. If so, the judgment debtors or any other person representing the Church are not entitled to contend that the decree is inexecutable.

15. I have held in paragraphs 11 to 14 above that Explanation VI to Section 11 is attracted, on the basis of the contention raised by the revision petitioners in C.R.P. No. 57 of 1994, that the C.S.I. Church as such was not a party to the suit and that the persons who were made defendants in the suit could not represent the Church. On the question whether the Church was a party to the suit, I am of the view that it was. The cause title in the judgment showing Vicar and Bishop, represented by C.S.I. Church, is evidently a mistake or misdescription. The Vicar or Bishop could not be represented by the Church. On the other hand, the Church could be represented by the Vicar and the Bishop. Therefore, I hold that the C.S.I. Church was a party to the suit and the Church was bound by the decree passed therein. The Church is not entitled to raise a contention that the decree is inexecutable.

16. The contention raised by the judgment debtors that the present execution petition is barred in view of the dismissal of E.P. No. 4 of 1986 is unsustainable. When the execution petition was dismissed on a technical ground that all the legal representatives of the decree holder were not made parties to the execution petition, a fresh execution petition is not barred. The liability under the decree is a continuing liability and it can be executed at any time. More over, there was no decision on the merits in E.P. No. 4 of 1986.1 hold that the present execution petition is not barred by res judicata in view of the order in E.P. No. 4 of 1986.

17. The other contention raised by the judgment debtors is that the property is not properly identified and, therefore, the execution petition is not maintainable. The question of identity was considered by the trial court and it was held that the identity of the property in dispute is well established. The judgment debtors are not

entitled to put forward a contention regarding identity of the property in execution. When that question was considered at the trial stage and the court held that the identity is established, it is not necessary to establish the identity of the immovable property, at the execution stage again. Once identity of the property is established at the trial stage, that would enure to all the subsequent stages of the litigation, unless in extreme cases, where the nature of the property has undergone a change requiring fresh identification, the change in the nature of the property being caused not due to any act of the judgment debtors or persons claiming under them.

18. For the aforesaid reasons, I hold that there is no merit in CR.P. No. 57 of 1994 and it is accordingly dismissed without costs. In so far as C.R.P. No. 438 of 1994 is concerned, the executing court held, on evidence, that the decree holders have not established any specific instance of they being effectively prevented by any of the judgment debtors from entering into the decree schedule property. It was held that the present 'parson' of the Church was shown as the third judgment debtor and his possession of the petition schedule property is in continuation of the possession of his predecessor. The executing court held that the decree holders failed to adduce any evidence as to who prevented them from entering into the property. The executing court held that though the decree was willfully disobeyed, it is not established whether it was by the third judgment debtor or his predecessor. Cogent reasons have been stated by the executing court to disallow the prayer for detaining the judgment debtors in civil prison for disobeying the decree. The conclusion was arrived at, on an analysis of the oral evidence in the case and taking into account the facts and circumstances of the case. It cannot be said that the finding is without jurisdiction or illegal. Therefore, I hold that C.R.P. No. 438 of 1994 lacks merit and it is accordingly dismissed without costs.

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