

**Thomas Vs. Saidalavi**

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**Court :** Kerala

**Decided On :** Mar-28-2005

**Reported in :** 2005(2)KLT724

**Judge :** K.R. Udayabhanu, J.

**Acts :** [Kerala Civil Courts Act, 1957](#) - Sections 13(1); ;Kerala Civil Courts (Amendment) Act, 1984; ;Code of Civil Procedure (CPC) - Sections 21(2) - Order 6, Rule 17

**Appeal No. :** W.P.(C) No. 32408 of 2003

**Appellant :** Thomas

**Respondent :** Saidalavi

**Advocate for Def. :** A.P. Chandrasekharan,; Prabha R. Menon and ; M. Krishn

**Advocate for Pet/Ap. :** V.R. Venkitakrishnan, Sr. Adv.,; S. Ananthakrishnan and;

**Disposition :** Petition allowed

**Judgement :**

**K.R. Udayabhanu, J.**

1. Whether an appeal from the judgment of the Munsiff would lie straight away to the High Court bypassing the Court of the District Judge is the problem posed in

the Writ Petition. The writ petitioners/appellants have roundly flayed the decision arrived at by the District Judge holding that it would not only as a trifle misleading but also as absolutely unsound. The District Judge, after detailed probing and deciphering of the issue that came up, ordered to return the appeal memorandum filed over the decision of the Munsiff, for presentation before the High Court direct.

2. The course of sequence of the events in the matter is as follows: The original suit, i.e., O.S.No. 49/1982 for the relief of perpetual injunction with respect to the plaint schedule property was instituted in the Munsiff s Court on 3.3.1982 with valuation shown as Rs. 150/-. Subsequently alleging trespass effected, application for amendment in order to insert the prayer for recovery of possession with valuation modified to Rs. 12,960/- was filed. The Trial Court allowed the application. The matter was taken up before the High Court by the defendant but the same was turned down. The pecuniary jurisdiction of the Court of the Munsiff on the date of filing of the suit was Rs. 5000/- and on 17.3.1987, i.e. the date of filing of the application for amendment was Rs. 15,000/- (with effect from 6.9.1983). The suit was tried and disposed of by the Munsiff on 26.2.1988. The matter was taken up in appeal before the District Court and the District Judge made over the same to the Subordinate Judge's Court. The Subordinate Judge heard the appeal and allowed the same on 21.8.2001 remanding the suit to the Trial Court itself for fresh disposal. The order of the Subordinate Judge was challenged before the High Court as C.M.A.No. 295/2001. The C.M.A. was disallowed and the remand order of the Subordinate Judge affirmed. Incidentally, the C.R.P.No. 2506/2001 filed in the High Court over that order allowing alteration in the plaint schedule was also disallowed. The issues involved in the suit were reconsidered by the Munsiff and disposed of on 17.2.2003. It is against the above order that the plaintiff who lost, filed the appeal before the District Judge.

3. During the period of the initial institution of the suit and the final disposal of the same by Trial Court i.e., a span of more than two decades (the suit was dismissed on 17.2.2003), the pecuniary jurisdiction of the different levels of the hierarchy of courts underwent substantial changes. At the time of the institution of the suit as already noted, the pecuniary jurisdiction of the Munsiff Court was only upto Rs. 5000/-. As per Section 13(1) of the [Kerala Civil Courts Act, 1957](#), at the time the

appellate jurisdiction from original decrees was up to Rs. 10,000/- in the District Court. The same was again raised to Rs. 25,000/- by the Amendment Act, 1984 with effect from 6.1.1984 and again lifted to Rs. 2 lakhs by the Amendment Act 6/96 with effect from 27.3.1996. Hence, as the time of the filing of the suit involved in the instant proceedings, i.e. on 3.3.1982, the pecuniary jurisdiction of the Munsiff's Court was just Rs. 5000/- and appellate jurisdiction of the District Court was up to Rs. 10,000/-. But it so happened, as already noted above, that the suit was subsequently amended as per application filed on 17.3.1987 enhancing the valuation to Rs. 12,960/- and the same was tried and disposed of by the Munsiff. Of course, on the date of application for amendment, the Munsiff's Court had jurisdiction up to Rs. 15,000/- and the District Court had also appellate jurisdiction upto Rs. 25,000/-.

4. The District Court held that the decisive date to locate the forum of appeal is the date of filing of the suit. Hence as on 3.3.1982, the date of filing of the suit the pecuniary limit of the regular Appellate Court i.e., the District Court was only Rs. 10,000/-, and the valuation of the suit was Rs. 12,960/-, the appeal should be filed in the High Court, the District Judge held. The fact that the Munsiff who had then i.e., on the date of filing of the suit, only pecuniary jurisdiction up to Rs. 5000/- tried the suit having a valuation of Rs. 12,960/- and the Subordinate Judge who had coordinate jurisdiction in the matter along with the District Judge entertained and disposed of the appeal was given a short shrift and the appellant was directed to present the appeal over the decree of the Munsiff straight at the High Court. The writ petitioners have reviled the above order of the District Judge as based on impermissible and if logical inferences as the upshot of the discussion of the District Judge amounts to depriving the appellants an additional forum of appeal as the District Court has been bypassed. The District Court has relied on the decision reported in *Clara v. Augustine*, 1984 KLT 377, which was followed in *Kunnappadi Kalliani v. Lekharaj*, 1996 (2) KLT 106 in support of the proposition that the institution of the suit carries with it the implication that all rights of appeal then in force are preserved to the parties till the rest of the career of the suit and that the same can be taken away only by a subsequent enactment if it so provides expressly or by necessary intendment and not otherwise. Hence, the logic is that the forum of appeal would stand predetermined with respect to the pecuniary

appellate jurisdiction of the District Court as on the date of filing of the suit. In the instant case, the jurisdiction of the District Court in appeal was up to Rs. 10,000/- as on 3.3.1982, the date of filing of the suit. Hence, as the valuation of the suit, i.e. Rs. 12,960/- exceeded Rs. 10,000/- only the High Court has got jurisdiction to entertain the appeal, it was held.

5. The proposition that in every matter so far as amendments incorporated under Order VI, Rule 17 are concerned, the same would relate back to the date of the suit was affirmed. It was also held relying on the decisions in Sreedharan v. P.S. Job, 1968 KLT 479, Balasubramanian v. Narayanan Nair, 1985 KLT 374 and Suri Films v. Govinda Prabhu, 1987 (2) KLT 145, that in a case where the sought after amendment of valuation of the suit happened to exceed the pecuniary jurisdiction, the proper procedure is to return the plaint for presentation in the proper Court in case the amendment is allowed. The fact that the application for amendment contained the prayer for the valuation exceeding that of the Munsiff's Court will not deprive it the jurisdiction to allow or decline the application. The contention that in the case of subsequent trespass into the property as was the case in the impugned suit, the same is a new cause of action and that the plaint must be deemed to have been instituted on the date of the application for amendment was turned down.

6. Shri. V.R. Venkitakrishnan, Senior Counsel appearing for the writ petitioners in his bid to expose the alleged fragility in the reasoning of the Court below has set up the following contentions: (1) So far as the reliefs of recovery of possession and declaration are concerned, the suit should be deemed to be filed on the date of the application for amendment was made and not on the date of filing of the suit; (2) regarding the objections as to the pecuniary jurisdiction are concerned, the same are to be entertained only if taken up at the earliest possible opportunity and also unless there has been a consequent failure of justice vide; Section 21(2) C.P.C.; (3) Objection as to the pecuniary jurisdiction can be waived by the party and is capable of being cured by acquiescence; and (4) The Civil Courts Act, 1957 never ever conceived filing of appeals to the High Court right away and directly from the orders of the Munsiff, vide Section 13(1) of the Civil Courts Act.

7. It was argued that so far as the reliefs of declaration and recovery of possession are concerned, the suit is to be treated as filed only on the date of application for amendment was made. The above submission was made placing reliance on the ruling of the Supreme Court in Sampath Kumar v. Ayyankannu, AIR 2002 SC 3369. The observation of the Supreme Court is that it cannot be said that in all cases the amendment will relate back to the date of filing of the suit, and that it is open to the Court ordering amendment to specify that it will not date back to the day of presentation of the plaint (restated by R. Bhaskaran, J. in Subramanian v. Aboobaker Koya, 2003 (3) KLT 819. I find that the Supreme Court has only authorised the courts allowing the amendment to restrict the reach of the amendment to the date of filing of the petition in suitable cases depending upon the demands of justice of the situation, and not propounded as an absolute rule. In the instant case, after allowing amendment for enhancing valuation to Rs. 12,960/-, the Munsiff would not be in a position to return the plaint as at that point of time, the Munsiff was having pecuniary jurisdiction upto Rs. 15,000/-. The counsel has also pointed out that in Balasubramanian's case (op.cit.) (which was relied on by the Court below to hold that the right procedure is to return the plaint for presentation before the proper Court after allowing the amendment) the Court had observed that on the date of the application for amendment the pecuniary limits of the jurisdiction of the Munsiff stood raised upto Rs. 15,000/- and hence the Munsiff is competent to adjudicate the same. The facts of the above case, I find, are on all fours with that of the present one. In the above set up it is only proper to hold that the Munsiff was having jurisdiction to try and dispose of the case as on the date of application for the amendment enhancing valuation to Rs. 12,960/- the pecuniary jurisdiction of the Munsiff then extended up to Rs. 15,000/-.

8. The contention of the appellant is further reinforced on account of the provision in Section 21(2) C.P.C. as per which the dispute as to the pecuniary limits of the jurisdiction and the competence of the Court has to be taken up at the earliest opportunity. In the present ease, not only the issue was not contested but the lower Court as well as the appellate Court determined the dispute without any objection being raised by any of the parties. In fact, the Court of the Munsiff entertained the suit twice, i.e., in the first round the District Court admitted the appeal, and made over the same to the Subordinate Judge's Court and the

Subordinate Judge after hearing, remanded the matter to the Trial Court vide; judgment in A.S.No. 38/98; and also after the remittal. As already noted, the order of remand and orders on the interlocutory applications were taken up before the High Court. In the High Court also no objection as to the pecuniary jurisdiction was raised and hence, Section 21(2) C.P.C. forbid any attempt to take up the same again.

9. Objections as to the pecuniary jurisdiction as distinct from the inherent lack of jurisdiction which goes to the root of jurisdiction of the Court stands on a different footing. It is well-settled that such objections as to the territorial or pecuniary jurisdiction can be waived by a party and is capable of being cured by acquiescence which is not the case so far as the inherent lack of jurisdiction is concerned (Bharat Petroleum Co. Ltd. v. P.J. Pappu, AIR 1966 SC 634).

10. The most patent incongruity which was not brought to the notice of the Court below is the provision in Section 13(1) of the [Kerala Civil Courts Act, 1957](#) which provided since its inception that appeals from decrees and orders of the Munsiff s Court would lie only to the District Court. The finding that the appeal from the Court of Munsiff would lie to the High Court straight, really tilt the well-crafted hierarchical set up envisaged in the statute and upset the Conventional parameters of the system of appellate reliefs. The legal position as comprised in Section 13(1) of the Civil Courts Act is really unequivocal and the stance of the District Judge indefensible. Hence, the order in A.S.No. 91/2003 of the District Court directing the return of the appeal for filing before the High Court is liable to be quashed as the Kerala Civil Courts Act does not envisage a situation of appeals from the decrees of the Court of Munsiff lying straight to the High Court.

11. The other contention made by the writ petitioners that the decree of the Munsiff is a nullity as the Court was devoid of authority as the valuation exceeded the pecuniary jurisdiction on the date of filing of the suit cannot be sustained for the reasons already mentioned above.

In the result, the Writ Petition is allowed. The District Judge is directed to take back the appeal into file, hear and dispose of the same as per law; and at the earliest as the original suit is one filed in the year 1982.

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