

Thomas Vs. Pathrose Abraham

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Court : Kerala

Decided On : Jun-30-2005

Reported in : AIR2005Ker252; 2005(3)KLT572

Judge : S. Sankarasubban, J.

Acts : [Code of Civil Procedure \(CPC\) , 1908](#) - Order 1, Rule 8 and 8(3)

Appeal No. : C.R.P. No. 272 of 2004

Appellant : Thomas

Respondent : Pathrose Abraham

Advocate for Def. : K.K.M. Sherif and A.A. Ziyad Rahman, Advs.

Advocate for Pet/Ap. : S. Sreekumar,; R. Rajesh Kormath,; A. Meena,;

Disposition : Petition dismissed

Judgement :

ORDER

S. Sankarasubban, J.

1. Petitioner is the plaintiff in O.S. No. 364 of 1997 of the Additional Sub Court, Kottayam. The suit was filed by the plaintiff against defendants 1 to 3, who are respondents 3 to 5 in the revision for a declaration of title and possession in

respect of the plaint schedule properties and for consequential injunction restraining the defendants from obstructing the plaintiff from enclosing plaint item 1 upto northern boundary of the third defendant's property.

2. According to the petitioner, on the southern side of the plaint schedule property, the property owned by the third defendant is situated. Both these properties are separated by an old stone kayyala put up on the northern boundary line of the third defendant's property. There is a mud wall on the southern side of the plaint schedule property and some space is left on its southern side as kottapadu for maintenance of the mud wall. The kottapadu also forms part of the plaint schedule property. The suit was filed when the defendants attempted to prevent the plaintiff from enclosing the plaint schedule property upto the boundary of the third defendant's property. The suit was filed against the defendants in a representative capacity.

3. There was a publication in the paper under Order I Rule 8. The suit was decreed ex pane. According to the plaintiff, a Commissioner was appointed to implement the judgment and at that time, present respondents 1 and 2 filed two petitions to implead them and to set aside the ex parte under Order I Rule 8(3). This was objected to by the plaintiff. But the court below by the impugned order, allowed the applications. Hence, this revision is filed.

4. At present, we are only concerned with the question whether the court below was correct in impleading respondents 1 and 2. The contention taken by the plaintiff is that since the suit has been disposed of, respondents 1 and 2 cannot be impleaded. On the other hand, learned counsel for respondents 1 and 2 contended that the ex pane decree can be set aside only after impleading respondents 1 and 2. Order I Rule 8(3) enables the plaintiff or defendant to be impleaded. In *Swaminatha Mudaliar v. Kumaraswami Chettiar and Ors.*, A.I.R. 1923 Madras 472, it was held that 'In a representative suit however like the present, all the members of the class are in effect parties to the suit and any of them is entitled to bring himself on the record as an actual party'. In the particular case, since the decree was ex pane, the petitioners wanted to implead themselves. According to them, a fraud has been practised by the plaintiff and

defendants 1 to 3.

In the above view of the matter, I am of the view that the court below was correct in allowing the petition for impleading respondents 1 and 2. Civil Revision Petition is dismissed.

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