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Radhakrishnan Vs. Priya S. and ors.

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Court : Kerala

Decided On : Sep-22-2009

Reported in : 2009(3)KLJ549

Judge : S.S. Satheesachandran, J.

Acts : Code of Civil Procedure (CPC) - Sections 16 and 20

Appeal No. : C.R.P. No. 66 of 2009

Appellant : Radhakrishnan

Respondent : Priya S. and ors.

Advocate for Def. : V. Ajayakumar,; T.M. Chandran, Advs.; N.N. Sugunapalan

Advocate for Pet/Ap. : G.S. Reghunath, Adv.

Judgement :
ORDER

S.S. Satheesachandran, J.

1. The revision is directed against the order dated 20-12-2008 in O.S. No. 120 of 2002 passed by the Principal Munsiff, Trivandrum over Issue No. 4 raised in the suit as to whether the court is having Jurisdiction to try the suit. The learned Munsiff has held, after hearing both sides, that the court has jurisdiction to try the

suit, negativing the contentions raised by the defendants that in view of the agreement between the parties the suit can be filed only before the courts at Kochi and not in Trivandrum. Propriety and correctness of the finding entered on jurisdiction by the learned Munsiff is challenged in the revision by the first defendant in the suit.

2. I heard the counsel on both sides. Learned Counsel for the petitioner/Ist defendant contended that as per Clause 19 of the agreement entered by the parties only the court at Kochi has got jurisdiction to entertain by the parties only the court at Kochi has got jurisdiction to entertain the suit, and so much so, the order passed by the court below on Issue No. 4 settled in the suit is not correct and liable to be set aside. On the other hand, learned Counsel for the first respondent/plaintiff in the suit contended that there is not merit in the challenges raised against the finding entered by the court below on Issue No. 4 that the court at Trivandrum has jurisdiction to try the suit.

3. Annexure A2 is the copy of the plaint in the suit. Suit has been filed for a declaration that the first respondent/plaintiff is entitled to conduct the business, a retail petrol outlet, the dealership of which was previously carried under the name of M/s. Radhakrishnan and Brothers. A decree of perpetual prohibitory injunction was also sought in the suit against defendants 3 to 5 from taking over the business of the petroleum dealership business carried in the plaint schedule premises and as against the defendants 1 and 2 from causing any disturbance of the above business being run by the plaintiff in the name and style of M/s. Radhakrishnan and Brothers. The petroleum outlet in respect of which declaration of right to conduct that outlet was sought for by the plaintiff with prohibitory injunction against the defendants from interfering her right to conduct such business, was described as the plaint schedule property. Though it was urged before me by the learned Counsel for the first respondent/plaintiff the suit has been filed with regard to the right of the plaintiff over the conducting of the petroleum outlet seeking injunction against the defendants from interfering with her enjoyment thereof and so much so, the proviso to Section 16 of the Code of Civil Procedure is applicable to such a suit in determining the jurisdiction, I am not impressed by such submissions. Similarly, the challenge to jurisdiction of the court at Trivandrum canvassed by the

defendants under Clause 19 of the agreement, a copy of which is produced as Annexure Al, also does not appear to have much merit in determining the question whether the court in which the suit has been instituted has territorial jurisdiction to entertain such suit. Though the reliefs have been couched in a manner as if the dispute related to the right or entitlement to run a petrol outlet and also for prohibitory injunction against the defendants interfering with such right of the plaintiff, it has to be examined with reference tot he allegations raised in the plaint whether any interest in the plaint schedule immovable property having an extent of 22 cents comprising the petrol outlet is emerging for consideration and adjudication by the court. In this context, it is appropriate to take note of the allegations in paragraph 15 of the plaint which read thus:

The plaintiff got reliable information on 7-1-2002 that the 1st and 2nd defendants are making preparations to cause disturbances to the peaceful conduct of the BPCL Petrol pump business being operated by the plaintiff at Kilimanoor in the plaint schedule premises. The defendants 1 and 2 may be restrained by a decree of perpetual injunction from doing the same.

I am not adverting to the merit of the case canvassed by the plaintiff to sustain the suit claim and the reliefs sought thereunder nor the contentions of the defendants resisting such claim. Before the court proceed to examine any of the disputed questions involved in the case, the court has satisfy that it has jurisdiction to entertain the suit. In this context, it has to be taken note that the plaintiff among the reliefs sought, has also canvassed for a decree of perpetual prohibitory injunction against the defendants from disturbing and interfering with the conducting of the petrol outlet in die plaint scheduled property.

4. The trial court has to examine whether the decree of injunction sought for is in respect of an immovable property and if so, the applicability of Section 16(d) of the Code of Civil Procedure in determining the territorial jurisdiction as to where the suit has to be instituted. If any interest over me immovable property is involved in a suit where a relief of injunction is claimed, needless to point out, such a has to be instituted within the territorial jurisdiction of the court where it is situate. A Division Bench of this Court in Vas Pharmaceuticals (India) Ltd. v. State of Kerala ILR 2006

Ker 483 gives an insight as to the ambit of the right or interest in the immovable property mentioned in Clause (d) of Section 16 of the Code of Civil Procedure. The learned Counsel for the first respondent/plaintiff contended that the proviso to Section 16 of the C.P.C. is applicable and so much so, since the defendants are permanently settled at Trivandrum by virtue of Section 20 of the C.P.C. the suit is entertainable in the court at Trivandrum. Even assuming that the proviso enables the entertainability of the suit to obtain relief respecting, or compensation for wrong to, immovable property by instituting such suit at the place where the defendant is residing, as covered under Section 20 of the C.P.C, it has to be pointed out that two essential conditions are to be satisfied for the applicability of the proviso. The proviso is applicable only if two conditions exist, namely, (1) that the property is held by the defendant himself or by someone oh his behalf and (2) that the relief sought can be entirely obtained through his personal obedience. Here in the present case, the immovable property involved in the plaint schedule with the right to conduct the petroleum outlet situate therein is claimed by me plaintiff as of right and not held by or on behalf of the defendants. That itself is sufficient to hold that the interpretation of the proviso in the manner suggested by the counsel is inapplicable to render jurisdiction to the court where the suit has been instituted.

5. Setting aside the order impugned in the revision, I direct the court below to examine the matter afresh as to whether it is having territorial jurisdiction to entertain the suit and pass appropriate orders taking note of the observations made above and in accordance with law, within a period of one month from the date of receipt of a copy of this order.

Revision is disposed as above.

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