

Prabhakaran Vs. Sajini

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Court : Kerala

Decided On : Dec-08-2009

Reported in : 2010(1)KLT53

Judge : S.S. Satheesachandran, J.

Acts : [Code of Civil Procedure \(CPC\) , 1908](#) - Order 11, Rule 21 - Order 43, Rule 1; ;[Constitution of India](#) - Article 227

Appeal No. : W.P.(C). No. 30861 of 2009

Appellant : Prabhakaran

Respondent : Sajini

Advocate for Def. : K.M. Firoz, Adv.

Advocate for Pet/Ap. : S. Nirmal, Adv.

Judgement :

S.S. Satheesachandran, J.

1. Writ Petition is filed seeking the following reliefs:

i) To issue a writ of certiorari calling for the records of Ext. P1 and quash the original of the same.

ii) To issue a writ, order or direction, directing the Sub-Court, Kozhikode to afford another opportunity to the petitioner to comply with the order dated 26.08.2008 to answer the interrogatories.

2. Petitioner is the first defendant in O.S. No. 100 of 2007 on the file of the Sub-Court, Kozhikode. Suit is one for partition and the first respondent is the plaintiff and other respondents, co-defendants in the suit. After the written statement was filed by the petitioner/first defendant resisting the suit claim first respondent/plaintiff moved an application to serve interrogatories on the first defendant to elicit answers to some of the questions raised. Ext.P3 is the copy of that application to which the petitioner/first respondent filed Ext.P4 objections. Negating the objections raised by the petitioner, court below directed him to answer the interrogatory. Since interrogatories were not answered as directed, on the application moved by the first respondent/plaintiff to strike off the defence, learned Munsiff after hearing both sides passed Ext.P 11 order striking out the defence of the first petitioner/defendant for non-compliance of the order issued to answer the interrogatories under Ext.P3 application. Ext.P 11 is the copy of that order. Propriety and correctness of P11 order is challenged in the Writ Petition invoking the supervisory jurisdiction vested with this Court under Article 227 of the [Constitution of India](#).

3. I heard the counsel for the petitioner and also the first respondent/plaintiff.

4. A preliminary objection was raised by the learned Counsel for the first respondent that the impugned order falls under Order XI Rule 21 of the Code of Civil Procedure from which an appeal is entertainable under Order XLIII Rule 1(f) of the Code of Civil Procedure. That being so, according to the learned Counsel, the Writ Petition filed invoking the supervisory jurisdiction under Article 227 of the [Constitution of India](#) is not entertainable. True, when an alternative efficacious remedy is available by way of an appeal, normally, this Court will be slow to interfere with the order passed by a subordinate court. However, where there is glaring jurisdictional infirmity in the order of the subordinate court which is challenged by way of a Writ Petition invoking the supervisory jurisdiction of this Court nothing prevents this Court, even the availability of an alternative efficacious

remedy of an appeal, to examine the correctness and propriety of that order and pass appropriate orders which are necessary to advance the ends of justice. Perusing the impugned P11 order passed by the court below it is seen that the court below has not taken into account the circumstances under which the case of the plaintiff or of defence of the defendant can be struck off for the reason of noncompliance of the order directing for furnishing answers to interrogatories. In Barber Sewing Machine Co. v. Tritok Nath Mahajan : AIR 1978 SC 1436 the Apex Court has held that 'an order striking out the defence under Order XI Rule 21 should not be made unless there has been obstinacy or contumacy on the part of the defendant or wilful attempt to disregard order of the court, to produce the documents'. It is well settled that the stringent provisions of Order XI Rule 21 should be applied only on extreme cases where there is wilful and deliberate default on the part of the defendant to disregard the orders of the court. Merely for the reason that an order had been passed on an application of one or other party for serving interrogatories on the other, and failure of the party who had been directed to answer such interrogatories the court cannot pass an order to strike out his defence. The court has to examine whether there was obstinacy amounting to wilful and deliberate disobedience of the order of the court which warrants striking of his defence. No such enquiry or finding thereof has been entered by the learned Munsiff while passing Ext. P11 order. That being so, Ext.P11 order, no doubt suffers from jurisdictional infirmity and it is liable to be set aside. Then examining Ext.P3 application of the first respondent/plaintiff it is seen what she has sought for by way of interrogatories is details of the transactions which are alleged to have been carried out by the first defendant in respect of the plaint properties with particulars of the documents and also the names of the vendees to whom such properties had been transferred. In Ext.P4 objections the first defendant had contended that all the vendees are in the party array, and also the documents have been produced by them, and nothing more remains for him to be furnished in answer to the interrogatories. It appears, when the plaintiff moved an application to strike out the defence of the first defendant for noncomplying with the order to serve interrogatories, the learned Additional Sub Judge failed to examine the question whether the interrogatories sought for deserved to be answered by the defendant in the light of the objections canvassed by him that all the vendees are

in the party array and they have produced their documents. Setting aside Ext.P11 order I direct the learned Sub Judge to consider Ext.P10 application afresh taking note of the observations made above and dispose the application in accordance with law.

Writ Petition is disposed of as above.

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