

Sheeba and Others Vs. Sasidharan and Another

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Court : Kerala

Decided On : Feb-06-2012

Judge : S. S. Satheesachandra

Appeal No. : CRP. NO. 550 OF 2006

Appellant : Sheeba and Others

Respondent : Sasidharan and Another

Judgement :

1. Defendants 6 to 8 in O.S. No 437/03 on the file of the Principal Sub Court, Irinjalakuda, have filed this revision, challenging the order dated 6.6.2006 in I.A. No. 346/06 passed by the learned Sub Judge.

2. The above suit is one for partition and it was instituted by the 1st respondent and another as plaintiffs. However, later, the co-plaintiff with the 1st respondent was transposed as the additional 8th defendant in the suit. Suit property having an extent of 75 cents, was valued in the plaint at Rs. 7,50,000/-, and claiming to be joint possession with the other sharers, fixed court fee in respect of 2/8 shares of the plaintiffs was paid under Section 37(2) of the Kerala Court Fees and Suits Valuation Act, 1959 (hereinafter referred to as “**the act**”). After the transposition of the 2nd plaintiff as additional 8th defendant in the suit, the valuation of the share of the remaining plaintiff - the 1st respondent, even on the valuation made in the plaint, is much less than the pecuniary jurisdiction of the Sub Court, to continue

with the suit before that court was set forth by the petitioners/ defendants 6 to 8 in the suit, for return of the plaint contending that the Sub Court has no more jurisdiction to proceed with the suit. An application moved by the petitioners (defendants 6 to 8) as I.A.No.346/06 contending as aforesaid, it is stated, was turned down by the learned Sub Judge; and , its legality and correctness is assailed in this revision.

3. In the revision, the plaintiff and 4th defendant alone have been made parties as respondents. Though the 1st respondent/plaintiff was served he has elected to remain absent. Notice to the 2nd respondent/4th defendant has not been effected, as steps thereof were not taken. So, dispensing with notice to the 2nd respondent, and also the non-impleadment of the other parties in the suit as respondents in the revision, which is not of any significance in considering the merit of the order impeached, I heard the learned counsel for the petitioners on the merits of the revision. 4. Pointing out that even where fixed court fee is payable under sub-section (2) of Section 37 of the Act, in which partition is claimed by the plaintiffs claiming joint possession with the other shares, jurisdiction of the court to maintain the suit thereof depends upon the share value of the plaintiff/s, the learned counsel contended that on the admissions made in the plaint after the transposition of the co-plaintiff (2nd plaintiff) as additional 8th defendant in the suit, the Sub Court, before which the plain was presented, has no jurisdiction. Share value of the sole plaintiff, after transposition of co-plaintiff as a defendant, is less than Rs. 1 lakh. In such circumstances, the court below has to return the plaint for presentation before the proper court, is the submission of the counsel. The learned counsel would submit that the principles to be followed when an amendment to the plaint affects the valuation of the suit has to be followed in the case of transposition of one or more plaintiff/s as defendants. The decisions rendered in **Balasubramaniam versus Narayanan Nair (1985 KLT 374)** and **Sufi Films versus Govinda Prabhu (1987 (2) KLT 145)** are relied by the counsel to contend that the principles stated therein in relation to change of valuation on amendment of a plaint applied in the case of transposition of a party to the suit as well in affecting jurisdiction of the court. 5. I do not find any merit in the challenge raised by the learned counsel that on transposition of one among the plaintiffs, the suit presented before the court below would lose its jurisdiction which undoubtedly

it had for receiving the plaint at the time of its institution. Since the value of the share of the remaining plaintiff over the properties sought to be partitioned is much less than the pecuniary jurisdiction of that court. The death of one or more of the plaintiffs after presentation of the suit, requiring substitution of their legal heirs as plaintiffs or defendants in such suit, nor of the transposition of the parties to the suit as co-plaintiffs or co-defendants from the array of one to the other, cannot have any bearing on the continued competency and jurisdiction of the court to resolve the disputes where it had jurisdiction at the time of institution of the suit to receive the plaint. The decisions relied by the counsel with respect to the amendment of the plaint where under pecuniary jurisdiction of the court before which such plaint had been presented stood impaired cannot have any application in the case of transposition of one or the other party to the array of the plaintiff or defendant in a suit. In the case of an amendment to the plaint having bearing over the pecuniary jurisdiction of the court as allowing of such amendment relates back to the date of institution of the suit, its entertainability before that court will arise for determination. However, in the case of transposition of a party after institution of the suit and it being received on file by the court which has competent jurisdiction to do so, it is only a step in continuation of the suit which does not in any way affect the jurisdiction of the court to continue with the suit.

6. Perusal of the order under challenge also would indicate it was not a question of jurisdiction of the court that was canvassed on the transposition of one of the co-plaintiffs in the suit as a defendant, but, the payment of the court fee made on the basis of the claim of the plaintiff to be in joint possession of the suit property, which was disputed by the present petitioners, some of the defendants in the suit. The learned Sub Judge has found that the case of the plaintiff as to having joint possession has to be accepted for the time being for determination of the court fee payable in the suit. Even assuming that the question of jurisdiction of the court was raised by the petitioners in their interlocutory application in the manner canvassed by their counsel in the revision, it is only to be stated that since the Sub Court had jurisdiction to entertain the suit as and when it was instituted, the transposition of a co-plaintiff as a defendant will no way affect its jurisdiction to continue with the suit.

Revision lacks merits, and it is dismissed.

