

(1997) 01 KL CK 0047

High Court Of Kerala

Case No: A.S. No. 608/94 and Cross Objections

Krishnan Nambiar and Others

APPELLANT

Vs

Sankara Kurup and Another

RESPONDENT

Date of Decision: Jan. 21, 1997

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 1 Rule 8
- Transfer of Property Act, 1882 - Section 52
- Trusts Act, 1882 - Section 14

Hon'ble Judges: T. Ramachandran, J

Bench: Single Bench

Advocate: R. Bhaskdran, for the Appellant; K.I. Mayankutty Mather, V.V. Asokan and Jijemol J. Vadakkan, for the Respondent

Final Decision: Allowed

Judgement

T. Ramachandran, J.

This appeal arises from the judgment and decree of the Sub Judge of Vadakara in O.S. No. 156/93.

2. The Appellants were Defendants 1, 2 and 4 in O.S. No. 156/93 before the Sub Court of Vadakara. That suit was filed by the first Respondent as Plaintiff for recovery of possession of the plaint schedule property with damages. The facts are that the first Respondent is the eldest male member of Malappangatt Thavazhi. He filed the suit as Karanavan of the said Thavazhi for recovery of possession of the plaint schedule property. Item No. 1 of the plaint schedule was given on lease as per the lease deed dated 13th June 1982. Items 2 to 4, belonged to the said Thavazhi and they were in possession of them. The third Defendant was the earlier Karanavan and Chandu Kurup was the predecessor. While the 3rd Defendant was the Karanavan, he allowed Defendants 1 and 2 to take income from the plaint schedule properties. Later Defendants 1 and 2 formed a Trust. Thus the plaint schedule

properties are trust properties now. It was alleged that Defendants 1 and 2 or the Trust have no right to get possession of the plaint schedule properties. According to the Plaintiff the Trust was formed only to defeat the right of the family members. There was a building in the property and there were several trees. The house was demolished and one jack tree and mango tree has been cut and removed. Thus Rs. 10,000 was claimed as damages by the Plaintiff apart from recovery of possession on behalf of the thavazhi. Defendants 1, 2 and 4 contended that the suit was not maintainable and that, after the Kerala Hindu Joint Family Abolition Act, 1976 the Plaintiff cannot file the suit as Karanavan. It was also contended that as the Plaintiff was one of the trustees, he cannot act against the trust. It was also contended that the house was demolished and the trees were cut as per a resolution recorded in the minutes book and the Plaintiff was a signatory to it. The 4th Defendant is a trust and the Plaintiff was not entitled to get recovery of possession or damages. It was also contended that the suit was not filed in the representative capacity. After framing necessary issues the lower Court marked Exts. A-1 and B-1 to B-6 and examined P.W. 1, D.W. 1 and D.W. 2. The lower court held that by impleading the supplementary 4th Defendant the suit was not bad for non-joinder of necessary parties. It was found that the court fee paid was correct. Relying on the decision reported in 1993 (2) KLT 67 (Valsala v. Sundaram Nadar), the lower court held that the suit was maintainable as one co-owner is entitled to recover possession on behalf of the other co-owners. Thus it was held that there was no necessity to file the suit under Order 1, Rule 8 of Code of Civil Procedure. Regarding the damages it was held that the Plaintiff can recover proportionate share of damages due to him. Thus the lower court decreed the suit for recovery of possession of the share of the co-owners other than that mentioned in Ext. B-5. It was further decreed that the Plaintiff was entitled to recover his share of damages with interest at 6 per cent from the date of suit till realisation. Aggrieved by that judgment and decree this appeal is filed. Cross objections are filed for granting the reliefs fully as prayed for.

3. According to the learned Counsel appearing for the Appellants the lower court was not correct in decreeing the suit for recovery of possession of the share of the Plaintiff and that the lower court went wrong in allowing damages due to the Plaintiff as one of the sharers. According to him the decision reported in 1993 (2) KLT 67 is not applicable to the facts of the present case.

It was argued that in view of Section 14 of the Trust Act one of the trustees cannot act against the interests of the Trust. Aggrieved by the partial decree the Plaintiff filed cross objections stating that the decree ought to have been to recover the plaint schedule property and damages of Rs. 10,000.

4. The points arising for consideration are: (1) whether Section 14 of the Indian Trust Act is a bar for filing the suit; (2) whether the Plaintiff was entitled to get recovery of the plaint schedule property; and (3) whether the Plaintiff was entitled to damages as prayed for.

5. Point No. 1: The Plaintiff is the present karanavan of his thavazhi. Thus as karanavan of the thavazhi he has filed the suit for recovery of possession of the plaint schedule properties on behalf of the thavazhi. The first Defendant is the President of Eramala Kshethra Committee. The second Defendant is the Secretary and the 4th Defendant is the Trust represented by the managing trustee. They are the Appellants in this appeal. The Trust was formed for the administration of the temple. In the Trust some of the members of the thavazhi were parties and they were the trustees. The Plaintiff is one of the trustees. There was an old building in the property and as per the resolution of the trustees as recorded in the minutes book, the house was decided to be demolished and two trees were cut and removed. The third Defendant is another trustee and he was the former karanavan. As the Plaintiff is one of the trustees, it is contended that he cannot file a suit against the Trust in view of Section 14 of the Indian Trusts Act. It is also seen that all the co-owners are not parties to the suit. Ext. B-1 is the minutes of the trust. Ext. B-1 shows that the Plaintiff was one of the signatories to the resolution by which the building was decided to be demolished. The suit was not filed in a representative capacity and the Plaintiff wanted recovery of possession only as karanavan. Ext. B-4 is the trust deed of the year 1988. Ten thavazhi members and others formed the trust.

Executant No. 2 was the 3rd Defendant and executant No. 3 was the Plaintiff. Thus the trust was created for the proper management of the temple. Now the 3rd Defendant has supported the Plaintiff in the suit. Thus as the Plaintiff is one of the trustees, Section 14 of the Trusts Act is a bar for filing the suit against the interests of the Trust. Thus I hold that the suit is not maintainable.

6. Point No. 2: It is seen that after the suit as per Ext. B-5 many members of the thavazhi assigned their right to the trust. Thus the trust is now has the capacity of co-owner also. The Joint Family Abolition Act came into force in the year 1976. As such there is no karanavan in the thavazhi. P.W. 1 stated that he wanted the relief only as karanavan. Thus the suit is not maintainable. The lower court relied on the decision reported in 1993 (2) KLT 67 (Valsala v. Sundaram Nadar). There it was held that one co-owner is entitled to recover possession of the building without the junction of the other co-owners. But that was a suit against a stranger and that was why this Court held that one of the co-owners is entitled to recover possession of the building without the junction of other co-owners. In view of Ext. B-5 it is clear that the trust has got assignment of the share of some of the co-owners. It is futile to contend that on the date of suit the Trust was not in the position of a co-owner. The court can take cognizance of subsequent events in such cases. The decision reported in 1972 K.L.J. 49 (Unnikrishna Menon v. Kozhikkot Narayana Menon) held that a co-owner in possession cannot be evicted from property by another co-owner. The same view was held by this Court in the decision reported in 1963 K.L.J. 1164 (Avanthika v. Sita Bai). The lower court relied on the decision reported in 1986 KLT 481 (Andappan v. Saramma Varghese). In that decision it was held that a

petition filed under the Kerala Buildings (Lease and Rent Control) Act, 1965 by one co-sharer for eviction was maintainable. That was a decision under a special statute and it is not applicable to the facts of the present case. It is to be noted that the suit was not filed in a representative capacity under Order 1 Rule 8 of CPC To grant a prayer for recovery of possession all the co-owners must be on the party array. This Court in the decision reported in 1989 (2) KLT S N 38, Case No. 46 (Suhara v. Hilda Godfred) held that when there are other co-sharers suit by one of the co-sharers without impleading others is not maintainable.

7. The learned Counsel appearing for the Respondents argued before me that Ext. B-5 cannot be considered as it was after the suit. As against this argument the learned Counsel appearing for the Appellant cited the decisions reported in [Laxmi and Co. Vs. Dr. Anant R. Deshpande and Another](#), [Shikharchand Jain Vs. Digamber Jain Praband Karini Sabha and Others](#), and [Pasupuleti Venkateswarlu Vs. The Motor and General Traders](#), wherein it is stated that subsequent events can be noted by the Court. It was further argued by the learned Counsel appearing for the Respondent that a suit by one co-owner against a trespasser is maintainable. In the present case it cannot be stated that the trust is a trespasser. In fact it was a creation by some of the members of the thavazhi along with others. In fact the Plaintiff and the 3rd Defendant are trustees. It was alleged that Defendants 1, 2 and 4 had no right on the date of suit. It is to be noted that the 4th Defendant is a trust and Defendants 1 and 2 were the President and Secretary of that trust. They were representing the trust on the date of suit and as such it cannot be stated that they have no right. The learned Counsel relied on Section 52 of the Transfer of Property Act. But it has no relevance to the facts of the present case. It was urged that recovery was claimed only from trespassers and not against the members of the thavazhi. As I stated earlier the trust cannot be considered as a trespasser and it was a lawfully created trust. Thus the prayer for recovery of possession cannot be allowed. Thus I hold that the Plaintiff is not entitled to get recovery of possession as prayed for.

8. Point No 3: The lower court granted share of damages due to the Plaintiff as payable by Defendants 1, 2 and 4. But it is to be noted that the damages claimed is regarding the demolition of the building and cutting of trees. But that Act was done in pursuance of the resolution passed by the trustees as noted in the minutes book. It is also to be noted that the Plaintiff and the 3rd Defendant have signed in the resolution as the trustees. Thus they are bound by that resolution and as such they are not entitled to get any compensation or damages.

For the above reasons this appeal is allowed and the judgment and decree of the Court below are set aside and the suit is dismissed. The parties are to bear their costs. The cross objections are dismissed.