Thomas Vs Kunjamma

Court: High Court Of Kerala

Date of Decision: Sept. 2, 2005

Acts Referred: Civil Procedure Code, 1908 (CPC) â€" Section 152
Constitution of India, 1950 â€" Article 226

Citation: AIR 2006 Ker 40 : (2005) 3 CivCC 680 : (2005) 5 CTC 241 : (2005) 4 ILR (Ker) 185 : (2006) 2 JCR 135 : (2005) 4 KLT 286 : (2006) 1 RCR(Civil) 287

Hon'ble Judges: Thottathil B. Radhakrishnan, J; R. Bhaskaran, J; K.P. Balachandran, J

Bench: Full Bench

Final Decision: Dismissed

Judgement

R. Bhaskaran, J.
This revision is filed by the plaintiff in O.S.No. 369 of 1976 on the file of the Munsiff"s Court, Muvattupuzha. The suit

was for injunction and it was tried along with O.S.No. 438 of 1976. The trial court decreed O.S.No. 369 of 1976 and dismissed O.S.No. 438 of

1976. The common judgment was confirmed in appeals and second appeals. Common judgment of the High Court was in SA.Nos. 482 and 486

of 1982. Subsequently, the plaintiff filed an application for amendment of the plaint as well as of the decree to correct the extent of the plaint

schedule property as 77.79 cents instead of 75 cents and also the survey number as Sy.No. 734/2B instead of 734/2AB. The trial court dismissed

the application holding that that court has no jurisdiction in view of the Full Bench decision in Kannan v. Narayani (1980 KLT 9 (FB). The plaintiff

filed this revision before this Court challenging the order of the trial court. When the matter came before the learned single Judge reliance was

placed on the decision of another learned single Judge in Vasudevan v. Lakshmi (2000 (3) KLT 704) holding that the trial court has jurisdiction to

allow such amendments. The learned single Judge in Vasudevan"s case (2000 (3) KLT 704) had relied on the decision of the Supreme Court in

Tiko and Ors. v. Lachman . The learned single Judge also noticed a decision of a Division Bench in Kattamkandi Puthiya Maliackal Saheeda v.

P.V. Hemalatha (2002 (3) KLT 301 : 2002 (2) KLJ 306) holding that there is merger of the trial court decree with the decision of the appellate

court and hence the appellate court alone has jurisdiction to amend the decree. The learned single Judge referred the case to the Division Bench

after expressing an opinion that the decision in Vasudevan''s case (2000(3) KLT 704) required reconsideration. When the case reached the

Division Bench, their Lordships have referred the case to the Full Bench for an authoritative pronouncement on the issue raised in the revision. It is

thus that the revision is placed before us.

2. Any clerical or arithmetical mistake in a decree has to be corrected by the court which passed the decree. When the decree of the trial court is

taken up in appeal and has merged in the appellate decree, the appellate decree alone subsists for all purposes. Therefore any correction of the

decree has to be made by the appellate court only. That is the law laid down by the Full Bench of this Court in Kannan''s case (1980 KLT 9 (FB).

However, in Vasudevan''s case (2000 (3) KLT 704) the learned single Judge relied on the decision of the Supreme Court in Tiko and Ors. v.

Lachman . The question for consideration is whether the decision of the Supreme Court in Tiko and Ors. v. Lachman has laid down any law

contrary to the decision of the Full Bench of this Court. The question whether an application for amendment of the decree has to be filed in the trial

court where the trial court decree had merged in the appellate court was not the question considered by the Supreme Court. On the other hand,

the petition for amendment was filed in the execution court which dismissed the application holding that the execution court cannot go behind the

decree. In such circumstances, the Supreme Court directed the application made for amendment of the plaint and decree to be treated as an

application made in the original suit proceedings and to be disposed of in accordance with law.

3. The learned senior counsel appearing for the revision petitioner contended that in this case the appeal and second appeal from the trial court

judgment were only dismissed confirming the decree of the trial court and therefore the trial court had jurisdiction to allow amendment of the plaint

as well as of the decree. This contention cannot be accepted in view of the larger Bench decision of the Supreme Court in Collector of Customs,

Calcutta Vs. East India Commercial Co. Ltd., . In that case, the question arose under Article 226 of the Constitution of India. The original

authority which passed the order was within the jurisdiction of the High Court. But the appellate authority was outside the jurisdiction of the High

Court. Though the appellate authority had only confirmed the finding of the original authority it was pointed out that the order of the original

authority had merged with that of the appellate authority and therefore the High Court had no power to interfere even with the order of the original

authority. This contention was accepted by the Supreme Court on the principle of merger. Whether the appellate authority''s order was one of

reversal or modification was immaterial while considering the question of merger. Again in Kunhayammed and Others Vs. State of Kerala and

Another, , a three member Bench of the Supreme Court held as follows:

12. The logic underlying the doctrine of merger is that there cannot be more than one decree or operative orders governing the same subject-

matter at a given point of time. When a decree or order passed by an inferior court, before a superior forum then, though the decree or order

under challenge continues to be effective and binding, nevertheless its finality is put in jeopardy. Once the superior court has disposed of the lis

before it either way - whether the decree or order under appeal is set aside or modified or simply confirmed it is the decree or order of the

superior court, tribunal or authority which is the final, binding and operative decree or order wherein merges the decree or order passed by the

court, tribunal or the authority below. However, the doctrine is not of universal or unlimited application. The nature of jurisdiction exercised by the

superior forum and the content or subject-matter of challenge laid or which could have been laid shall have to be kept in view.

In view of the authoritative pronouncement of the Supreme Court referred to above and the fact that in Tiko and Ors. v. Lachman the Supreme

Court only directed the trial court to consider the question of amendment of the plaint and decree instead of the execution court and did not

consider the question whether the application for amendment should have been made before the appellate court or the original court, we are of

opinion that the earlier Full Bench decision of this Court as well as of the Division Bench cannot be said to be no longer good law. We also notice

that the binding precedent of the Full Bench decision in Kannan''s case (1980 KLT 9) was not brought to the notice of the learned single Judge

while deciding Vasudevan''s case (2000 (3) KIT 704).

4. We may also indicate the desirability of filing such petitions before the appellate court which disposed of the appeal and not before the trial court

though the appellate court had only confirmed the judgment of the trial court. The Supreme Court in Jayalakshmi Coelho Vs. Oswald Joseph

Coelho, has clearly stated the scope and content of an amendment to be made u/s 152 of the Code of Civil Procedure. It is held that the

rectifications must be limited to something originally intended to include and which is erroneously left out or something which has to be included to

give effect to the original intention. Further it was also held that a mistake by a court ought not to make that party to suffer. Therefore, while

considering an application u/s 152 the real intention of the court in passing the decree has to be considered. When the decree which has become

final is that of the appellate court it is not advisable to leave it to the trial court to decide the real intention of the appellate court. In other words, the

possibility of the parties approaching the trial court for correction of the judgment and decree on the supposed intention of the appellate court

cannot be ruled out and in that view of the matter also it is always desirable that the parties approach the appellate court or second appellate court

which decided the case finally for making any correction of the judgment and decree. Though in this case an application is also made to amend the

plaint this power can also be exercised by the second appellate court as the second appeal was disposed of on merit.

5. In the light of the above discussion, we are of opinion that the principle laid down in Vasudevan''s case (2000 (3) KLT 704) is against the

decision of the Full Bench in Kannan''s case (1980 KLT 9) and subsequent decision of the Division Bench in Saheeda v. Hemalatha (2002 (3)

KLT 301) and is not correctly decided.

In the result, the C.R.P. is dismissed without prejudice to the right of the plaintiff/ revision petitioner to move such petition in the second appellate

court which confirmed the decree of the trial court. The parties shall bear their costs in this revision.