

(2009) 11 KL CK 0096

High Court Of Kerala

Case No: Un-Numbered W.A. of 2009 in O.P. No. 24035 of 1999

Eliyamma Kuriakkose

APPELLANT

Vs

The Plantation Corporation of
Kerala Ltd.

RESPONDENT

Date of Decision: Nov. 20, 2009

Acts Referred:

- Constitution of India, 1950 - Article 226
- Kerala Court Fees and Suits Valuation Act, 1959 - Article 3(A)(2)
- Kerala High Court Act, 1958 - Section 5
- Kerala High Court Rules, 1959 - Rule 147(3), 147A, 159, 159(2)

Citation: AIR 2010 Ker 52 : (2010) 1 ILR (Ker) 266 : (2009) 4 KLT 874

Hon'ble Judges: S.R. Bannurmath, C.J; Kurian Joseph, J

Bench: Division Bench

Advocate: K.P. Balasubramanian and Nirmal S, for the Appellant; Joseph Kodianthara, for the Respondent

Judgement

Kurian Joseph, J.

A simple but an interesting question has come up for consideration by reference before us, in the matter of payment of court-fees. In the case before us a penalty proceedings was challenged by a person before the learned single Judge. The writ petition was dismissed. The writ petitioner died in the meanwhile. The legal representatives of the writ petitioner have come up in appeal. The question is whether the legal representatives should pay court-fee per appellant at the rate of Rs. 200/-.

2. In order to appreciate the question posed before us it is necessary to refer to the relevant provisions. Section 5 of the Kerala High Court Act provides for intra Court appeals, which reads as follows:

5. Appeal from judgment or order of single Judge.--An appeal shall lie to a Bench of two Judges from--

(i) a judgment or order of a single Judge in the exercise of original jurisdiction; or

(ii) a judgment of a single Judge in the exercise of original jurisdiction in respect of a decree or order made in the exercise of original jurisdiction by Subordinate Court.

Rule 159 of the Kerala High Court Rules provides for the procedure. The Rule reads as follows:

159. Appeals from decisions of single Judges.--(1) The procedure prescribed for appeals in Order XLIA of the Code, excluding Rule 2 thereof, shall as far as may be, be followed in appeals from decisions of single Judges in writ matters.

Provided that in writ appeals against judgments dismissing original petitions in limine copies produced under Rule 147(3) shall also be served on the respondents along with the notice of writ appeal.

Provided further that no decree need be drawn up in writ appeals.

Provided also that in appeal from decision of a single Judge dismissing writ petition in limine, the appellants shall produce, on notice being ordered in the writ appeal, as many copies of the writ petition as there are respondents in the appeal, forthwith unless the Court otherwise directs.

(2) More persons than one may join in one writ appeal as appellants in whom any right to relief in respect of or arising out of the same act or transaction or series of acts or transactions is alleged to exist whether jointly severally or in the alternative where. if such persons present separate writ appeals any common question of law of fact would arise provided that each person joining in such writ appeal shall pay the court-fee payable under Article 3(iii) A(2)(c) of Schedule II of the Kerala Court-fees and Suits Valuation Act as if he had brought a separate appeal.

2A. On a plain reading of Rule 159(2) it would appear that when a cause of action is pursued, whether jointly or severally, the court-fee is payable as if each appellant had separately filed the appeal. In other words, the Rule only permits one memorandum of appeal but insists for separate court-fee per appellant. The question before us is whether in a situation where the legal representatives of the deceased writ petitioner pursues the grievance in writ appeal should they pay court-fee per appellant or only one set of court-fee need be paid.

3. Schedule 11, Article 3(A)(2)(c) of the Kerala Court Fees and Suits Valuation Act provides for the court-fee at the rate of Rs. 200/- per appellant in a case of appeal to the High Court u/s 5 of the Kerala High Court Act in exercise of the original jurisdiction, in cases which are not otherwise provided for. To put it in simpler words, in a writ appeal filed against a judgment in a writ petition filed under Article 226 of the Constitution of India the court-fee payable is Rs. 200/- per appellant. As

we have already noted above, Rule 159 of the High Court Rules permits several parties to join in a common memorandum of appeal in case they are pursuing the same cause of action or same relief, in order to avoid multiplicity of proceedings and to avoid docket explosion.

4. The learned Counsel appearing for the appellants would contend that court-fee is to be understood and levied only in terms of the interest pursued in a case. It is submitted that court-fee is always related to the relief claimed in a litigation. In the instant case the writ petitioner pursued his grievances with regard to the imposition of penalty on account of the delay in the matter of execution of a contract by the predecessor in interest of the appellants. Appellants are the legal heirs. They are five in number. As far as the appellants are concerned, they are affected since they have inherited the estate of the predecessor in interest. What they pursued is only the continuation of the challenge made by the predecessor in interest. No new cause of action has arisen. There is no dispute between the legal heirs, legal heirs are not fighting among themselves and they pursue only the same grievance and relief. In other words, the legal heirs have stepped into the shoes of the predecessor in interest. In such circumstances where the legal heirs of a deceased have stepped into the shoes of the deceased litigant, the court-fee has to be reckoned as if the court-fee is paid by the original-predecessor in interest. If the rule is not understood interpreted and applied like that, it would lead to an impermissible levy of court-fee.

5. We find that this Court in one of the earliest decisions had considered a similar issue, reported in *Nangeli Nangiar v. Gopala Sarma* 1965 KLT 1284. Referring to an earlier decision of the Madras High Court in *Abinsa Bibi v. Abdulkhader Saheb* ILR 25 Mad 260 it has been held as follows:

When a right accruing to a single person from a covenant in his favour devolves, on his death on two or more of his heirs in several shares, no question can possibly arise as to whether the covenant was joint or several, and the only difference caused by the death of the covenantee is that the cause of action which resided in one person, is, by operation of law transferred to a number of parceners, who as observed by Tindal C.J. in *Decharms v. Horwood* 10 Bing. 526 at p. 529, constitute one heir. In other words the claim which was possessed by one individual is now possessed jointly by a number of individuals, who are his legal representatives and all most therefore join in a suit to enforce that claim. If one or more of such joint claimants do not join as plaintiffs, the course to be pursued in India, according to long established course of decisions, is for the claimants bringing the suit to join, as party defendants, those who do not join as plaintiffs.

True the decision is in a different context. But the principle is very clear. It is the right to sue or rather the liability to pursue the litigation to its logical end that has devolved upon the legal heirs. Therefore, the legal heirs in such circumstances constitute one heir. The said decision was followed by this Court in [M. Appa and Another Vs. State of Kerala and Others](#), wherein it has been held as follows:

Rule 147-A envisages a case where each of the petitioners can by himself bring a separate writ petition, and not a case where the several heirs of a deceased person are to file a writ petition as a legal entity. This is a case where one of the legal heirs cannot by himself bring a suit or a petition as against the landlord (the 4th respondent herein) invoking the statutory right of the sole tenant, the predecessor-in-interest of the petitioners, is alleged to have had in the land in question. One or the other or some of the legal representatives could not have filed a separate writ petition for the relief now sought for on the ground that each of them is entitled to a fractional share in the alleged tenancy. In that view, Rule 147-A of the Rules of the High Court of Kerala does not govern the instant case. This is a writ petition which the deceased himself could have brought; and he now being dead, his legal representatives as one legal entity have brought the same. Only a court-fee of Rs. 25/- is leviable thereon.

The issue has again come up for consideration in another context before a Division Bench of this Court in *Narayana Ragavan v. Noordeen* 1993 (1) KLT 528. That was a case where three persons had filed an appeal claiming the single and same relief on behalf of the SNDP Yogam. This Court has held that in such circumstances it is the Yogam that is the appellant and only one set of court-fee need be payable. The relevant portion reads as follows:

Rule 159(2) is not attracted to the facts of the case inasmuch as the three appellants are not claiming any right to relief in respect of or arising out of the same act or transaction or series of acts or transactions jointly or severally. If they were doing so, then they would have become liable to pay court-fee of Rs. 100/- each, in accordance with the latter part of Rule 159(2). All the appellants are representatives of a single body, namely, the SNDP Yogam, which is a charitable trust and they are all claiming a single right on behalf of the Yogam. In other words, it is the Yogam which is claiming through them. Therefore, the Yogam as a single body must be treated in law to be the appellant.

6. The emerging position under law is very clear. When a pending, litigation is pursued or continued by the legal heirs of a writ petitioner they need not pay separate court-fee since the predecessor in interest has already paid the court-fee. Similarly in the event of such matter being pursued in writ appeal by all the legal heirs jointly, they need only pay one set of court-fee in the appeal since they pursue the litigation as one heir, having stepped into the shoes of the predecessor in interest. However, the situation will be different if there is difference of opinion among the legal heirs and the legal heirs choose to file separate writ appeals, either in groups or individually. Then those groups will have to pay one set of court-fee each and if the writ appeal is filed individually, each individual will have to pay the court-fee at the prescribed rate, currently at the rate of Rs. 200/- per appellant.

The reference is answered as above.