

RAMACHANDRAN UNNITHAN & Ors Vs SREE BHAGAVATHI & Ors

Court: High Court Of Kerala

Date of Decision: March 16, 2017

Acts Referred: [Constitution of India, Article 227](#) - Power of superintendence over all courts by the High Court
[Code of Civil Procedure, 1908, Section 92](#) - Public charities¹

Hon'ble Judges: P.Somarajan

Bench: SINGLE BENCH

Advocate: J.JAYAKUMAR, AJITH ANTONY CHATHAMKANDAM, SANTHOSH MATHEW, ARUN THOMAS, D.AJITHKUMAR

Judgement

1. Challenging the order dated 23.8.2014 in I.A.No.921 of 2014 in O.S.No.27 of 2014 of the Sub Court, Attingal, defendants 1 and 5 to 7 came

up with this petition under Article 227 of the Constitution of India. The abovesaid application in I.A.No.921 of 2014 was filed for the grant of

leave under Section 92 of the Code of Civil Procedure. It was allowed by the lower court without issuing notice to the defendants. Defendants 1

and 5 to 7 entered appearance and filed the application in I.A.No.921 of 2014 for revoking the leave already granted as per the order in

I.A.No.543 of 2014. It was dismissed by the lower court under Ext.P6 order dated 23.8.2014. Aggrieved by the said order, defendants 1 and 5

to 7 approached this court by this petition.

2. Heard the learned counsel appearing for the petitioners and Sri.Arun Thomas, learned counsel appearing for respondents 1 to 5 and Sri.D.Ajith

Kumar, learned counsel appearing for respondents 6 to 10.

3. Ext.P1 is the application submitted under Section 92 of the Code of Civil Procedure for the grant of leave. This is an interlocutory application

supported by an affidavit. The learned Sub Judge accepted the application and issued notice to the respondents after granting leave.

4. The question remains for consideration is whether the leave granted in an interlocutory application filed along with the suit would satisfy the

mandate under Section 92 CPC. A mere reading of Section 92 CPC after its amendment by Act 104 of 1976 shows that leave should be

obtained before the institution of the suit. The wordings used in Section 92 CPC ""having obtained the leave of the court may institute a suit"" stands

for a leave which has to be obtained before the institution of the suit. It is a condition precedent to institute a suit under Section 92 CPC. The said

question was earlier considered by this court in Mathew v. Thomas (AIR 1983 KERALA 5 = 1982 KLT 493 = 1982 (1) KLJ 634). A

subsequent decision drawn by this court in Abdul Azeez v. L.I.W.A Educational Charitable Society (2010 (3) KLT 158) took the very same

view, but subsequently in St.Peter's and St.Paul's Syrian Orthodox Church v. Varghese (2010 (3) KLT 382) a learned Single Judge of this court

made an observation that the decision reported in 2010 (3) KLT 158 (Abdul Azeez's case) was rendered on the facts pleaded for grant of leave

but did not lay down that no reference could be made to the averments in the plaint under any circumstance. The decision reported in 2010 (3)

KLT 158 cannot be taken into account to mean that a pending request for leave can be dismissed as not maintainable for the mere fact that it is

made as an interlocutory application. At this juncture, it has to be borne in mind that the first decision rendered by this court is the decision drawn

in Mathew V. Thomas reported in AIR 1983 KERALA 5 = 1982 KLT 493 = 1982 (1) KLJ 634 wherein it was held by this court that obtaining

leave of the court is a condition precedent to institute a suit under Section 92 CPC. Needless to say that the previous decision would prevail over

the subsequent decision rendered by the same strength of Bench and as such the legal position settled down in Mathew's case can be followed.

This would show that the granting of leave is a condition precedent. As such, the suit which was received on file and numbered without having

leave granted prior to its institution is bad in law.

5. Here in this case, the leave was granted in an interlocutory application filed along with the suit. Interlocutory application would come into play

only after the institution of the suit. It is not at all permissible to grant leave under Section 92 CPC after the institution of the suit in an interlocutory

application. Going by the scheme of Section 92 CPC, an original petition has to be filed for the grant of leave and it should be supported by

sufficient document relied on by the plaintiff and a copy of the plaint so as to have an assessment regarding the issues involved in the suit and to

take a decision on the leave application.

6. Rule 56 of the Civil Rules of Practice mandates that an original petition shall, in addition to the particulars required by Rules 11 and 13, state the

provision of law or authority under which it is presented as in Form Nos.5 and 6. If it is not intended to serve any person with notice of the

petition, it shall be so stated and the petition shall be headed as in form No.6, but if the Court directs any person to be made a party, the cause title

shall be amended to conform Form No.1. Rule 11 mandates that a plaint or original petition shall be headed with a cause title as in Form No.1.

The cause title shall set out the name of the Court and the names of the parties separately numbered and described as plaintiffs and defendants or

petitioners and respondents as the case may be. Rule 13 states that all proceedings subsequent to the plaint or original petition shall be headed with

a cause title as in Form No.3 and all proceedings subsequent to a memorandum of appeal or revision petition except interlocutory applications

shall be headed with a cause title as in form No.4. This has to be read along with the object of Section 92 CPC to prevent people from interfering

with the administration of the public trust of a charitable or religious nature by instituting frivolous suits. This would mandate the requirement of a

considered order, prima facie satisfying the scope, nature and object of the suit. It can be done only after taking into consideration the pleading in

the plaint and the materials relied on. A meticulous analysis is not necessary, but there should be a prima facie satisfaction as to its nature, object

and scope; for which, the leave application should disclose the relevant pleadings and materials relied on. Hence a petition under Section 92 CPC

should contain all pleadings in the plaint with reliefs sought and materials relied on. It mandates an exact replica of the plaint in addition to cause

title. The leave granted by the lower court in an interlocutory application supported by an affidavit is bad in law and does not satisfy the

requirement of a leave as mandated under Section 92 CPC. Hence, the order of the lower court granting leave in an interlocutory application in

I.A.No.921 of 2014 is not proper. The suit instituted without obtaining leave is liable to be struck off from the file of the lower court but with

liberty to the plaintiff to have a fresh suit after obtaining leave under Section 92 CPC.

7. In the result, the original petition is allowed. The suit and orders passed in the suit in O.S.No.27 of 2014 of the Sub Court, Attingal, including

the order passed in I.A.No.921 of 2014 are hereby set aside and struck off from the file of the lower court as there is no valid granting of leave

prior to the institution of the suit. The plaintiffs/petitioners are at liberty to apply for grant of leave by filing an original petition as mandated under

Section 92 CPC along with a copy of the plaint and the documents relied. On filing of such an application, the lower court shall dispose of the

same in accordance with law. No order as to costs.

The Registry shall communicate a copy of the judgment to the lower court immediately.