

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

MONDAY, THE 20TH AUGUST 2007 / 29TH SRAVANA 1929

WP(C).No. 24366 of 2004(A)

OS.107/2001 of I ADDL.SUB COURT,TRIVANDRUM

PETITIONERS:

- 1. K.A.RAMAKRISHNAN, PROPRIETOR,
MARK MARBLES, UDAIPUR, BADIYA ROAD,
NO.12, SAMAR PIT COMPLEX, RAJASTHAN.**
- 2. R.STHANU KRISHNAN, OFFICER IN CHARGE
OF MARK MARBLE, GANDHARI AMMAN KOVIL ROAD,
THIRUVANANTHAPURAM.**

BY ADV. SRI.P.R.VENKITESH

RESPONDENTS:

- 1. BIJU ANIRUDHAN, SON OF ANIRUDHAN,
AGED 40 YEARS, RESIDING AT VASANTHAM,
KOWDIAR, THIRUVANANTHAPURAM.**
- 2. VASANTHA ANIRUDHAN, WIFE OF LATE
G.ANIRUDHAN, DO. DO.**
- 3. SMITHA ANIRUDHAN, @ ANITHA ANIRUDHAN,
DO. DO. DO.**

**BY ADV. SRI.FAZIL
GOVERNMENT PLEADER**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 20/08/2007, ALONG WITH WPC NO. 30952 OF 2004 THE COURT
ON THE SAME DAY DELIVERED THE FOLLOWING:**

W.P.(C) NO.24366/2004

APPENDIX

PETITIONERS EXHIBITS

EXT.P:- COPY OF THE PLAINT IN OS. 107/01 OF THIRUVANANTHAPURAM SUB COURT.

EXT.P2:- COPY OF THE IA. 2162/04 IN OS. 107/01 FILED BEFORE THE
THIRUVANANTHAPURAM SUB COURT DT. 1.6.2004.

EXT.P3:- COPY OF THE OBJECTIONS FILED IN IA. 2162/04.

EXT.P4:- COPY OF THE ORDER DT. 14.7.04 IN OS. 107/01 BY THIRUVANANTHAPURAM
SUB COURT.

/TRUE COPY/

P.S. TO JUDGE

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PIUS C. KURIAKOSE, J.

W.P.(C)Nos. 24366 & 30952 OF 2004

Dated this the 20th day of August, 2007

J U D G M E N T

Essential grievance of the petitioners in these cases is that the two suits filed by them which have been valued under section 39 read with section 50 of the Kerala Court Fees Act have been found to be not maintainable by the Subordinate Judge and that they have been directed to apply for amendment of the plaint after revaluating the suit under section 22 of the Kerala Court Fees and Suit Valuation Act. Ext.P5 is the order impugned in WP(C). No. 30952 of 2004 pertaining to suit O.S. No. 422 of 2002 filed by the writ petitioner in that case. The impugned order in WP(C) No. 24366 is Ext.P4, an order similar to Ext.P5 in WP(C). No. 30952 of 2004 passed in O.S. No. 107 of 2001 filed by the petitioners in that case. According to the petitioners one Aniruddhan who is no more owed amounts to them. Aniruddhan owes amounts to several other creditors. Aniruddhan passed away and is survived by his wife and children who are respondents in WP(C). 24366/04 who were defendants in O.S. No. 107/01. in the suit filed by the petitioners in WP(C). 30952/04 apart from Aniruddhan's legal representatives, the petitioners in WP(C). 24366/04 are also arrayed as co-defendants. The prayer in O.S. no. 107/01 is that for enabling

statement of accounts and an administrator cum receiver be appointed for determining the assets and liabilities of deceased Aniruddhan and for quantifying the amount due from Aniruddhan to various creditors and that the administrator cum receiver be directed to assume possession of the assets, to sell them and to distribute the proceeds amongst the various creditors of Aniruddhan. The prayer in O.S. No. 422/02 relating to WP(C). 30952/04 is also in the same lines. But importantly in both the suits the plaintiffs petitioners are not in confusion as to the amounts correctly due to them and they have mentioned those amounts in the plaints. It is considering the issues raised regarding maintainability and propriety of valuation etc. that the impugned orders have been passed. Sri.P.R.Venkitesh, learned counsel for the petitioner would argue that it was highly improper on the part of the court below to insist that the suit should be valued under section 22 and ad valorem court fee paid. Plaintiffs have not sought for any decree for money. What is sought for by them is only for ascertainment of the determination of what is the liability of late Aniruddhan and only ratable apportionment. It is section 39 of the Court Fees and Suit Valuation Act which is attracted and since there is no court fee prescribed under that section the residuary provision,

section 50 is also invoked. The suit was for the administration of assets of deceased person is a suit of a civil nature cognizable by a civil court and there is no statutory bar or any other implied bar much less such suits not maintainable. Submissions of the learned counsel for the petitioner ably resisted by Sri.P.Fazil, counsel for the respondent. Mr. Fazil drew my attention to judgment of a Division Bench in Brothers Cchitty Fund v. Jacob Mathew, 2004 (1) KLT 64 and another Division Bench judgment in Vijayarajan v. Kalavathy, 2006(3) KLT 470. In his submissions and reply Sri.P.R.Venkitesh, learned counsel for the petitioner drew my attention to the judgment of the Bombay High Court in Abdul Rahim v. Lingappa Vaijappa, AIR (30) 1943 Bombay 273.

2. In the Bombay decision the precise effect of the appointment of a receiver in an administration suit is defined for the purpose of appreciating the reasoning behind an order which the Madras High Court had passed in that case. Observations in the Bombay decisions are quoted below.

“To appreciate the reasoning underlying these grounds, it is necessary to defined precisely the effect of the appointment of a receiver in an administration suit. As indicated in O.20, R. 13, Civil P.C. 1908 and administration suit is in essence a suit for an account and application of the estate of a deceased debtor for the satisfaction of the dues of all his creditors. The entire

administration and settlement of the estate are assumed by the Court. The assets are marshalled and a decree is made for the benefit of all the creditors. For this purpose, the Court has to appoint a receiver, but that receiver will have no better status than that of a receiver appointed under O. 40, R. 1 Civil P.C. The property does not vest in him as it does in a receiver appointed in an insolvency proceeding. It is true that O. 20, R. 13 sub-r.(2) provides for the application of the rules and principles applicable in insolvency proceedings. But it is only when the property under administration proves to be insufficient for the payment in full of the debts and liabilities that those rules are to be observed, only as regards the respective rights of secured and unsecured creditors, the debts and liabilities and the valuation of annuities and future and contingent liabilities. That sub-rule has nothing to do with the vesting of the property in the receiver. In an administration suit, the receiver's possession is the possession of the Court which takes upon itself the management during the continuation of the litigation. The interest in the property is not thereby transferred either to the Court or to the receiver. It is, however, the duty of the Court to see that all the assets are realized and equitably distributed among all the creditors. Hence, even though the suit be filed by a single creditor, as in the present case, the decree passed would be in favour of all the creditors, and even after the preliminary decree is passed, every creditor has a right to be joined as a party and to prove his claim. But no creditor will be allowed to steal a march over others by obtaining a separate decree and recovering his dues by executing it. He cannot gain a priority even though he may have got the property attached before the appointment of the receiver in the administration suit. If such a creditor proceeds with the execution of his decree, four courses are open to the Court which has passed a preliminary decree in an administration suit: (1) it may stop the execution proceedings either by a stay order or (2) if the sale of the property has taken place, it may call for the sale proceeds for being included in the assets for distribution, or (3) it may take proper steps to have the sale set aside, or (4) it may call for the proceedings from the executing Court and include them in the administration proceedings. This last course was recognised in AIR 1934 Cal. 33."]

Having considered the arguments addressed at the Bar I am of the view that the decision taken by the court below had considerable support of the judgments of this court in Brothers Chitty Fund's case and Vijayarajan's case. Plaintiffs are not entitled to institute an administration suit without any scope for enquiry as to what is the amount due to them from the estate of the deceased debtor. At the same time the view taken by the court below that an administration suit is not maintainable also does not appear to be correct. Administration suits will be maintainable in law though as any other suit, where a decree should be issued directing appointment of administrator or receiver is to be decided on the basis of the evidence which comes. Obviously the Bombay High judgment quoted by me was not cited before the learned Subordinate Judge. Therefore even as I approved the view of the court below that in view of the assertion of the petitioners that definite precise amounts are due to them the scope for maintaining an administration suit on facts is limited. I dispose of both the writ petitions permitting the petitioners to file application for amendment of the suits in whichever manner the petitioners need without being trammelled by the directions and observations of the court below regarding the prayers to be made in

the amendment application. Petitioners can seek such amendments found by them to be necessary for maintaining the suit for administration not only in law but also on facts and for getting the defence which they have sought for. The question of propriety of the valuation of the suit should always be decided by the court below essentially with reference to the reliefs sought for in the plaint after amendment.

(PIUS C.KURIAKOSE, JUDGE)

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