

KERALA HIGH COURT
Hon'ble Justice V. R. Krishna Iyer

Vishnu Namboothiri v. Sankara Pillai And Others

Citation: 1968 KHC 122 : 1968 KLT 692 : ILR 1968 (2) Ker. 571 : 1968 KLR 457

Advocates:

K. John Mathew; For Petitioner

K. N. Narayanan Nair; For Respondents

ORDER

1. If Only the plaintiff revision petitioner had paid heed to the proverb that he who fights and runs away lives to fight for another day he would not have come up to this Court in this case.

2. The plaintiff has brought this suit for declaration of his title and recovery of possession and the it he has impleaded certain defendants some of whom have raised the contention that part of the suit property is in the possession of the 3rd defendant and one Sankara Pillai on the basis of a sale or an agreement to sell to them of specific extents of land. This Sankara Pillai came up to the Court with a petition to implead himself on the basis that he was in possession under some agreement and that the plaintiff was not entitled to eject him therefrom. The identical plea has already been put forward by the 2nd defendant and / or by the 3rd defendant and an issue has already been raised. The decision on that issue is sure to affect directly not merely the 3rd defendant but also Sankara Pillai, the petitioner, who sought to implead himself. Thus, he is a proper party under O.1 R.10(2) of the Civil Procedure Code because the questions involved in the suit cannot be satisfactorily and completely decided without his presence. The principles to be followed in adding a party under this rule have been, stated thus; "The test is not whether the joinder of the person proposed to be added as a defendant would be according to or against the wishes of the plaintiff or whether the joinder would involve an investigation into a question not arising on the cause of action averred by the plaintiff. It is whether the relief claimed by the plaintiff will directly affect the intervener in the enjoyment of his rights. It is not

enough that the plaintiff's right, and rights which the person desiring to be made a defendant wishes to assert should be connected with the same subject matter. The intervener must be directly and legally interested in the answers to the questions involved in the case. A person is legally interested in the answer only if he can say that it may lead to a result that will affect him legally that is by curtailing his legal rights." (Mulla's CPC. Vol. I page 626, 13th Edn.)

In a suit for recovery of possession a person who claims to be in possession will undoubtedly be prejudiced if a decree were passed and therefore he is a proper party. Whether on the merits his contention is sustainable is another matter.

3. From the point of view of the plaintiff there is no doubt that if he obtains a decree without the intervener on record he will be obstructed at the time of the execution of the decree and a suit must necessarily follow for a final adjudication of the rights of the intervener. By impleading the intervener now as the 5th defendant, multiplicity of suits is avoided and an advantageous telescoping of two litigations into one is achieved. Really, the plaintiff will benefit by his being given an opportunity right now to silence the intervener when he claims to have some independent rights in the property. Moreover, the precise plea which the intervener has projected in his petition to implead himself is already involved in the suit and an issue has been raised. Therefore, the plaintiff's headache cannot be avoided by keeping out the intervener. On the other hand, the plaintiff can finish off the 3rd defendant and the intervener at one stroke in this litigation, if he has merit in his contention. From all points of view, therefore, there is absolutely no justification for keeping out the intervener Sankara Pillai. He has been rightly impleaded by the learned Munsiff whose language has been far more imperfect than his understanding of the law.

4. In any view, a revision cannot be sustained against an order under O.1 R.10(2) impleading a party. Impleading of parties is not a matter of jurisdiction ordinarily, but one of judicial discretion. In this case, the discretion has been properly exercised, but even where it has been improperly exercised, S.115 of the Civil Procedure Code cannot be attracted because there is no failure to exercise a jurisdiction or exercise of one where there is none or acting With material irregularity in the exercise of jurisdiction. There may be better cases where the Court may exceed its power when it brings on record a party. But certainly this is not such a case.

5. In the circumstances, I dismiss the Civil Revision Petition which I hold as misconceived, but there will be no order as to costs.