

Kerala High Court

Sasi vs Saudamini on 20 August, 2003

Equivalent citations: 2003 (3) KLT 433

Author: K Radhakrishnan

Bench: K Radhakrishnan, P C Kuriakose

ORDER K.S. Radhakrishnan, J.

1. This appeal has been filed by defendants 1 and 3 and additional defendants 8 to 11 in O.S. No. 428 of 1997 on the file of the Sub Court, Thrissur.

2. Valuation shown in the memorandum of appeal is above Rs. 1 lakh. Total valuation is Rs. 1,40,788/- and the court fee payable is Rs. 12,478/- and the court fee paid is Rs. 4,160/-. Registry noted various defects of which we are concerned with No. 4, viz., "Since O.S. is for the year 1997, and valuation is below Rs. 2 lakhs, please clarify how the appeal is maintainable before this Court."

Advocate replied stating as follows:

"P.O.P.9/96 filed in February 1996, i.e., suit filed before March 1996. So R.F.A. is maintainable in the High Court."

Registry again reiterated the defect stating as follows:

"Suit is of the year 1997. Since the suit valuation is below Rs. 2 lakhs, this appeal is not maintainable before the High Court. May be posted before Court for orders". Hence this matter has been placed before us."

3. This appeal has been preferred under Section 96 Order 41 Rule 1 of the Code of Civil Procedure. Counsel appearing for the appellant Smt. Shahna Karthikeyan submitted that the appeal is perfectly maintainable since the suit was instituted before the Sub Court, Thrissur before the coming into force of the Civil Courts (Amendment) Act, 1996 with effect from 27.3.1996. Counsel submitted that the suit was instituted as indigent person on 13.2.1996 with P.O.P. No. 9 of 1996. Since pauper application was filed on 13.2.1996 it must be taken that the suit was instituted on the said date though registered as O.S. No. 428 of 1997 only on 25.9.1997. Counsel submitted that since pauper application was filed prior to 27.3.1996 suit related back to the said date and therefore parties would be governed by the position as it stood before 27.3.1996. Counsel also placed reliance on the decision of a Division Bench of this Court in Kunnappadi Kalliani v. Lekharaj, 1996 (2) KLT 106. In order to establish the contention that the date of institution would relate back to the date of filing of the application, reference was also made to the decision of a learned Single Judge of this Court in Mercantile Credit Corporation v. Sathyan, 1997 (1) KLT 384.

4. Two points which arise for consideration here are as follows;

- i) If a pauper application has been filed in a suit Whether the date of institution

ii) In case it relates back to the filing of the pauper application, whether defendan

5. The Kerala Civil Courts Act, 1957 is enacted to consolidate and amend the law relating to civil courts in the State of Kerala. Section 12 of the Act provides for appeal from decrees and orders of District Court or Subordinate Judge's Court. It says that regular and special appeals shall, when such appeals are allowed by law, lie from the decrees or orders of a District Court or a Subordinate Judge's Court to the High Court. Originally Section 13(1) provided that the appeals from decrees in suits, the subject matter of which did not exceed Rs. 7,500/- lay to the District Court, The limit was later raised to Rs. 10,000/- with effect from 26.3.1959 by virtue of Act 12 of 1959. The limit under Section 13(1) for appeals to the District Court was again raised to Rs. 25,000/- by the Kerala Civil Courts (Amendment) Act, 1984 with effect from 6.1.1984. By the Kerala Civil Courts (Amendment) Act 6 of 1996 the limit was further raised to Rs. 2 lakhs with effect from 27.3.1996.

6. We may in this connection refer to the decision of the Division Bench of the High Court in Kunnappadi Kalliani v. Lekharaj (1996 (2) KLT 106). That was a case where appeals were preferred before this Court under Section 96 of the Code of Civil Procedure. First of those appeals was filed against the decree in O.S. No. 23 of 1992 on the file of the Sub Court, Trichur. The suit giving rise to that appeal was filed on 30.12.1991 seeking a declaration that the sale deed impugned therein was not binding on the plaint schedule property of the plaintiff and the plaintiff had the title and possession over the property and for a perpetual injunction restraining the defendants from interfering with the possession of the plaintiff. Plaintiff had valued the reliefs claimed in the plaint at Rs. 28,000/-. On the suit being dismissed on 29.2.1996 plaintiff filed the appeal before this Court on 29.5.1996. When the appeal was filed before this Court on 29.5.1996 Registry sought a clarification as to whether in view of the amendment brought in by Act 6 of 1996, appeal would be maintainable before this Court. Counsel explained that since suit giving rise to the appeal was filed before the coming into force of Act 6 of 1996, going by Sections 12 and 13 of the Civil Courts Act as they stood at that time, appeal lies before this Court. However, the matter was placed before the Bench and the Bench held as follows:

"While making the amendment of 1996 the Legislature had adopted the same device by merely enhancing the valuation of the subject matter from Rs. 25,000/- to Rs. 2 lakhs. Since it must be taken that the Legislature was aware of the legal position laid down by this Court when the same device was adopted by it in the year 1984, no intention could now be attributed to the Legislature that it was intended by the amendment of Section 13(1) of the Civil Courts Act to interfere with the accrued right of the litigants to appeal to this court".

It may be noted that appeals from decrees of Subordinate Court in suit instituted prior to 27.3.1996 would continue to lie in this Court, if they were maintainable in this Court, prior to 27.3.1996. We are of the view the principle laid down by the Bench in the above said decision is equally applicable to this case, in the instant case, the plaintiff instituted the suit for damages as indigent person on 13.2.1996 as P.O.P. No. 9/96. It was later registered as O.S. 428 of 1997 as per order dated 25.5.1997

in Pauper O.P. No. 9 of 1996. Plaintiff had remitted court fee of Rs. 5800/-. When the application to sue as *informa pauperis* was dismissed, the court would give time for payment of court fee in the event of which also suit would relate back to the date on which application was filed. In this connection reference was made to the decision in *Smt. Gomti Devi v. Harishankar*, AIR 1978 All. 402, and *Mercantile Credit Corporation v. Sathyan*, 1997 (1) KLT 384. We therefore hold that in this case suit was suited on 13.2.1996 when the P.O.P. was filed by the plaintiff. Therefore we have to determine the rights of the parties as per the law which stood on the date of the filing of the P.O.P. The Civil Courts (Amendment) Act 6 of 1996 came into effect on 27.3.1996. In the instant case, as we have already indicated, pauper application was filed on 13.2.1996 prior to the amendment. Prior to the amendment, position was that appeal from decrees of Sub Court would lie to the High Court. Plaintiff as well as defendants in the suit are therefore governed by the law as it stood at the time of filing of the application, irrespective of the fact whether the application is allowed or not. In view of the above legal position, objection raised by the registry is overruled. Appeal is perfectly maintainable to this court. Registry will number the appeal and send up for admission.