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S. N. D. P. SAKHAYOGAM

v.

KERALA ATMAVIDYA SANGHAM

(Civil Appeal No.7068 of 2010)

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SEPTEMBER 05, 2017

**[R. K. AGRAWAL AND ABHAY MANOHAR SAPRE, JJ.]**

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*Code of Civil Procedure, 1908 – O. I, r.8 – Application filed by plaintiff to prosecute suit in a representative capacity – Examination of – Respondent No.1 (plaintiff) filed a civil suit against the appellant (defendant No.1) and defendant No.2 for declaration that the sale deed executed by defendant No.2 in favour of defendant No.1 in respect of suit land be cancelled as being void and bad in law – Trial Court framed issues – Thereafter, plaintiff filed an application u/O. I, r.8 and sought permission to prosecute the suit as a representative suit – Sanction to prosecute the suit as representative suit was granted unopposed – Suit dismissed by the trial Court and the First Appellate Court – However, High Court allowed the appeal by plaintiff – Supreme Court remanded the case to the High Court for deciding the appeal afresh – High Court again allowed the appeal and decreed the plaintiff’s suit – On appeal, held: Plaintiff applied to the trial Court u/O.I, r.8 of the Code to prosecute the suit in representative capacity and permission was granted without any objection from the defendants – Trial Court should have examined the question as to whether the plaintiff, who is a juristic person, i.e., “Society” is entitled to invoke the provisions of O.I, r.8 of the Code for filing a suit in a “representative capacity” – Secondly, if the plaintiff is held entitled to file such suit, whether the facts pleaded and the reliefs claimed in the plaint can be said to be in the nature of representative character so as to satisfy the ingredients of O.I, r.8 of the Code which are meant essentially for the benefit of public at large for grant of any relief – Lastly, if the facts pleaded and the reliefs claimed in the plaint do not satisfy the requirements of O.I, r.8 of the code for grant of relief to the public at large then whether such suit is capable of being tried as a regular suit on behalf of the plaintiff for granting reliefs in their personal capacity because the suit relates to ownership of land, namely, who is the owner of the suit land – However, there was neither any*

*discussion much less finding on any of the aforesaid issues by any of the courts below though these questions directly and substantially arose in the case – Therefore, in the interest of justice, matter remanded to trial Court to answer these issues and then decide the suit depending upon the answer in accordance with law – Jurisdiction.*

**Allowing the appeal, the Court**

**HELD: 1.** In the instant case, one question, which goes to the root of the case affecting the very jurisdiction of the Court to try the suit, was not taken note and if taken note of, it was not decided in its proper perspective by any of the Courts below. May be due to the reason, instead of raising the objection, the defendant appears to have conceded it. Be that as it may, the issue of jurisdiction which goes to the root of the case, if found involved has to be tried at any stage of the proceedings once brought to the notice of the Court. [Paras 17, 18][461-D-E]

**2.** The plaintiff had sought permission before the trial court to prosecute the suit by taking recourse to the provisions of Order 1 Rule 8 of the Code of Civil Procedure, 1908. In other words, the plaintiff treated their suit to be in the nature of a “representative suit” within the meaning of Order 1 Rule 8 and, therefore, applied to the Trial Court under Rule 8 of the Code seeking permission to prosecute the suit in the representative capacity. This permission appears to have been granted to the plaintiff by the Trial Court without any objection from the side of the defendants. [Para 19] [461-D-G]

**3.1** While deciding issue regarding the ‘suit in a representative capacity’, the Trial Court was expected to decide several material questions, namely, whether the plaintiff, who is a juristic person, i.e., “Society” is entitled to invoke the provisions of Order 1 Rule 8 of the Code for filing a suit in a “representative capacity”. In other words, the Trial Court should have examined the question as to whether the expression “person” occurring in Rule 8 also includes “juristic person”. [Para 21] [462-A-B]

**3.2** Secondly, if the plaintiff is held entitled to file such suit, whether the facts pleaded and the reliefs claimed in the plaint can be said to be in the nature of representative character so as

A to satisfy the ingredients of Order 1 Rule 8 of the Code which  
 are meant essentially for the benefit of public at large for grant of  
 any relief and lastly, if the facts pleaded and the reliefs claimed in  
 the plaint do not satisfy the requirements of Order 1 Rule 8 of  
 the Code for grant of relief to the public at large then whether  
 B such suit is capable of being tried as a regular suit on behalf of  
 the plaintiff for granting reliefs in their personal capacity because  
 the suit relates to ownership of land, namely, who is the owner of  
 the suit land. [Para 22] [462-C-D]

4. Since there was neither any discussion much less finding  
 on any of the aforesaid issues by any of the Courts below though  
 C these questions directly and substantially arose in the case, thus,  
 it would be just and proper and in the interest of justice to remand  
 the case to the Trial Court to answer these issues and then decide  
 the suit depending upon the answer in accordance with law. [Para  
 23] [462-D-E]

D CIVIL APPELLATE JURISDICTION : Civil Appeal No. 7068  
 of 2010.

From the impugned Judgment and final Order dated 27.01.2005  
 passed by the High Court of Kerala at Ernakulam in S.A. No.299 of  
 1987(B).

E Jayanth Muth Raj, Sr. Adv., Nishe Rajen Shonker, Abdul Kabeer,  
 Anu K. Roy, Advs. for the Appellant

C.S. Rajan, Sr. Adv., A. Raghunath, Ms. Yogamaya, Advs. for the  
 Respondents.

The Judgment of the Court was delivered by

F ABHAY MANOHAR SAPRE, J. 1. This appeal is filed by the  
 first defendant against the final judgment and order dated 27.01.2005  
 passed by the High Court of Kerala at Ernakulam in S.A. No.299 of  
 1987 whereby the appeal filed by the respondent-plaintiff was allowed  
 and the judgment and decree passed by the Courts below were set aside  
 G and the defendants were given two months' time to deliver the property  
 to the plaintiff failing which the plaintiff shall be entitled to put the decree  
 in execution.

2. In order to appreciate the controversy involved in the suit, which  
 has now travelled up to this Court, it is necessary to state the relevant  
 H facts infra.

3. The appellant herein is defendant No. 1 whereas respondent No. 1 is the plaintiff. So far as respondent Nos. 2 to 8 are concerned, they were made parties in appeal as legal representatives of original defendant No. 2, who died pending this appeal but later by order dated 14.01.2009 their names were deleted from the array of the parties. They are, therefore, no longer parties to the *lis* arising in the case.

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4. Respondent No. 1 (plaintiff) is a Society registered as such under the Travancore Cochin Literary Scientific and Charitable Societies Act 12/1955 (hereinafter referred to as "the Act") having their branches all over the State of Kerala. It is claimed to be running charitable institutions all over the State through their branches. It has its own bye-laws to run the charitable institutions.

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5. The appellant (defendant no 1) is alleged to be another body of persons known as "Panoor 47 Atma Vidya Sabha" having their place of working at a place called "Panoor" in the State of Kerala whereas defendant No. 2 was one Kunju Panikan Narayanan (since dead). He was alleged to be President of defendant No. 1 (appellant).

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6. The dispute in this case relates to land bearing Survey Number No. 991/1, situated in village Thrikkunnapuzha, District Alappuzha as described in detail with specifications in the Sale Deed, registered as Document No. 399-dated 09.02.1978(Annexure-P) hereinafter referred to as the "suit land".

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7. Respondent No. 1 (plaintiff) filed a civil suit (O.S. No. 213/1978) against the appellant herein (defendant No.1) and one Kunju Panicken Narayanan-defendant No. 2. The suit was for a declaration that the sale deed (Document No.399) dated 09.02.1978 executed by defendant No. 2 in favour of defendant No. 1 in respect of the suit land be cancelled as being void and bad in law.

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8. It was, inter *alia*, averred in the plaint that respondent No. 1 (plaintiff) had purchased the suit land by registered sale deed (Document No.2904) in the year 1951 for running their charitable activities through defendant No. 1 which, according to them, was their branch of which defendant No. 2 was the President at all relevant time. It was alleged that the suit land was purchased by respondent No. 1 being the parent organization in the name of the appellant (defendant No. 1) through defendant No. 2. It was alleged that since the appellant (defendant No. 1), after some time had stopped their activities due to some reasons, all

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A the properties stood in the name of the appellant (defendant No. 1) was merged as provided in the bye-laws with respondent No. 1 (plaintiff), i.e., parent body. It was alleged that defendant No. 2, who claimed to be the President of defendant No. 1, had no right, title and interest nor had any authority to sell the suit land to anyone much less to defendant No. 1

B wide sale deed dated 09.02.1978. On these averments, the suit was filed seeking declaration in the reliefs.

9. The appellant (defendant No.1) denied the claim set up in the plaint and defended the sale deed executed in their favour by defendant No. 2. It was contended that the sale deed dated 09.02.1978 is legal and proper. According to defendant No.1, both (plaintiff and defendant No.

C 1) were always independent organizations having no connection between them in any manner. Some more facts were also averred in the written statement, which are not necessary to mention here. The Trial Court framed several issues on merits arising in the case.

10. The plaintiff (respondent No. 1) then applied under Order 1

D Rule 8 of the Code of Civil Procedure, 1908 (hereinafter referred to as "the Code") and sought permission of the Court to allow them to prosecute the suit as a representative suit. Defendant No. 1 (appellant) did not oppose the prayer and hence sanction to prosecute the suit seemed to have been granted to the plaintiff. (See- Issue No. 1). Parties adduced

E evidence.

11. The Trial Court, by judgment/decree dated 21.08.1980 dismissed the suit. The plaintiff, felt aggrieved, filed first appeal being A.S. No.77 of 1981 before the Additional District Judge, Mavelikkara. The first Appellate Court, by judgment/decree dated 02.09.1986, dismissed the

F appeal and affirmed the judgment/decree of the Trial Court. The plaintiff, felt aggrieved, filed Second Appeal being S.A. No.299 of 1987 before the High Court.

12. By judgment/decree dated 29.05.1995, the High Court allowed the appeal and decreed the suit.

G 13. Defendant No. 1, felt aggrieved, filed special leave petition (SLP(c) No.24439 of 1995) before this Court. This Court by order dated 30.10.2003 after granting leave, allowed the appeal, set aside the order of the High Court and remanded the case to the High Court for deciding the second appeal afresh. This Court remanded the case to the High

H Court essentially on the ground that it was noticed that the High Court

allowed the second appeal without framing any substantial question(s) of law arising in the case. A

14. On remand, the High Court framed three substantial questions and, by impugned order 27.01.2005, again allowed the appeal and decreed the plaintiff's suit. Against this order, defendant No. 1 felt aggrieved and filed this appeal by way of special leave before this Court. B

15. We have heard Mr. Jayanth Muth Raj, learned counsel, for the appellant and Mr. C.S. Rajan, learned senior counsel for the respondents.

16. Having heard the learned counsel for the parties and on perusal of the record of the case, we are inclined to allow the appeal and while setting aside all the judgment/decrees of the Courts below remand the case to the Trial Court for disposal of the suit afresh. C

17. In our considered opinion, one question, which goes to the root of the case affecting the very jurisdiction of the Court to try the suit, was not taken note and if taken note of, it was not decided in its proper perspective by any of the Courts below. May be due to the reason, instead of raising the objection, the defendant appears to have conceded it. D

18. Be that as it may, in our considered view, the issue of jurisdiction which goes to the root of the case, if found involved has to be tried at any stage of the proceedings once brought to the notice of the Court. E

19. As mentioned above, the plaintiff had sought permission to prosecute the suit by taking recourse to the provisions of Order 1 Rule 8 of the Code. In other words, the plaintiff treated their suit to be in the nature of a "representative suit" within the meaning of Order 1 Rule 8 and, therefore, applied to the Trial Court under Rule 8 of the Code seeking permission to prosecute the suit in the representative capacity. This permission appears to have been granted to the plaintiff by the Trial Court (see discussion on issue No. 1) without any objection from the side of the defendants and, therefore, Issue No.1 was answered in plaintiff's favour. F G

20. This is how issue no 1 was answered by the Trial Court:

**"Issue No.1:- This is not pressed by the defendant's counsel as sanction was obtained by the Plaintiff from Court to file the suit in a representative capacity under or Rule 8 C.P.C."** H

A 21. In our considered opinion, while deciding Issue No. 1, the Trial Court was expected to decide several material questions, namely, whether the plaintiff, who is a juristic person, i.e., “Society” is entitled to invoke the provisions of Order 1 Rule 8 of the Code for filing a suit in a “representative capacity”. In other words, the Trial Court should have examined the question as to whether the expression “person” occurring in Rule 8 also includes “juristic person”.

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D 22. Secondly, if the plaintiff is held entitled to file such suit, whether the facts pleaded and the reliefs claimed in the plaint can be said to be in the nature of representative character so as to satisfy the ingredients of Order 1 Rule 8 of the Code which are meant essentially for the benefit of public at large for grant of any relief and lastly, if the facts pleaded and the reliefs claimed in the plaint do not satisfy the requirements of Order 1 Rule 8 of the Code for grant of relief to the public at large then whether such suit is capable of being tried as a regular suit on behalf of the plaintiff for granting reliefs in their personal capacity because the suit relates to ownership of land, namely, who is the owner of the suit land.

E 23. Since there was neither any discussion much less finding on any of the aforesaid issues by any of the Courts below though these questions directly and substantially arose in the case (Issue No. 1), we are of the considered opinion that it would be just and proper and in the interest of justice to remand the case to the Trial Court to answer these issues and then decide the suit depending upon the answer in accordance with law.

F 24. In the light of foregoing discussion, the appeal succeeds and is allowed. Impugned order, judgment/decreed passed by the first Appellate Court and the Trial Court are set aside.

25. The suit is restored to its file for trial to answer the aforementioned issues and then decide it in accordance with law.

G 26. We have not expressed any opinion on any of the issues on their respective merits, therefore, the Trial Court would decide the issues uninfluenced by any of our observations made herein.

27. Parties to appear before the Trial Court on 03.10.2017 to enable the Trial Court to decide the suit as directed within one year as an outer limit.