'IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE BASANT BALAJI

TUESDAY, THE 3RD DAY OF OCTOBER 2023 / 11TH ASWINA, 1945

FAO NO. 331 OF 2011

AGAINST THE ORDER/JUDGMENT OS 100/2004 OF SUB COURT, NEDUMANGAD

APPELLANTS:

NASEEMA BEEVI
DAUGHTER OF ABIDA BEEVI, [redacted]

BY ADVS.
SRI.V.SURESH
SRI.G.SUDHEER

RESPONDENTS:

1 AMEER SHAHUL @ AMEER P.S.
[redacted]

2 MRS.AMEER SHAHUL
[redacted]

3 SHAHUL HAMEED PATTANI SHAHUL HAMEED
[redacted]

4 M.M.BASHEER
[redacted]

BY ADVS.
SRI.R.S.KALKURA
SMT.P.ANJANA
SMT.R.BINDU
SRI.HARISH GOPINATH
SRI.M.S.KALESH
SRI.P.M.UNNI NAMBOODIRI

OTHER PRESENT:

ADV. SRI. ANANTHA KRISHNAN

THIS FIRST APPEAL FROM ORDERS HAVING COME UP FOR ADMISSION ON 03.10.2023, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

"C.R"

JUDGMENT

(Dated this the 3rd day of October, 20223)

The plaintiff in O.S. No. 100 of 2004 on the files of the Sub-Judge, Nedumangad is the appellant and the respondents were the defendants therein. The suit was filed claiming compensation of Rs.3,00,000/- together with future interest at the rate of 18 % p.a from the defendants and their assets.

The brief facts necessary for the disposal of this appeal are as follows:-

2. The plaintiff is the mother of the deceased Nisamol who passed away on 02.06.2001 in New Delhi at the residences of defendants 1 and 2. She is residing in Lekshamveedu colony having no means of her own other than 4 cents of property and has small building thereon. The plaintiff is a chronic heart patient suffering from other ailments and cannot work to earn her

livelihood. She has a son who is blind and invalid. The deceased Nisamol was the only earning member of the family. The 1st defendant was employed in New Delhi along with his wife, the 2nd defendant. The 3rd defendant is the father of the 1st defendant, and the 4th defendant is the relative of the 3rd defendant. Defendants 3 and 4, having close acquaintance with the plaintiff and made a proposal to the plaintiff to take her daughter Nisamol to Delhi to look after the kids of defendants 1 and 2. As plaintiff and her children were in extreme poverty, she was forced to accept the proposal of the 3rd & 4th defendant. Accordingly, Nisamol was taken to Delhi on 05.12.2000.

3. On 02.06.2001, the 4th defendant informed the plaintiff that her daughter was ill and admitted to a hospital in Delhi. The plaintiff was taken to Delhi by Air on that day itself, along with her uncle. The 1st defendant informed the plaintiff that Nisamol died due to blood cancer. The body of Nisamol was taken back to the native place and buried at the graveyard of Mangalappally Jama Ath, Mathira. The plaintiff suspected that the death of the

daughter was due to the ill treatment of defendants 1 and 2. The plaintiff was shattered by the unnatural death of her only daughter, the only earning member of the family. The plaintiff has lost all her amenities, ambition, happiness, peace of mind, and everything in her life. The defendants are jointly and severally liable for putting the plaintiff in misery. Though a notice was issued to the defendants to pay compensation, they were not amenable, so the suit was filed.

4. The defendants proceeded with the suit by filing a written statement. It was contended that the 2nd defendant is employed in New Delhi and Nisamol was taken as a maidservant to work as a babysitter for their one and half-year-old baby, on the representation of the plaintiff to take her as a domestic servant. The salary was fixed at Rs.1,000/- per month, and the amount was being regularly sent by cheque to the bank of the plaintiff. When taking the plaintiff's daughter to Delhi, the plaintiff was told that Nisamol was having ailments of bleeding through her nose, and therefore, she was treated at AIIMS, New Delhi. On

02.06.2001, when defendants 1 and 2 went out and returned by 8.00 pm; the house was locked, and when they peeped thought the window, it was found that Nisamol was hanging. The matter was informed to the police, and postmortem examination was conducted by the Forensic Department of AIIMS and the dead body was taken back by Air, and the 1st defendant had incurred an expenditure of Rs.1.5 Lakh for that. The Delhi Police submitted a report finding it as a suicide case.

5. The learned Sub Judge, after framing the issues, proceeded with the trial of the suit and Exhibits A1 to A3, A3 (a) to A3 (c), A4, A4 (a) and A5 to A8 and B1 to B3 were marked and PW 1 and 2 were examined on the side of of plaintiff and DW 1 and 2 on the side of the defendants. The learned Sub Judge, after considering the oral testimony as well as the documents produced, concluded that, the Court has no territorial jurisdiction to entertain the suit. Therefore, the plaint was returned to present before the proper court. It is aggrieved by the said order of the learned Sub Judge that this appeal is filed.

6. Heard Sri. V.Suresh the learned counsel for the appellant and Sri. Anandakrishnan the learned counsel for the respondents.

7. The learned counsel appearing for the appellant submits that, the suit has been instituted under Section 19 of the Code of Civil Procedure. Section 19 of the C.P.C is in respect of suits for compensation for wrongs to persons or movables, it states as follows:-

> *"where a suit is for compensation for the wrong done to the person or movable property, if the wrong was done within the local limits of the jurisdiction of one court and the defendants resides, or carries on business, or personally works for gain, within the local limits of the jurisdiction of another court, the suit may be instituted at the option of the plaintiff in either of the said courts."*

8. According to the counsel for the appellant, the suit can be filed for claiming compensation for the wrongs done to the person or the movable property not only at the place the wrongs was done on the defendant resides but at the place where the effect of the wrong is felt. It is true that the death of the daughter of the plaintiff has occurred in Delhi but, the effect of the death

definitely has a bearing on the livelihood of the plaintiff, who is stationed within the local limits of the Sub-Court, Nedumangad. Though, the wording used in section 19 for wrongs done to the person, it is not actually the place where the actual wrong is done. But it has a broader meaning and includes the place where the effect of the wrong is done also. The plaintiff has pleaded in the plaint that the daughter of the plaintiff was the sole earning member and the family was depending on the income of deceased Nisamol, who was taken by respondents 1 and 2 to New-Delhi to look after their baby aged one and half years old. Because of the death of Nisamol, the plaintiff and her family are put to poverty. Therefore, the plaintiff has a right to institute the suit within the local limits where the effect of the death of Nisamol has occurred, i.e, within the jurisdiction of the Sub-Court Nedumangad. It was also contended by the counsel for the appellant that, though a contention was raised in the written statement, the court does not have a territorial jurisdiction to try the suit. It was never raised as a preliminary issue and decided

by entering into trial by producing documents and the defendants' oral testimony. The defendants have subjected them to the territorial jurisdiction of the Sub-Court, Nedumangad and they have waived their objection to the territorial jurisdiction. Therefore, the court below was not justified in returning the plaint after a full fledged trial.

9. The learned counsel for the respondents Sri. Anandakrishnan argued that, a reading of Section 19 of the C.P.C would show that, the plaintiff has the option to institute a suit before two courts, i.e. the court having territorial jurisdiction where the actual wrong is done to the person or movable property and also the court having territorial jurisdiction where the defendant resides, or carries on business, or personally works for gain. Since the wrong alleged to be committed by defendants 1 and 2 being the death of Nisamol occurred within the territorial jurisdiction of the courts of New Delhi, the suit can only be filed in the courts of New Delhi and not in the Sub-Court, Nedumangad. The cause of action stated in the plaint is that the

cause of action of the suit arose within the jurisdiction of this Court in Pangode village, where the plaintiff resides, on 25.11.2000. The date on which the defendants 3 and 4 proposed to sent Nisamol to Delhi, on 05.12.2000 i.e., the date on which the 1st defendant reiterated the assurance for a secured life of Nisamol in Delhi and received custody of the minor on 05.12.2000 and 02.06.2001 the date of death of Nisamol and continuously thereafter.

10. A suit under Section 19 cannot be filed within the jurisdiction of the court where the plaintiff resides. Admittedly, the death of the plaintiff's daughter occurred in New Delhi and defendants 1 and 2 resides in New Delhi. Therefore, even according to the two ingredients of Section 19, the plaintiff can only file the suit in a court in New Delhi. The defendants have specifically pleaded in written statement that, the Nedumangad Sub-Court has no territorial jurisdiction to try the suit. The Sub-Court has clearly raised issue No.1 as to whether the court has jurisdiction to the trial of the suit. Since, defendants No. 3 and 4

were residing within the jurisdiction of Sub-Court, Nedumangad, the claim of compensation is also made against them. The question could be decided only after taking evidence, and therefore, the court has taken the evidence and ultimately found that the Sub-Court has no territorial jurisdiction to try the suit. Therefore, there is no illegality in the order passed by the learned judge.

11. Section 19 of the Code of Civil Procedure relates to suits for compensation for wrong to persons or movables it gives the right to the plaintiff to file a suit or compensation for the wrong done to the person or the property, if the wrong was done within the jurisdiction of one Court and within the local limits of another court where the defendant resides . The plaintiff has an option to file the suit in either of the said courts.

12. The question to be decided in this case is regarding the territorial jurisdiction of the court where the wrong done has taken place. The wrong done cannot be construed to mean only the act which was done and should also take in the effect of the

act. The cause of action is the bundle of facts that is required to be proved to grant relief to the plaintiff. It not only refers to the infringement but also the material facts on which the right is founded. In a suit for compensation for wrong done, mere injury or wrong done without anything more would not suffice to sustain claim of compensation. The wrong done cannot be interpreted in a narrow sense but has to be understood in the broader amplitude. It takes in both the act and effect to put it differently, the death of the plaintiff's daughter might have happened in Delhi, but its effect is felt by the plaintiff within the local jurisdiction of the Sub-Court, Nedumangad. It is pleaded by the plaintiff, that her family was solely relying on the income of the plaintiff's daughter received in Delhi, which was transferred to the plaintiff's bank account. Therefore, the death of the plaintiff's daughter has definitely put the family in great hardship and thus, it can be seen that the wrong done has its effect on the plaintiff where she resides. This Court has occasion to consider this issue in **AYYAPPAN PILLAI V. STATE OF KERALA AND**

ANOTHER reported in 2009 (2) KLT 985, in which the learned single judge of this Court has held in paragraph 5 as follows:-

> **"***In Words and Phrases', Permanent Edition, Vo. 46, Page No.483 the word' wrong' is given the following meaning:*
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> *"Wrong' means any deprivation of right, breach of contract, or injury done by one person to another'. (O' Connor V. Dils, 26 S.E.354, 355).*
>
> *'Wrong' in law means a violation of the legal rights of another; an invasion of right to the damage of the parties who suffer it, especially a tort'. (Donelen V. Denser, 134, S.W. 2d. 132, 133). A 'wrong' involves the violation of one's right. 'Wrong done' includes the effect of the act and the resultant damage. If the act does not lead to any consequence or damage, such act may not be actionable. Therefore the phrase 'wrong done' occurring in S. 19 of the Code should be understood as including the effect of the act."*

13. Therefore, for the reason stated above and also relying on dictum laid by this Court in Ayyappan Pillai (*Supra) .* I am of the considered opinion that the Sub-Court, Nedumangad, is having the territorial jurisdiction to try the suit since the wrong done has to be interpreted in the broader sense and the wrong done, as stated above, includes not only the act done in Delhi but

also its the effect of the said wrong which gives a cause to the plaintiff to file the suit. Therefore, the order passed by the learned Sub Judge has to be set aside, and I do so. The learned Sub Judge, Nedumangad is directed to try the suit, and therefore, the appellant is given liberty to present the plaint before the said court. Since, the suit is of the year 2004, there would be a further direction to the Sub Judge, Nedumangad, to dispose of the suit as far as possible and at any rate, within a period of four months from the date of receipt of a certified copy of the judgment.

Needless to say that the party shall be given an opportunity to adduce further documentary evidence, if required.

The F.A.O is allowed as indicated above.

Sd/-

BASANT BALAJI

JUDGE

SRJ