IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR

FRIDAY, THE 19TH DAY OF JUNE 2015/29TH JYAISHTA, 1937

AS.No. 133 of 2002 (C) & CROSS APPEAL

OS 88/1994 of SUB COURT,ATTINGAL

APPELLANT(S)/DEFENDANT:

ORIENTAL INSURANCE COMPANY LIMITED,
REPRESENTED BY THE DIVISIONAL MANAGER, TRIVANDRUM.

BY ADV. SRI.R.S.KALKURA

RESPONDENT(S)/PLAINTIFFS:
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1. RADHA RAVEENDRAN, D/O. SREEDHARAN,
   PROPRIETRIX RADHA BRICKS INDUSTRIES, RESIDING AT
   KUNNUVILA VEEDU, PLAVODE, PULIMATH VILLAGE.(DIED. LRS. IMPLEADED)

2. RAVEENDRAN, S/O. KOCHU, ADVOCATE,
   KUNNUVILA VEEDU, PLAVODE, PULIMATH VILLAGE.

(*R1 DIED AND R2 IS ONE OF HER LEGAL REPRESENTATIVE VIDE ORDER DT. 3.12.2009 AS PER MEMO DT. 14.9.2009, C.F. NO.4421 OF 2009).

ADDL.R3 IMPLEADED :

3. SANTHINI RAVEENDRAN, D/O.RADHA RAVEENDRAN,
   KUNNUVILA VEEDU, PLAVODE, PULIMATH VILLAGE, TRIVANDRUM - 695 612.
   (LEGAL HEIR OF DECEASED FIRST RESPONDENT IS IMPLEADED AS ADDL.R3 VIDE ORDER DT. 7.7.2014 IN I.A.NO.1563 OF 2013).

R1, R2, ADDL.3 & CROSS APPELLANTS BY ADV. SRI.MILLU DANDAPANI

THIS APPEAL SUITS HAVING BEEN FINALLY HEARD ON 19-06-2015, ALONG WITH CROSS APPEAL, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

P.B.SURESH KUMAR, J.

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A.S.No.133 of 2002 & Cross Appeal

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Dated 19th June, 2015.

J U D G M E N T

The sole defendant in a suit for realization of money is the appellant. The respondents are the plaintiffs in the suit.

2. The first plaintiff is the wife of the second plaintiff. The first plaintiff was running a brick kiln unit in a property owned by the second plaintiff with the financial assistance rendered by Kilimanoor Agricultural Co-operative Bank ('the Bank' for short). The Bank has insured with the defendant the buildings, plant, machinery and raw materials of the first plaintiff which were hypothecated to them for the period from 27.10.1992 to 26.10.1993. The case of the plaintiffs is that though the unit of the first plaintiff suffered damage to the tune of Rs.27,000/- in the flood occurred on 13.11.1992, the claim preferred by the plaintiffs was rejected by the defendant on unsustainable grounds. The suit was, therefore, filed for recovery of Rs.27,000/- towards damages.

3. The defendant admitted the group insurance

policy taken by the Bank from them by which the movables hypothecated to the Bank by the plaintiffs and others have been insured. Nevertheless, they contended that the Bank was a necessary party to the suit; that the independent surveyor appointed by them to assess the loss caused to the first plaintiff reported that she has not sustained any damage due to the flood occurred on 13.11.1992 as claimed by her and that the Bank also has confirmed the stand taken by the surveyor.

4. The trial court settled the following issues for trial:

> "1. Whether the suit is bad for non joinder of necessary parties?
>
> 2. Whether the plaintiffs have suffered any loss as alleged?
>
> 3. Whether claim of plaintiff is barred by limitation?
>
> 4. Whether the plaintiffs are entitled to any amount from the defendant as alleged?
>
> 5. Reliefs and Costs."

5. The evidence in the case consists of the oral testimonies of PW1 to PW5 and Exts.A1 to A8 documents on the side of the plaintiffs and the oral testimonies of DW1 to DW4

and Exts.B1 to B10 documents on the side of the defendant. A file called for from the Bank at the instance of the plaintiffs was marked as Ext.X1.

6. The trial court found that the Bank was only acting as the agent of the loanees including the first plaintiff in the matter of obtaining the insurance policy; that they had no interest in the subject matter of the policy and that therefore, the Bank was not a necessary party to the suit. On the remaining issues, the trial court found that the plaintiffs had sustained damage on account of the flood as claimed by them and therefore, the defendant is bound to indemnify the plaintiffs. The trial court further assessed the damage sustained by the plaintiffs and passed a decree permitting them to recover from the defendant a sum of Rs.17,000/- with interest towards damages. The defendant is aggrieved by the said decision of the court below and hence this appeal. The plaintiffs are also aggrieved by the decision of the trial court to the extent it confines the damages claimed by the plaintiff at Rs.17,000/- and they have preferred the Cross Appeal

challenging the decision of the trial court for the said purpose.

7. Heard Adv.Sri.R.S.Kalkura for the appellant and Senior Counsel Smt.Sumathy Dandapani for the respondents.

8. The learned counsel for the appellant contended that the insured articles were articles hypothecated by the first plaintiff to the Bank and consequently, a specific clause was included in the policy by which the parties have agreed that the monies becoming payable under the policy shall be paid only to the Bank. According to the learned counsel, in the light of the said provision in the policy, a suit for enforcement of the insurance policy can be filed only by the Bank. It was also contended by the learned counsel that, at any rate, the Bank was a necessary party to the suit and in so far as the Bank was not made a party to the suit, the suit was liable to be dismissed for non-joinder of necessary parties. The learned counsel has further contended that even on merits, the plaintiffs have not established that they sustained damage on account of the flood as claimed by them in the plaint.

9. Per contra, the learned Senior Counsel for the

respondents contended that there was no conflict of interests between plaintiffs and the Bank and that therefore, it cannot be said that the Bank was a necessary party to the suit. The learned counsel also contended that the materials on record would indicate beyond doubt that the plaintiffs had sustained damage in the flood occurred on 13.11.1992 and therefore, the court below cannot be found fault with for having decreed the suit.

10. Ext.B5 is the policy of insurance obtained by the Bank from the defendant. The Bank as well as the loanees including the first plaintiff are shown in Ext.B5 policy as the insured under the policy. Ext.B5 which contains a bank clause recites that upon any monies becoming payable under the policy, the same shall be paid by the defendant only to the Bank and such part of the monies so paid as may relate to the interests of the loanees insured thereunder shall be received by the Bank as the agents of such loanees. It is evident from the policy of insurance that the insured articles were hypothecated to the Bank and it is on account of the said reason, the

aforesaid bank clause was included in the policy. The right to receive the monies becoming payable under the policy therefore depends upon the liability of the loanee to the Bank. If there is no liability for the loanee to the Bank, there is no impediment for the insurer to disburse the monies becoming payable under the policy to the loanee. As such, it cannot be contended that the plaintiffs, who are the loanees of the Bank are not entitled to institute the suit for the amounts due to them under the policy, especially when the names of the loanees are specifically shown in the schedule to the policy as the insured.

11. As noticed above, since the right to receive the monies becoming payable under the policy depends on the liability of the first plaintiff to the Bank, according to me, the Bank was a necessary party to the suit. To sustain an action at the instance of the plaintiffs, it is obligatory for the plaintiffs to establish that they have no liability to the Bank. In so far as the Bank was not made a party to the suit, I am of the view that the matter has to be remitted to the court below for fresh disposal,

after affording the plaintiffs an opportunity to implead the Bank. Since it is found that the suit is bad for non-joinder of a necessary party, I do not propose to decide the correctness of the decision of the trial court on the remaining issues.

In the result, the appeal is allowed, the impugned judgment is set aside and the suit is remitted to the trial court for fresh disposal after affording the plaintiffs an opportunity to implead the Bank. This being a suit of the year 1994, I deem it appropriate to direct the court below to dispose of the suit finally within three months from today. The parties are directed to appear before the court below on 15.7.2015. In the light of the decision in the appeal, the Cross Appeal is closed. All the interlocutory applications in the appeal are closed.

Sd/-

P.B.SURESH KUMAR, JUDGE.

tgs

(true copy)