

IN THE HIGH COURT OF KERALA

PRESENT: P.A. MOHAMMED J.

Ayyappan Chellappan v. Ayyappan Thankappan,

Code of Civil Procedure 1908 - Order 1 R-1&3 and Order 2 R-3 Misjoinder of parties and misjoinder of causes of action - The provisions in 0.1 Rule 1 and 3 and 0.2 Rule. 3 have to be read together - The conditions provided in clauses (a) and (b) of Rule 3 of 0.1 have to be fulfilled before joining several persons as co-defendants in the same suit, and clauses (a) and (b) are not alternative but conjunctive.

Held: Clauses (a) and (b) of Rule 3 deal with two conditions to be fulfilled before joining several persons as co-defendants in the same suit. In reading clause (a) it appears to me quite apparent that the word 'same' which precedes acts or transactions governs also the words series of the acts or transactions and must be read before those words also. Therefore it is perpicuous that the first condition to be satisfied before joining several persons as co-defendants in the same suit is that the right to relief sought in the suit must arise against all defendants from the same act or transaction or from the same series of acts or transactions. The second condition to be satisfied under the rule is that some common question either of fact or law should arise against the defendants if the separate suits were brought against such persons. After the amendment of Order 1 Rule 3, two conditions must exist for enabling the plaintiff to join two or more persons in one suit as co-defendants as prescribed in clauses (a) and (b). Clauses (a) and (b) are not alternative but conjunctive. (Paras 8 & 9)

AIR 1984 Punj & Har 233

Dissented from

1986 KLT 988

Relied on

AIR 1979 Ori. 66, 1959 KLT 849

Distinguished

ILR 1953 (1) Cal. 15, AIR 1954

Manipur 5, AIR 1950 Cal 128

Referred to

K.C. John (Sr. Advocate), K.K. John

For Petitioner

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For Respondent