

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 09.03.2015

CORAM:

THE HONOURABLE MR. JUSTICE S.NAGAMUTHU

Second Appeal No.1182 of 2014

Ranganathan

.. Appellant/ Plaintiff

-Vs-

Narayanan

.. Respondent/ Defendant

SECOND APPEAL filed under Section 100 of Code of Civil Procedure against the judgment and decree dated 25.02.2011 in A.S.No.65 of 2011 on the file of the Principal District Judge, Cuddalore reversing the judgment and decree dated 24.02.2010 passed in O.S.No.68 of 2006 on the file of the II Additional Subordinate Judge, Cuddalore.

For Appellant : Mr.R.Sunilkumar

For Respondent : Mr.D.Ravichander

J U D G M E N T

The plaintiff in O.S.No.68 of 2006 on the file of the learned II Additional Subordinate Judge, Cuddalore is the appellant herein. The respondent is the sole defendant in the suit. This was a suit filed for damages. The trial court by decree and judgment dated 24.02.2010, partly decreed the suit thereby directing the defendant to pay a sum of Rs.1,00,000/- as damages. As against the same, the respondent herein filed an appeal in A.S.No.65 of 2010 on the file of the learned Principal District Judge, Cuddalore. Challenging the denial of the entire amount of compensation as claimed, the appellant filed A.S.No.100 of 2010 before the same court. The lower appellate court heard both the appeals and by a common decree and judgment dated 25.02.2011, allowed the A.S.No.65/2010, thereby setting aside the decree and judgment of the trial court and dismissed A.S.No.100/2010. As against the said decree and judgment in A.S.No.65 of 2010, the appellant is before this Court with this Second Appeal.

2. The facts of the case would be as follows:

Both the appellant and the respondent belong to the same village. There was some dispute in respect of the boundaries of the respective lands between the family of the plaintiff and the defendant. On 6.10.1997 at about 2.00 p.m., the plaintiff and his brother Vaidyanathan were engaged in agricultural work in their land. At that time, the defendant, his brother Purushothaman and his father Venkatachalam, who are the adjacent land owners, came to the spot, developed quarrel and finally, the defendant attacked the plaintiff with a spade handle on his head and Venkatachalam attacked him with a stick on his hip. The plaintiff sustained head injury and he was immediately rushed to the Government Hospital at Cuddalore from where he was referred to the General Hospital at Chennai. On a complaint duly made, a case was registered in Crime No.1031/1997 on the file of Nillikuppam Police Station which resulted in filing of a final report against the defendant and his brother. Thereafter, the case was committed to the court of sessions. The Additional Assistant Sessions Judge, Cuddalore in S.C.No.137 of 1999 convicted the appellant under Section 307 of IPC and sentenced him to undergo rigorous imprisonment for 4 years. His brother Mr.Purushothaman was convicted under Section 307 read with 34 of IPC and he was also sentenced to undergo rigorous imprisonment for 4 years. As against the same, they have filed an appeal in C.A.No.66 of 2000 before the learned Additional District and Sessions Judge, Cuddalore. The lower appellate court acquitted the defendant's brother Purushothaman, however, dismissed the appeal, thereby confirming the conviction and sentence imposed on the defendant. As against the same, the defendant filed a revision before this Court in CrI.R.C.No.890/2002. By judgment dated 16.09.2003, this Court confirmed the conviction, however, modified the sentence, thereby directing the defendant to pay a sum of Rs.10,000/- as fine and this Court further directed that the said amount be paid as compensation to the plaintiff herein under Section 357 of Cr.P.C.

3. Thereafter, the plaintiff filed this suit as an indigent person in the year 2004. He was declared indigent and accordingly, the suit was numbered as O.S.No.68 of 2006. In this suit, the plaintiff claims a sum of Rs.1,50,000/- as compensation, as according to him, because of the injuries sustained by him, he was not able to pursue his normal avocation and he has also suffered lot of mental agony and monetary loss.

4. The defendant filed a written statement disputing his liability to pay any amount as compensation. According to him, simply because the criminal court had convicted him, that would not automatically go to prove that the plaintiff is entitled for compensation. Apart from that, the quantum of compensation claimed was also disputed.

5. Based on the above pleadings, the trial court framed appropriate issues. On the side of the plaintiff, he was examined as P.W.1 and as many as 11 documents were exhibited and one Dr.J.S.Chandran was examined as P.W.2 to speak about the injuries sustained by the plaintiff and the consequential loss sustained by him. On the side of the defendant, he was examined as D.W.1 and no document was exhibited. Having considered all the above, the trial court partly decreed the suit, thereby directing the defendant to pay a sum of Rs.1,00,000/- as compensation. That is how, the Appeal as well as the Cross Appeal have been filed by the parties concerned. The lower appellate court allowed the appeal in A.S.No.65 of 2010 on the ground of limitation. Consequently, the lower appellate court dismissed the Cross Appeal. That is how, the appellant is before this Court with this Second Appeal.

6. In this Second Appeal, the following substantial questions of law have arisen for consideration:

a. Whether the lower appellate court was right in setting aside the decree and judgment of the trial court on the ground of limitation, when there was no question of limitation at all raised either in the written statement filed before the trial court or in the appeal memorandum filed before the lower appellate court?

b. Whether the period of limitation will commence from the date of judgment of this Court in the Criminal Case or from the date of the occurrence in which the plaintiff sustained injuries? and

c. Whether the period spent before the criminal court should be excluded, while computing the period of limitation for the purpose of this suit?

7. I have heard the learned Counsel on either side and I have also perused the records carefully.

8. The first and foremost contention of the learned Counsel for the appellant is in respect of the first substantial question of law. According to him, in the absence of the plea of limitation raised either in the written statement before the trial court or in the appeal memorandum before the lower appellate court, the lower appellate court ought not to have raised the question of limitation itself to answer the same.

9. In my considered opinion, this argument overlooks the statutory provision contained in Section 3 of the Limitation Act (hereinafter referred to as, 'the Act'). Section 3(1) of the Act reads as follows:

"3. Bar of limitation-(1) Subject to the provisions contained in Section 4 to 24 (inclusive), every suit instituted, appeal preferred, and application made after the prescribed period shall be dismissed, although limitation has not been set up as a defence."

Thus, a plain reading of the above would make it undoubtedly clear that it is the duty of the court to verify as to whether the suit has been filed within the period of limitation irrespective of the fact as to whether the limitation has been set up as a defence or not and if it is found that the suit has not been filed within the period of limitation, the only option left open for the court is to simply dismiss the suit on the sole ground that the suit is barred by limitation.

10. Order VII Rule 11 of C.P.C. also says that the plaint shall be rejected where the suit appears from the statement in the plaint to be barred by any law. Here, the suit is barred by the Limitation Act. Therefore, in this case, de hors the fact that no plea of limitation was taken by the defendant, the trial court ought to have rejected the plaint as barred by limitation or to have dismissed the suit as barred by limitation. The trial court failed to do so. But the lower appellate court rightly went into the question and held that the suit is barred by limitation. In this finding, I do not find any illegality. Thus, the first substantial question of law is answered in favour of the defendant.

11. The next question is as to whether the period of limitation will commence from the date of judgment of the criminal court or from the date of the occurrence. Indisputably, the limitation in respect of the suits relating to tort is dealt with in Part VII Schedule II of the Limitation Act in Article 72 to 91. But the present suit does not fall under any one of these Articles. It squarely falls within Article 113. As per Article 113, the period of limitation is 3 years i.e. from the date when the right to sue accrues. Here in this case, admittedly, the right to sue accrues, on the date, when the injuries were caused to the appellant on 06.10.1997. Therefore, the suit should have been filed on or before 05.10.2000. But admittedly, it was filed only in the year 2004. Thus it is clearly barred by limitation.

12. I hold that the limitation period commences from the date on which the injuries were caused and not from the date of judgment by the criminal court. This can also be explained in the following manner. The crucial date, according to the limitation Act, is the date on which the right to sue accrues. In the present case, the claim for compensation is made, not on the basis of the judgment of the criminal case, but, on the basis of the injuries sustained in the occurrence. Thus, the right to sue in the present case accrues on the date of occurrence itself in which he sustained injuries and

not on the date of final judgment of the criminal court. Suppose in a given case, there is an allegation of malicious prosecution, the case ends in conviction before the trial court and the matter goes up to the Supreme Court and finally, the Supreme Court acquits him holding that the prosecution is malicious, in that case, the right to sue accrues for the accused, only on the date, when the judgment is given by the criminal court. Therefore, in such a case, the limitation period will start from the date of judgment and not from the date of occurrence. This distinction will make the issue in the present suit very clear that the right to sue accrues, not on the date of judgment by the criminal court, but, on the date when the appellant sustained injuries in the occurrence. Accordingly, the second substantial question of law is answered in favour of the defendant.

13. The next contention is that under Section 14 of the Limitation Act, the period spent before the criminal case is excluded while computing the period of limitation. If it is so excluded, the suit, according to the plaintiff, is well within the period of limitation.

14. In this regard, I would like to stress the distinction between the terms, "the extension of period of limitation" as provided in Section 5 of the Limitation Act and "the exclusion of time in legal proceedings" as dealt with in Part III of the Limitation Act. So far as Section 5 of the Act is concerned, if once the delay in preferring an appeal or application is condoned, by virtue of the said order, the period of limitation gets extended. Indisputably, for a suit, Section 5 of the Act is not applicable and therefore, there is no scope to extend the period of limitation. That is the reason why, the learned Counsel for the appellant contends that in the instant case, the provision relating to the exclusion of time is applicable. But, in my considered opinion, this contention also deserves to be negatived going by the plain reading of the Section 14 of the Act upon which much reliance is made by the learned Counsel for the appellant.

15. Section 14 of the Act reads as follows:

"Exclusion of time of proceeding bona fide in court without jurisdiction :

1. In computing the period of limitation for any suit the time during which the plaintiff has been prosecuting with due diligence another civil proceeding, whether in a court of first instance or of appeal or revision, against the defendant shall be excluded, where

the proceeding relates to the same matter in issue and is prosecuted in good faith in a court which, from defect of jurisdiction or other cause of a like nature, is unable to entertain it.

2. In computing the period of limitation for any application, the time during which the applicant has been prosecuting with due diligence another civil proceeding, whether in a court of first instance or of appeal or revision against the same party for the same relief shall be excluded, where such proceeding is prosecuted in good faith in a court which, from defect of jurisdiction or other cause of a like nature, is unable to entertain it.

3. Notwithstanding anything contained in rule 2 of Order XXIII of the Code of Civil Procedure, 1908 (5 of 1908), the provisions of sub-section (1) shall apply in relation to a fresh suit instituted on permission granted by the court under rule 1 of that Order where such permission is granted on the ground that the first suit must fail by reason of a defect in the jurisdiction of the court or other cause of a like nature.

Explanation : For the purpose of this Section:-

a. in excluding the time during which a former civil proceeding was pending, the day on which that proceeding was instituted and the day on which it ended shall both be counted;

b. a plaintiff or an applicant resisting an appeal shall be deemed to be prosecuting a proceeding;

c. misjoinder of parties or of causes of action shall be deemed to be a cause of a like nature with defect of jurisdiction."

16. A cursory perusal of Section 14 of the Act, as extracted above, would make it very clear that if only the plaintiff has been prosecuting with due diligence another civil proceeding, whether in a court of first instance or of appeal or revision, then the period so bona fide spent in the said proceeding shall be excluded by computing the period of limitation. In other words, the earlier proceeding where some time was spent inadvertently by the plaintiff should also be a civil proceeding. But in the instant case, according to the plaintiff, the time was spent in a criminal case. A criminal case cannot be equated to a civil proceeding for the purpose of Section 14 of the Act. Therefore, I have no doubt in my mind that Section 14 of the Act is not applicable to the present case and therefore, any amount of time spent before the criminal court shall not be excluded while computing the period of limitation for the purpose of the present case. Accordingly, the 3rd

substantial question of law is also answered in favour of the defendant.

17. But the learned Counsel for the appellant would make reliance on a judgment of the Hon'ble Supreme Court in Smt. Bhuri Bai (Dead) by Legal Heirs and others vs. State of Madhya Pradesh reported in 1987 (Supp) Supreme Court Cases 690.

18. I have carefully gone through the said judgment. But, I do not find anything in favour of the appellant in the said case. The operative portion of the said judgment reads as follows:

"...As regards the question of limitation, we have pointed out often enough that the plea of limitation is not a proper one to be taken by the State. That was perhaps the reason why the government very properly did not raise the plea of limitation in defence to the action of the appellants. We do not think that the High Court was justified in taking up the question suo motu and finding that the suit was barred by limitation. We notice that there was in fact some question whether it was Article 29 or Article 49, which was the appropriate Article to be applied to the facts of the case. We also notice that the suit was filed within one year of the decision of the High Court which declared the seizure illegal. In the circumstances we allow the appeal with costs, set aside the judgment of the High Court and restore that of the trial court."

In that case, the Hon'ble Supreme Court on facts found that the suit was filed within the period of limitation.

19. The learned Counsel for the appellant nextly relied on a judgment of the Hon'ble Supreme Court in Narne Rama Murthy vs. Ravula Somasundaram and others reported in (2005) 6 Supreme Court Cases 614 and also yet another judgment of the Hon'ble Supreme Court in 1. Banarsi Das (in C.As.Nos.94 to 96 of 60) and 2. Kundanlal (In C.A.No.97 of 60) vs. 1. Kanshi Ram and others (in C.As.Nos.94 and 97 of 60) 2. Kundanlal and others (In C.A.No.95 of 60) and Munna Lal and others (In C.A.No.96 of 60) reported in AIR 1963 Supreme Court 1165. In those cases, the Hon'ble Supreme Court has held that a new plea of limitation, which was not purely one of law, but a mixed question of law and facts, should not have been allowed to be raised for the first time at the stage of arguments in the Second Appeal by the High Court, especially, when it was raised by the non-contesting defendant, who had not filed a written statement in the suit. Regarding this legal position, I cannot have any different opinion at all. I am bound by that.

20. But what the Hon'ble Supreme Court has held in those cases is that when the question involved is not a pure question of law, but a mixed question of law and facts, then, the same cannot be raised for the first time at the time of argument in the Second Appeal, because the disputed facts are to be either proved or disproved by the parties concerned by affording sufficient opportunities. It was, in those circumstances, the Hon'ble Supreme Court held that raising such a plea of mixed question of law and facts on limitation should not be allowed to be raised for the first time in the Second Appeal thereby depriving the right of the adverse party. But, it is also the law that if the question is pure and simple, a question of law, as provided under Section 3 of the Limitation Act, it can be raised as a plea of defence either in the written statement before the trial court or in the appeal memorandum before the first appellate court. In such view of the matter, these judgments also do not come to the rescue of the appellant, because here in this case, the question of law raised is pure and simple question of law and not a mixed question of law and facts. In view of the foregoing discussions and the conclusions, I hold that the lower appellate court was right in setting aside the decree and judgment of the trial court. I do not find any merit in this appeal.

21. In the result, the Second Appeal fails and the same is accordingly dismissed. No costs.

Sd/-

Asst.Registrar (CS V)

/true copy/

Sub Asst. Registrar

tsi

To

1. The Principal District Judge, Cuddalore.
2. The II Additional Subordinate Judge, Cuddalore.

1 cc to Mr.R. Sunilkumar, Advocate, Sr. 13493
1 cc to Mr.D. Ravichander, advocate, Sr. 13113

S.A.No.1182 OF 2014

SV (CO)
kk 17/4