

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.07.2015

CORAM

THE HON'BLE MS. JUSTICE R. MALA

S.A.No.1501 of 1998

Date of Reserving the Judgment	Date of Pronouncing the Judgment
30.06.2015	06.07.2015

1.Nedumaran (Deceased)

... Appellant/1st Respondent/Plaintiff

2.Saroja

3.Ilangovan

4.Kalaiselvi

5.Manivannan

6.Anbarasan

... Appellants/Plaintiffs.

(Appellants 2 to 6 brought on record as Lrs of the deceased sole appellant vide order of the Court dated 03.02.2015 in C.M.P.Nos.450 to 452 of 2014)

-Vs-

1. The District Collector
Nagai Quide Milleth
District, Nagapattinam

2. The Assistant Director
Tamil Nadu Khadi and
Village Industries
Board, Cuddalore

3. The Tahsildar
Tharangampadi
Tharangampadi Taluk

... Defendants 1 to 3/Appellants/Respondents

4. The Village Administrative Officer
Tattangudi
Tharangampadi

... Respondents 1 to 4 /Defendants.

Prayer:

Second appeal filed under Section 100 of CPC against the judgment and decree of the learned District Judge, Nagai Quide Milleth District, Nagapattinam in A.S.No.396 of 1994, dated 23.11.1995 reversing the judgment and decree of the learned District Munsif, Nannilam in O.S.No.70 of 1994, dated 30.09.1994.

For Appellant : Mr.M.Kamalanathan

For Respondents : Mr.Jayaramarajan, Spl.G.P. (C.S)
for R1, R3 & R4

R2 - No Appearance

J U D G M E N T

The second appeal arises out of the judgment and decree dated 23.11.1995 made in A.S.No.396 of 1994 on the file of the learned District Judge, Nagai Quide Milleth District, Nagapattinam, reversing the judgment and decree dated 30.09.1994 passed in O.S.No.70 of 1994 on the file of the learned District Munsif, Nannilam.

2. The averments made in the plaint are as follows:-

The plaintiff was originally serving as a Manager under the 2nd defendant institution at Thittakudi. While the plaintiff was in service the department people levelled some grave charges against him and as per the order of the Department, the plaintiff was directed to pay a sum of Rs.11,611.96/-. Further, criminal prosecution was launched as against him under Crime No.7/76 by the District Crime Branch Police, Cuddalore. The plaintiff had also offered his explanation to the Department stating that he had not committed any offence and that he is not liable to pay any amount to the Department. The prosecution levied by the District Crime Branch was also closed on 07.02.1977 as "Mistake of Facts". Thereafter, the Tahsildar of Thattangudi attempted to initiate Revenue Recovery Proceedings under R.R.Act against the plaintiff for the collection of the abovesaid amount. Immediately the plaintiff offered his explanation and it was accepted and the proceedings was dropped. While so, after a gap of 12 years, the 3rd defendant had issued a notice under Form I Dstraint order, dated 05.11.1990 through the 4th defendant whereby they have demanded the plaintiff to pay Rs.10,478.75/-, failing which the dstraint proceeding will be implemented. Immediately, thereafter the plaintiff issued a notice to the defendants 1 to 3 under Section 80 CPC on 18.12.1990. However, even after the receipt of the notice, the defendants 1 to 3 neither complied with the demands made by the plaintiff nor gave any reply. But the 3rd defendant issued a notice dated 11.06.1991 and the same was served on the plaintiff on 20.06.1991. On 22.06.1991 the 3rd defendant's men and the 4th defendant attempted to cause attachment. Hence, the plaintiff was constrained to file the suit.

3. The gist and essence of the written statement filed by the 2nd defendant is as follows:

While the plaintiff was working as Manager in the 2nd defendant Department, he committed misappropriation of funds and hence, disciplinary action was taken against him. Moreover, a criminal action was also initiated for the offences committed by him. Though the criminal action was dropped by the police on the ground of mistake of facts, it does not mean that the plaintiff has not committed any misappropriation of funds. Thereafter, the plaintiff was dismissed from service and the third respondent was directed to claim the misappropriated sum of Rs.11,611.96/- from the plaintiff under Revenue Recovery Proceedings. The distraint proceedings have been rightly initiated against the plaintiff after obtaining necessary permission from the 1st defendant under the provisions of the Revenue Recovery Act. The notice issued by the plaintiff under Section 80 CPC is not proper and valid. Further, when the plaintiff alleges that he does not own any movable and immovable properties, it is unnecessary for the plaintiff to resist the attempt of the defendant 3 and 4 to cause attachment. Hence he prayed for dismissal.

4. The Learned Trial Judge after considering the averments made in the plaint and the written statement and arguments on either side counsel, has framed necessary issues and on perusing the oral and documentary evidences viz., P.W.1, D.W.1 and Exs.A.1 to A.6, decreed the suit. Aggrieved against the judgment and decree passed by the trial court, the defendants 1 to 3 preferred an appeal in A.S.No.396 of 1994 on the file of the learned District Judge, Nagapattinam.

5. The learned First Appellate Court has considered the arguments advanced on either side and framed necessary point for consideration and reversed the Judgment and Decree passed by the Trial Court and allowed the appeal. Against the Decree and Judgment passed by the first Appellate Court, the present second appeal has been preferred by the plaintiff/appellant.

6. At the time of the admission, the following question of law has been framed.

"1. Whether the first appellate Court committed an error in applying Article 112 of the Limitation Act of 1963 in negating the relief of the appellant/plaintiff?

2. Whether the first appellate Court has misread the evidence and failed to consider the materials on record to dismiss the suit?"

7. The learned counsel appearing for the appellant would submit that the appellant as a plaintiff had filed the suit for declaration that the demand made by the third defendant in R.C.No.831 of 1990, dated 27.10.1990 and 11.06.1991 is illegal and without any basis and

consequently restraining the defendants 3 and 4 from in any way collecting any amount from him. The learned counsel would submit that when the plaintiff was working as Manager in the 2nd defendant institution at Thittakudi, he was directed to pay a sum of Rs.11,611.96/- and a criminal proceeding was initiated in Crime No.7/76 by the District Crime Branch Police, Cuddalore. But after investigation, the said FIR was closed as mistake of facts on 07.02.1977. However, even after the matter was closed by the police, the respondents are attempting to recover the money under the Revenue Recovery Proceedings, after a gap of 12 years. So, the plaintiff issued a notice to the respondents/defendants under Section 80 CPC and has filed the present suit for the relief set out earlier. The learned counsel would further submit that the Trial Court after considering the defence raised by the respondent had rightly decreed the suit. However, in the appeal preferred by the respondents/defendants, the first appellate Court had allowed the appeal stating that the claim made by the respondents/defendants is not barred by limitation. But as per Article 68 of the Limitation Act, the claim is barred and the respondents/defendants are not entitled for taking action under the Revenue Recovery Act. Hence, the demand made by the respondents/defendants is void and illegal. Thus, the learned counsel for the appellant prayed for allowing the appeal.

8. Resisting the same, the learned Special Government Pleader would submit that as per Article 112 of the Limitation Act, in respect of Government, the period of limitation is 30 years. So, the first appellate Court has rightly considered the same and held that the claim is not barred by limitation and decreed the suit. He would further submit that the suit is barred for non-issuance of notice under Section 80 CPC. Hence, he prayed for dismissal of the appeal.

9. Considered the rival submissions made by both sides and perused the material records, oral and documentary evidences.

10. It is pertinent to note that both the Courts below had held that only the Civil Court has jurisdiction to entertain the civil suit. However, the Courts below had taken a contrary view as to whether Article 68 or Article 112 of the Limitation Act would be applicable to the facts of the present case. It is appropriate to incorporate Article 68 and Article 112 of the Limitation Act.

Article 68

For specific movable property lost, or acquired by theft, or dishonest misappropriation or conversion.	Three years	When the person having the right to the possession of the property first learns in whose possession it is.
--	-------------	--

Article 112

Any suit (except a suit before the Supreme Court in the exercise of its original jurisdiction) by or on behalf of the Central Government or any State Government, including the Government, including the Government of the State of Jammu and Kashmir.	Thirty years	When the period of limitation would begin to run under this Act against a like suit by a private person.
---	--------------	--

11. In the instant case, the respondents/defendants are the Government. According to the appellant, he was working as Manager in the 2nd defendant/2nd respondent i.e., Tamil Nadu Khadi and Village Industries Board. At that time there was an alleged misappropriation of Rs.11,611.96/-. Immediately a complaint was preferred and a case was registered in Crime No.7/76 by the District Crime Branch Police, Cuddalore. However, it was closed on 07.02.1977 as Mistake of facts. As per Ex.A.1, dated 27.10.1990 notice was issued for attaching the property under the Revenue Recovery Act. Immediately, the appellant/plaintiff had issued Ex.A.2/Notice, dated 18.12.1990 to the respondents. Admittedly, the said notice was not issued under Section 80 of CPC. At this juncture, it would be appropriate to incorporate Section 80 CPC.

"80. Notice.- Save as otherwise provided in sub-section (2), no suit shall be instituted against the Government (including the Government of the State of Jammu and Kashmir) or against a public officer in respect of any act purporting to be done by such public officer in his official capacity, until the expiration of two months next after notice in writing has been delivered to, or left at the office of-

(a) in the case of a suit against the Central Government, except where it relates to a railway, a Secretary to that Government;

(b) in the case of a suit against the Government where it relates to a railway, the General Manager of that railway;

(bb) in the case of a suit against the Government of the State of Jammu and Kashmir, the Chief Secretary to that Government or any other officer authorised by that Government in this behalf;

(c) in the case of a suit against any other State Government a Secretary to that Government or the Collector

of the district;

and, in the case of a public officer, delivered to him or left at his office, stating the cause of action, the name, description and place of residence of the plaintiff and the relief which he claims; and the plaint shall contain a statement that such notice has been so delivered or left.

(2) A suit to obtain an urgent or immediate relief against the Government (including the Government of the State of Jammu and Kashmir) or any public officer in respect of any act purporting to be done by such public officer in his official capacity, may be instituted, with the leave of the Court, without serving any notice as required by sub-section (1); but the Court shall not grant relief in the suit, whether interim or otherwise, except after giving to the Government or public officer, as the case may be, a reasonable opportunity of showing cause in respect of the relief prayer for in the suit:

Provided that the Court shall, if it is satisfied, after hearing the parties, that no urgent or immediate relief need be granted in the suit, return the plaint for presentation to it after complying with the requirement of sub-section (1).

(3) No suit instituted against the Government or against a public officer in respect of any act purporting to be done by such public officer in his official capacity shall be dismissed merely by reason of any error or defect in the notice referred to in sub-section (1), if in such notice—

(a) the name, description and the residence of the plaintiff had been so given as to enable the appropriate authority or the public officer to identify the person serving the notice and such notice had been delivered or left at the office of the appropriate authority specified in sub-section (1), and

(b) the cause of action and the relief claimed by the plaintiff had been substantially indicated."

12. On perusal of Ex.A.2/Notice would show that it is not a notice as prescribed under Section 80 CPC. So, the argument advanced by the learned Government Advocate that no notice under Section 80 CPC has been issued merits acceptance.

13. As per Ex.A.6, dated 20.06.1991, Form No.1 Distant order has been issued. A perusal of the pleadings would show that the proceeding has been initiated after 12 years. But as per Article 112 of the Limitation Act, the period of limitation for Government to take action is 30 years. In the instant case, the cause of action arose in the year 1976 and the Ex.A.6 was issued on 20.06.1991, well within 30 years. So, as per Article 112 of the Limitation Act, the said notice is not barred by limitation. The first appellate Court

has considered this aspect in proper perspective and came to the correct conclusion. The substantial question of law 1 is answered accordingly.

14. As far as the second substantial question of law is concerned, the first appellate Court has considered the entire evidence in proper perspective and came to the correct conclusion and dismissed the suit stating that the appellant is not entitled to any relief. Hence, I do not find any reason to interfere with the finding of the Trial Court. The substantial question of law 2 is answered accordingly.

15. Furthermore, though the learned counsel for the appellant would submit that already the entire amount had been recovered from the appellant, he has not filed an iota of evidence to prove the same. It is a well settled principle that the person who pleads discharge must prove his case i.e., discharge.

16. Thus, considering the above facts and circumstances, I am of the view that the first appellate Court has considered all the aspects in proper perspective and dismissed the suit and hence, it does not warrant any interference by this Court. Consequently, the second appeal is dismissed without costs.

17. In fine,

- (a) The Second Appeal is dismissed. No costs.
- (b) The judgment and decree passed by the first appellate Court is hereby confirmed.

s/d-
Assistant Registrar(CO)

True Copy

Sub-Assistant Registrar

To

- 1.The District Munsif, Nannilam.
- 2.The District Judge, Nagapattinam.
- 3.The Record Keeper, V.R.Section, High Court, Chennai.
4. The District Collector
Nagai Quide Milleth
District, Nagapattinam

5. The Assistant Director
Tamil Nadu Khadi and
Village Industries
Board, Cuddalore

6. The Tahsildar
Tharangampadi
Tharangampadi Taluk

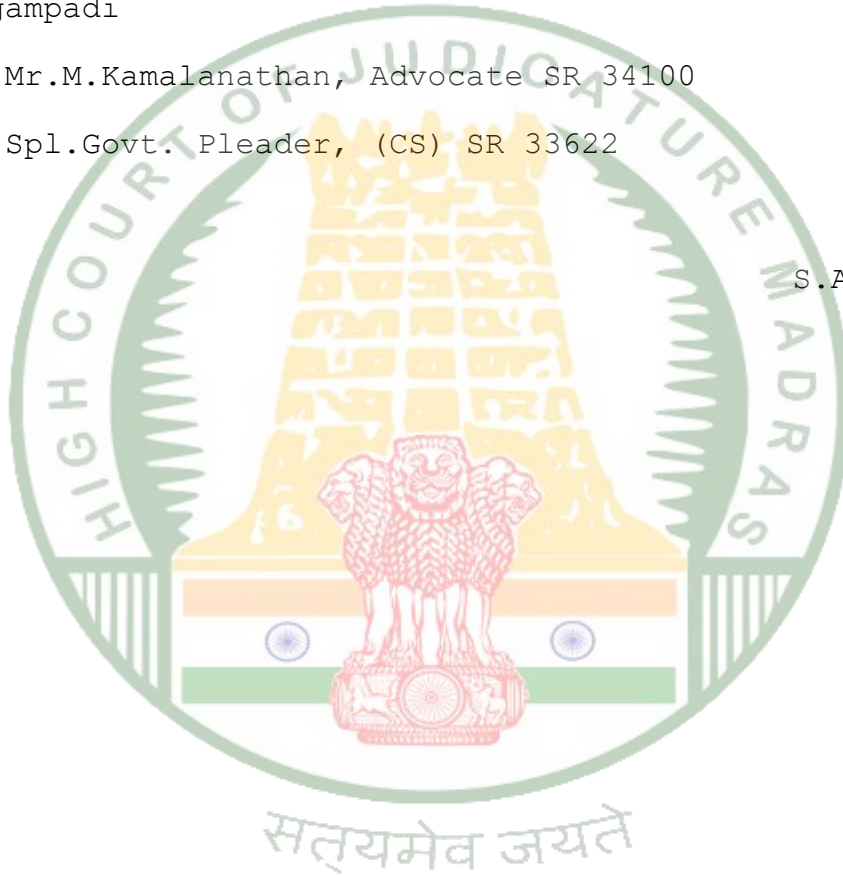
7. The Village Administrative Officer
Tattangudi
Tharangampadi

+ 1 cc to Mr.M.Kamalanathan, Advocate SR 34100

+ 1 cc to Spl.Govt. Pleader, (CS) SR 33622

tej(co)
prk22/7

S.A.No.1501 of 1998



WEB COPY