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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA-1927-2012 (O&M)
Date of decision : 27.10.2016

Manmohan Lal @ Mohan Lal and another

... Appellant

Versus

Gurbaksh Singh and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. S.K. Singla, Advocate
for the appellants.

Mr. Sanjiv Gupta, Advocate
for the respondents.

AMIT RAWAL, J. (ORAL)

The appellants-defendants are aggrieved of the judgment and decree of the lower Appellate Court, whereby the suit of the respondents-plaintiffs seeking recovery of ₹ 2,80,000/- along with interest @ 12% from the date of the demand dated 16.06.2007 till filing of the suit and future interest @ 6% from the date of filing of the suit till actual realization, has been decreed with an assessment of counsel fee of ₹ 2,000/-, in essence, the judgment and decree of the trial Court dismissing the suit, has been set aside.

Mr. S.K. Singla, learned counsel appearing on behalf of the

appellants-defendants submits that the respondents-plaintiffs instituted a suit claiming the aforementioned amount on the basis of the document alleged to be *amanat nama* dated 01.01.1997 (Ex.PW-2/B) and the same is extracted hereinbelow.

“Received as amanat ₹ 2,80,000/-, the half whereof is ₹ One lakh forty thousands from S. Gurbaksh Singh resident of Khanian today on 1.1.97.”

He submits that the aforementioned *amanat nama* was executed by Amrit Lal, father of the defendant, who admittedly died on 16.09.2001. The *amanat nama* would not be considered as an agreement to bring the case within the provisions of Article 22 of the Limitation Act. There was no undertaking, much less, an agreement between the parties for returning the amount. The filing of the suit on 23.08.2007 was barred by law of limitation. The trial Court by noticing the aforementioned facts, dismissed the suit, but the lower Appellate Court has brought the case within the aforementioned provisions and held to be within the period of limitation, thus, urges this Court for setting aside the judgment and decree under challenge as there is gross illegality and perversity.

Per contra, Mr. Sanjiv Gupta, learned counsel appearing on behalf of the respondents-plaintiffs submits that the *amanat nama* would be construed as an agreement and therefore, when the demand was stated to have been made on 16.06.2007, the suit had been filed on 23.08.2007 cannot be thrown out on the ground of limitation. Even otherwise, the defendants are none-else, but the legal heirs of Amrit Lal and once they succeeded in his estate, they are liable to pay the amount. In support of his contentions, he relies upon the *ratio decidendi* culled out by the Hon'ble

Supreme Court in “Guntur Narasimham and another V/s Nyapati Narayan Rato Garu” AIR 1926 Madras 66, to contend that the suit would be within the period of limitation. The lower Appellate Court being the last Court of fact and law has rightly decreed the suit, thus, urges this Court affirming the findings under challenge as the findings of the lower Appellate Court cannot be interfered until and unless there is a gross illegality and perversity.

I have heard the learned counsel for the parties and appraised the paper book and of the view there is a merit and force in the submissions of Mr. S.K. Singla, for, the document extracted above cannot remotely be brought within the ambit of expressions “Agreement” to bring the suit within the period of limitation on the premise that the respondents-plaintiffs had raised a demand on 16.06.2007 and the suit having been filed on 23.08.2007 would be said to be within the period of limitation. No doubt the appellants-defendants are the legal heirs of Amirt Lal, but it was a personal transaction between the plaintiff and the deceased Amrit Lal. He had not undertaken that his legal heirs would be bound. No steps have been taken to recover the amount during his life, much less, within the period of limitation commencing from 01.01.1997.

There is another aspect of the matter as the pleadings and evidence is conspicuously lacking with regard to the alleged demand made and acknowledgement of that, to bring the suit within the period of limitation by taking the aid of the provisions of Section 18 of the Limitation Act. All these facts have not been noticed by the lower Appellate Court while decreeing the suit.

The *ratio decidendi* culled out by the Hon'ble Supreme Court in “Guntur Narasimham's case (supra) is not applicable to the facts of the present case as the judgment is based upon the certain communications and correspondences which is not the case set out by the respondents-plaintiffs in the instant case.

No doubt, this Court, on earlier occasions had been framing the substantial questions of law while deciding the appeals but in view of the *ratio decidendi* culled out by five learned Judges of the Hon'ble Supreme Court in “Pankajakshi (dead) through LRs and others V/s. Chandrika and others AIR 2016 SC 1213”, wherein the proposition arose as to whether in view of the provisions of Section 97(1) CPC, provisions of Section 41 of the Punjab Courts Act, 1918 would apply or the appeal i.e. RSA would be filed under Section 100 of Code of Civil Procedure, so there is need to frame the substantial questions of law or not. The Constitutional Bench of Hon'ble Supreme Court held that the decision in “Kulwant Kaur and others V/s. Gurdial Singh Mann (dead) by LRs and others” 2001(4) SCC 262, on applicability of Section 97(1) of CPC is not a correct law, in essence, the provisions of Section 41 of the Punjab Courts Act, 1918 had been restored back.

For the sake of brevity, the relevant portion of the judgment of five learned Judges of the Hon'ble Supreme Court in “Pankajakshi 's case (supra) reads thus:-

“Since Section 41 of the Punjab Act is expressly in conflict with the amending law, viz., Section 100 as amended, it would be deemed to have been repealed. Thus we have no hesitation to hold that the law declared by the Full Bench of the High

*Court in the case of **Ganpat [AIR 1978 P&H 137 : 80 Punj LR 1 (FB)]** cannot be sustained and is thus overruled." [at paras 27 - 29] ”*

27. *Even the reference to Article 254 of the Constitution was not correctly made by this Court in the said decision. Section 41 of the Punjab Courts Act is of 1918 vintage. Obviously, therefore, it is not a law made by the Legislature of a State after the Constitution of India has come into force. It is a law made by a Provincial Legislature under Section 80A of the Government of India Act, 1915, which law was continued, being a law in force in British India, immediately before the commencement of the Government of India Act, 1935, by Section 292 thereof. In turn, after the Constitution of India came into force and, by Article 395, repealed the Government of India Act, 1935, the Punjab Courts Act was continued being a law in force in the territory of India immediately before the commencement of the Constitution of India by virtue of Article 372(1) of the Constitution of India. This being the case, Article 254 of the Constitution of India would have no application to such a law for the simple reason that it is not a law made by the Legislature of a State but is an existing law continued by virtue of Article 372 of the Constitution of India. If at all, it is Article 372(1) alone that would apply to such law which is to continue in force until altered or repealed or amended by a competent Legislature or other competent authority. We have already found that since Section 97(1) of the Code of Civil Procedure (Amendment) Act, 1976 has no application to Section 41 of the Punjab Courts Act, it would necessarily continue as a law in force.”*

Therefore, I do not intend to frame the substantial questions of law while deciding the appeal, aforementioned.

For the foregoing reasons, the judgment and decree of the lower Appellate Court is not sustainable and the same is hereby set aside and that of trial Court is restored, in essence, the suit of the respondents-plaintiffs is dismissed.

Accordingly, the appeal stands allowed.

27.10.2016
Yogesh Sharma

(AMIT RAWAL)
JUDGE

	✓
Whether speaking/reasoned	Yes/ No
	✓
Whether Reportable	Yes/ No