THE HON'BLE SRI JUSTICE A.V.SESHA SAI

A.S.No.2293 of 1992

JUDGMENT:

This appeal suit filed by the plaintiffs under Section 96 of the Code of Civil Procedure assails the order dated 25.08.1992 passed by the Court of the Principal Subordinate Judge, Guntur in CFR.No.6604 of 1992.

2. Heard Sri R.Vijayanandan Reddy, learned counsel for the appellants and Sri C.Prakash Reddy, learned counsel for the respondents 12 and 13.

3. The appellants herein presented a plaint before the said Court against the respondents herein for recovery of a sum of Rs.1,14,766.66 ps on the foot of a promissory note dated 29.12.1986, said to have been executed on behalf of the first defendant by the defendants 2 and 3. The learned subordinate Judge, by way of an order dated 25.08.1992, rejected the plaint vide CFR.No.6604 of 1992 on the ground that the claim was barred by limitation.

4. This appeal preferred under Section 96 of the Code of Civil Procedure, challenges the validity and the legal sustainability of the said order dated 25.08.1992.

5. It is contended by the learned counsel for the appellants that the order passed by the learned Principal Subordinate Judge is highly erroneous, contrary to law and is opposed to the very spirit and object of the provisions of Order 7 Rule 11 and Order 12 Rule 6 of the Code of Civil Procedure. It is further contended that since the point of limitation is a mixed question of law and fact, the plaint should not have been rejected at the threshold by the leaned Subordinate Judge. It is also the submission of the learned counsel

that at paragraph 8 of the plaint the plaintiffs' explanation about the limitation would clearly show that the suit plaint was presented within the period of limitation.

In support of his submissions and contentions, learned counsel for the appellants places reliance on the judgment of this Court in *SEELA VENKATA SUBBAIAH v. JINKA MUNI SWAMY AND ANOTHER*[1].

6. On the contrary, it is vehemently contended by the learned counsel for the respondents Sri C.Prakash Reddy that there is no bar nor there exists any infirmity in the impugned order and in the absence of the same, the order impugned is not amenable for any interference of this Court under Section 96 of the Code of Civil Procedure. It is also the submission of the learned counsel that the suit promissory note was executed on 29.12.1986 and the part payment was made on 21.05.1989 by the defendants 2 and 3 and the suit was instituted on 22.06.1992, as such, the Court below was perfectly justified in rejecting the plaint on the ground of limitation and the same being strictly in accordance with the provisions of the Limitation Act.

7. In the light of the above contentions and submissions made by the learned counsel for the appellants and the respondents, the points that emerge for consideration of this Court are:

1. Whether the order passed by the learned Subordinate Judge is in accordance with law?

2. Whether the impugned order warrants any interference of this Court under Section 96 of the Code of Civil Procedure.

[1] 1997 (6) ALT 654

8. It is a settled and well established principle of law that the question of limitation is a mixed question of law and fact and the same can be decided only after leading evidence. In this Connection, it may be appropriate to refer to the paragraph 8 of the plaint, which reads as under:

> "The cause of action for this suit has arisen at Guntur within the jurisdiction of this Hon'ble Court on 29.12.1986 when the first defendant through its Managing partners, the defendants 2 and 3 borrowed the amount of Rs.50,000/- and executed a promissory note; later on 21.5.89 when the defendants 2 and 3 as managing Partners paid Rs.1000/- signed the endorsement acknowledging the debit at Guntur within the jurisdiction of this Hon'ble Court; on 31.3.91 when the defendants entered into a deed not only acknowledging the debt but also undertaking to discharge the suit debt; on 11.9.91 when the plaintiffs got registered notices issued to defendants 2 and 3 as managing Partners of the first defendant; on 23.9.91 when the third defendant gave a reply notice accepting the debt."

9. It is very much evident from a reading of the above paragraph that one of the causes for institution of the suit, as shown by the plaintiffs, is the deed dated 31.3.1991 entered into by the defendants. According to the plaintiffs, the said deed acknowledged the debt due to the plaintiffs. It is also significant to note in this context that in the plaint, the plaintiffs pleaded that they lent a sum of Rs.50,000/- to the defendants 1 to 3 on 29.12.1986 at Guntur through the first plaintiff's husband and the second plaintiff's father by name Peddinti Venkata Murali Ranganadha Desika Iyyangar.

10. Admittedly, the suit was instituted on 22.06.1992. The learned Subordinate Judge rejected the plaint on the ground that in the deed dated 31.03.1991, the name of Sri Murali Iyyangar was alone shown but not the names of the plaintiffs. In this context, it may be appropriate and apposite to refer to the Judgment of this Court in *SEELA VENKATA SUBBAIAH (supra).* In the said judgment, while referring to the provisions of Order 12 Rule 6 and

Order 7 Rule 11 of the Code of Civil Procedure, this Court categorically held that the Court had no power to throw out the suit by rejecting the plaint at the threshold stage by examining and interpreting the provisions of law on which the suit was found. This Court further held that what is explicitly mentioned in the plaint must alone be the basis for the exercise of power under Order VII Rule 11(d), but not the conclusions that may be interpretatively drawn on an examination of the statutory provisions alluded to in the plaint. In the considered opinion of this Court, the principles laid down in the said Judgment are squarely applicable to the case on hand also. Therefore, this Court has absolutely no scintilla of hesitation nor any shadow of doubt to hold that the learned Subordinate Judge grossly erred in rejecting the plaint at the threshold.

11. In view of the reasons mentioned supra, the order impugned in the appeal suit cannot be sustained in the eye of law. Accordingly, the appeal is allowed, setting aside the order dated 25.08.1992 passed by the Court of the Principal Subordinate Judge, Guntur in CFR.No.6604 of 1992 and the Court below shall number the suit and proceed in accordance with law. As a sequel, the miscellaneous petitions, if any, shall stand disposed of. There shall be no order as to costs.

A.V.SESHA SAI, J

Date: 04.12.2017
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THE HON'BLE SRI JUSTICE A.V.SESHA SAI

A.S.No.2293 of 1992

Dated: .12.2017

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