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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 31.07.2018

PRONOUNCED ON : 07.09.2018

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THE HON'BLE MR.JUSTICE P.RAJAMANICKAM

Review Appln.No.60 of 2018
in
S.A.No.1217 of 2000

Subramanian ... Petitioner / Appellant/Plaintiff

Vs

Assodai ... Respondent/Appellant/Defendant

PRAYER: Review Application filed under Order 47 Rule 1 r/w under Section 114 of C.P.C., to Review the Judgment and Decree made in S.A.No.1217 of 2000 dated 30.01.2018.

S.A.No.1217 of 2000 : Second Appeal is filed under Section 100 of Civil Procedure Code against the judgment and decree dated 24/01/2000 made in A.S.No.151 of 1999 on the file of the learned II Additional District Judge, Pondicherry, conforming the judgment and decree dated 30/06/1999 made in O.S.No.P29 of 1995 on the file of the learned I Additional District Munsif at Pondicherry.

For Appellant : Mr.R.Gandhi,

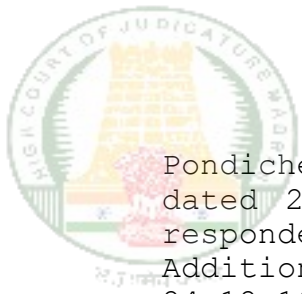
Senior Counsel for R.G.Narendhiran

For Respondent : Mr.R.Venkatesulu
for M/s.Usha Raman

O R D E R

This Review Application has been filed by the respondent under Order 47 Rule 1 r/w Section 114 of C.P.C., to review the judgment and decree passed by this Court in S.A.No.1217 of 2000 dated 30.01.2018.

2.The petitioner herein has filed a suit in O.S.No.929 of 1995 on the file of the III Additional District Munsif,



Pondicherry for specific performance of the sale agreement, dated 27.05.1982 and for permanent injunction, restraining the respondent herein from alienating the suit property. The III Additional District Munsif, Pondicherry, by his judgment dated 24.12.1996 has dismissed the said suit. Aggrieved by the same, the petitioner herein has filed an appeal in A.S.No.70 of 1997 on the file of the Principal District Judge, Pondicherry. The learned Principal District Judge, Pondicherry has allowed the said appeal on 08.12.1998 and remanded the matter to the trial Court for fresh disposal. Further, as per the requests made by both side counsel, the learned Principal District Judge, Pondicherry, had sent the said suit to the I Additional District Munsif, Pondicherry, for disposal. Accordingly, the I Additional District Munsif, Pondicherry, has disposed of the said suit by the judgment dated 30.06.1999 and decreed the suit as prayed for. As against the said judgment and decree, the respondent herein has filed an appeal in A.S.No.151 of 1999 on the file of the II Additional District Judge, Pondicherry. The said appeal was dismissed on 24.01.2000, confirming the judgment and decree passed by the learned I Additional District Munsif, Pondicherry. Feeling aggrieved, the respondent herein has preferred the Second Appeal in S.A.No.1217 of 2000.

3. This Court, after hearing both sides and perusing the judgment of the Courts below and records, by the judgment and decree dated 30.01.2018, has allowed the Second Appeal and set-aside the judgment and decree passed by the Courts below and dismissed the suit by holding that the suit is barred by limitation and the petitioner herein has failed to prove the execution of the sale agreement by the respondent herein. Aggrieved by the same, the petitioner herein has filed the present Review Application.

4. Heard Mr.R.Gandhi, learned Senior Counsel for Mr.R.G.Narendhiran, for the petitioner and Mr.R.Venkatesulu for M/s.Usha Raman, learned counsel appearing for the respondent.

5. The learned Senior Counsel for the petitioner has contended that the judgment and decree passed by this Court in S.A.No.1217 of 2000 dated 30.01.2018 requires review in view of the fact that the Government of Pondicherry has enacted a law 'The Pondicherry Limitation (Repeal of Local Laws) Act, 1994' and the same had obtained assent of the Hon'ble President of India. He further contended that the said Act was published in the Gazette of Pondicherry on 24.01.1995, after getting assent of the Hon'ble President of India, on 03.01.1995. As per Section 4 of the said Act, one year period has been extended and as such, the suit which was filed on 14.08.1995 is not barred by limitation. He further contended that this Court, has allowed the Second Appeal relying upon the decision in Gothamchand Jain Vs.



Arumugam @ Tamilarasan [(2013) (10) SCC 472)] wherein the afore-said Act was not placed before for the consideration of the Hon'ble Supreme Court of India and therefore, the judgment passed in S.A.No.1217 of 2013 has to be reviewed. He further contended that the Hon'ble Supreme Court in Gothamchand Jain Vs. Arumugam @ Tamilarasan (supra), relying upon the earlier decision in Syndicate Bank Vs Prabha D.Naik, (AIR 2001 SC 1968) has held that French Law of Limitation was repealed in Pondicherry and only the Limitation Act 1963, will apply to the Pondicherry, but the subsequent enactment that is Pondicherry Limitation (Repeal of Local Laws) Act, 1994 was not brought to the attention of the Hon'ble Supreme Court.

6. The learned Senior Counsel further contended that this Court in Saroja (died) and Others Vs. A.Ramakichenane (S.A.No.1222 of 2008) dated 21.09.2017 has held that the subsequent enactment i.e. The Pondicherry Limitation (Repeal of Local Laws) Act, 1994 was not brought to the attention of the Hon'ble Supreme Court and hence, the decision of the Hon'ble Supreme Court in Syndicate Bank Vs Prabha D.Naik, will not apply and therefore the decision in Gothamchand Jain Vs. Arumugam @ Tamilarasan (supra) also will not apply to this case.

7. The learned counsel for the respondent, on the contrary, has contended that the Hon'ble Supreme Court in Gothamchand Jain Vs. Arumugam @ Tamilarasan (supra), relying on the earlier decision in Syndicate Bank Vs Prabha D.Naik (supra), has held that, since on the date of passing of the Limitation Act, the Union Territory of Pondicherry had become part of India, the Limitation Act 1963 would apply to the Union Territory of Pondicherry from 01.01.1964 onwards and thereby the French Civil Code was impliedly repealed by the Limitation Act, 1963.

8. The learned counsel for the respondent further contended that as per Article 141 of the Constitution of India, the law declared by the Supreme Court shall be binding on all Courts within the Territory of India. He further contended that when the Supreme Court has stated that the law laid down in the particular case is the applicable law, it is not open to the High Court to consider, or rely on any supposedly conflicting decision. He further contended that it is a matter of Judicial discipline that requires that when the Supreme Court states as to what the law on the matter is, the same shall be binding on all Courts within the Territory of India. The learned counsel for the respondent relying on the decision in Director of Settlements, A.P. and others Vs M.R. Apparao and another (2002) 4 SCC 638) contended that the decision in a judgment of the Supreme Court cannot be assailed on the ground that certain aspects were not considered, or the relevant provisions were not brought to the notice of the Court. He further submitted that if the



Pondicherry Limitation (Repeal of Local Laws) Act, 1994 was not brought to the notice of the Hon'ble Supreme Court in Gothamchand Jain Vs. Arumugam @ Tamilarasan (supra), a Review Application has to be filed only in that case. So long as the said judgment is in force, this court is bound to follow the same. If this application is allowed that it would amount to review the judgment of the Supreme Court and that is not permissible under law.

9. The learned counsel for the respondent further contended that the Hon'ble Supreme Court in Gothamchand Jain Vs. Arumugam @ Tamilarasan (supra), has clearly held that, the Limitation Act, 1963 came into force in Union Territory of Pondicherry on 01.01.1964 itself and as such, the French Law of Limitation was in force only upto 01.01.1964 and thereafter the Limitation Act, 1963, would apply to the Pondicherry. He further submitted that the Hon'ble Supreme Court has held that there is one general law of limitation for the entire country i.e., Limitation Act, 1963 and the said Act, impliedly repealed the French Law of Limitation. He further contended that in view of the aforesaid decision of the Hon'ble Supreme Court, the French Law of Limitation was repealed on 01.01.1964 itself and that being so, there was no need to enact the Pondicherry Limitation (Repeal of Local Laws) Act, 1994. He further submitted that the said Act was enacted under the wrong presumption that the French Code was in force in Pondicherry even after enactment of the Limitation Act, 1963 and that will not have any effect and therefore, he prayed to dismiss the Review Application.

10. Section 3 of the Pondicherry Limitation (Repeal of Local Laws) Act, 1994 reads as follows:

'3.Repeal of the local laws relating to limitation:-

All local laws in force in the Union Territory of Pondicherry or any area thereof, corresponding to the Limitation Act, 1963 (hereinafter referred to as the Limitation Act) shall stand repealed as from the date of coming into force of this Act.'

11. From the reading of the aforesaid Section, it is clear that all local laws in force in the Union Territory of Pondicherry corresponding to the Limitation Act, 1963, have been stand repealed from the date of coming into force of the said Act. According to the petitioner, the said Act was came into force on 24.01.1995.

12. Notwithstanding such repeal, Section 4 of the said



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Act extends limitation for filing the suit or appeal for a certain period which reads as follows:-
''4. Savings:-Notwithstanding anything contained in this Act

(a) any suit for which the period of limitation prescribed in the Limitation Act is shorter than the period of limitation prescribed by the local laws may be instituted-

(i) within such shorter period or within a period of one year next after the commencement of this Act, whichever is longer, or

(ii) within the period prescribed for such suit by the local laws, whichever period expires earlier; and

(b) any appeal or application for which the period of limitation prescribed under the Limitation Act is shorter than the period of limitation prescribed by the local laws may be preferred or made.

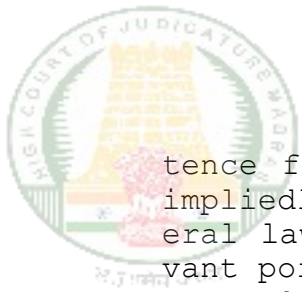
(i) within such shorter period or within a period of ninety days next after the commencement of this Act, whichever is longer, or

(ii) within the period prescribed for such appeal or application by the local laws, whichever period expires earlier.''

13. A plain reading of the aforesaid Section shows that notwithstanding the repeal of law of the local laws, any suit for which the period of limitation prescribed in the limitation Act is shorter than the period of limitation prescribed by the local laws may be instituted within such shorter period or within a period of one year next after the commencement of the aforesaid Act, whichever is longer.

14. According to the petitioner, in view of the Section 4 of the aforesaid Act, a suit can be filed within the extended period of one year from the date of commencement of the said Act. His further case is that since the above suit was filed on 14.08.1995, the suit is not barred by limitation. His further case is that the enactment of the aforesaid Act was not brought to the notice of the Hon'ble Supreme Court in Gothamchand Jain Vs. Arumugam @ Tamilarasan (supra), and hence, no reliance can be placed upon the aforesaid decision of the Hon'ble Supreme Court.

15. In Syndicate Bank Vs. Prabha D.Naik (supra), a three Judge Bench of the Hon'ble Supreme Court has held that in the wake of the factum of the Limitation Act coming into exis-



tence from 01.01.1964, Article 535 of the Portuguese Civil Code impliedly repealed. Further, it has held that there is one general law of limitation for the entire country. The relevant portion of the Judgment is as follows:-

''23. As regards the doctrine of implied repeal, another aspect of the matter ought to be noticed vis-a-vis the Civil Code. The issue of limitation being a mixed issue of law and fact under the Limitation Act, the Court in spite of plea not being raised by the defence, can go into the same suo moto but there is a specific bar under Article 515 of the Civil Code which records that the Court cannot suo moto take cognizance of description unless it is specifically pleaded by the parties. It is a bar of jurisdiction of Court. The repugnancy and incongruity arise by reason of the fact that the Parliament by law viz. The High Court at Bombay (extension of jurisdiction to Goa, Daman and Diu) Act, 1981 extended the jurisdiction of the High Court of Judicature at Bombay to the Union Territory of Goa, Daman and Diu from the appointed day and the Court of Judicial Commissioner was abolished. Section 9 of the statute [(Act of 1981) (supra)] provides that there shall be, on and from appointed day, established a permanent Bench of the High Court of Bombay at Panaji and some Judges of the High Court at Bombay being not less than two in number or as may be nominated by Chief Justice of the High Court from time to time shall sit at Panaji, in order to exercise the jurisdiction and power for the time being vested in the High Court in respect of cases arising in this Union Territory. The authority and jurisdiction of the High Court of Bombay, to take cognizance of an action being barred by limitation, thus stands negated - conceptually even a difficult situation to conceive that same High Court will have two different spheres of jurisdiction while dealing with matters. At the cost of repetition we say that while implied repeal is not to be readily inferred but in the contextual facts, upon scrutiny, we cannot but hold that on the wake of the factum of the Limitation Act coming into existence from 1.1.1964, Article 535 of the Portuguese Civil Code cannot but be termed to be impliedly repealed and it is on this score that the decision of this Court in Justiniano's case (supra) stand overruled. There is one general law of limitation for the entire country being the Act of 1963, and the Portuguese Civil law cannot be termed to be a local law or a special law



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applicable to the State of Goa, Daman & Diu prescribing a different period of limitation within the meaning of Section 29(2) of the Limitation Act and in any event, question of saving of local law under the Limitation Act of 1963 does not and cannot arise. The submission that without there being a specific mention of repealing statute (since 1963 Act of Limitation does not record express repeal of any other law excepting the Limitation Act of 1908), question of Portuguese Civil Code being repealed does not arise, cannot hold good by reason of the doctrine of implied repeal as noticed above. In the premises aforesaid, these appeals fail and are dismissed without however, any order as to costs.''

16. In Gothamchand Jain Vs. Arumugam @ Tamilarasan (supra), it was contended that in Syndicate Bank case the Hon'ble Supreme Court has examined the scope of the Limitation Act, vis-a-vis, the Portuguese Civil Code and not the provisions of the French Code Civil and therefore, the aforesaid decision will not be applicable to the Union Territory of Pondicherry. But the Hon'ble Supreme Court has held that since the Union Territory of Pondicherry having become part of India, the Limitation Act automatically extended to the Pondicherry and consequently the Limitation Act, 1963, came into force in the Union Territory of Pondicherry on 01.01.1964 itself. It was further held that the Act which governs limitation is the general law of land that is the Limitation Act and consequently, it is not Article 2262 of the French Code Civil that applies to the Pondicherry but, only the Limitation Act, 1963 will apply. The relevant portions of the said Judgment are extracted hereunder:-

"10. The Government of Union Territories Act, 1963 (Act 20 of 1963) was enacted to provide for Legislative Assemblies and Ministries for the Union Territories. It received the assent of the President on 10.5.1963. The Limitation Act, 1963 was passed by the Parliament on 5.10.1963. By that time, the Union Territory of Pondicherry had become part of India. Clause 2 of Section 1 of the Limitation Act, 1963 says that it extends to the whole of India except the State of Jammu and Kashmir. Since the Union Territory of Pondicherry having become part of India, the Limitation Act automatically extended to the then Pondicherry. The Limitation Act, 1963, consequently, came into force in the Union Territory of Pondicherry on 1.1.1964.

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13. Pondicherry (Extension of Laws) Act, 1968, as amended, has adopted several such legislations in the State of Pondicherry, but the Act which governs limitation is the general law of the land that is the Indian Limitation Act. Consequently, it is not Article 2262 of the French Code Civil that applies to the suit in question, but Section 54 of the Indian Limitation Act, 1963. Under such circumstances, as rightly held by the High Court, the suit filed beyond the period of limitation prescribed under Article 54 of the

Indian Limitation Act, 1963 is clearly barred. Since the suit itself is barred by the law of limitation, the other questions of law framed by the High Court were rightly not answered. The appeal, therefore, lacks in merits and accordingly dismissed.''

17. In Director of Settlements, A.P. and others Vs M.R. Apparao and another (supra), a three Judge Bench of the Hon'ble Supreme Court in paragraph No.7 has held as follows:-

' 7. So far as the first question is concerned, Article 141 of the Constitution unequivocally indicates that the law declared by the Supreme Court shall be binding on all courts within the territory of India. The aforesaid Article empowers the Supreme Court to declare the law. It is, therefore, an essential function of the Court to interpret a legislation. The statements of the Court on matters other than law like facts may have no binding force as the facts of two cases may not be similar. But what is binding is the ratio of the decision and not any finding of facts. It is the principle found out upon a reading of a judgment as a whole, in the light of the questions before the Court that forms the ratio and not any particular word or sentence. To determine whether a decision has 'declared law' it cannot be said to be a law when a point is disposed of on concession and what is binding is the principle underlying a decision. A judgment of the Court has to be read in the context of questions which arose for consideration in the case in which the judgment was delivered. An 'obiter dictum' as distinguished from a ratio decidendi is an observation by the Court on a legal question suggested in a case before it but not arising in such manner as to require a decision. Such an obiter may not have a binding precedent as the observation was unnecessary for the decision



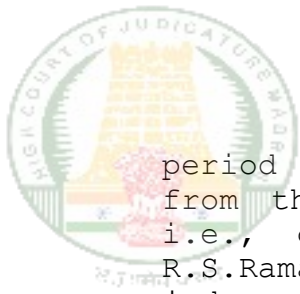
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pronounced, but even though an obiter may not have a binding effect as a precedent, but it cannot be denied that it is of considerable weight. The law which will be binding under Article 141 would, therefore, extend to all observations of points raised and decided by the Court in a given case. So far as constitutional matters are concerned, it is a practice of the Court not to make any pronouncement on points not directly raised for its decision. The decision in a judgment of the Supreme Court cannot be assailed on the ground that certain aspects were not considered or the relevant provisions were not brought to the notice of the Court (See Ballabhadas Mathurdas Lakhani v. Municipal Committee, Malkapur and AIR 1973 SC 794). When the Supreme Court decides a principle it would be the duty of the High Court or a subordinate court to follow the decision of the Supreme Court. A judgment of the High Court which refuses to follow the decision and directions of the Supreme Court or seeks to revive a decision of the High Court which had been set aside by the Supreme Court is a nullity. (See Narinder Singh v. Surjit Singh and Kausalya Devi Bogra v. Land Acquisition Officer).''

18. From the aforesaid decision, it is clear that as per Article 141 of the Constitution, the law declared by the Supreme Court shall be binding on all courts within the territory of India. It is also clear that the decision in a judgment of the Supreme Court cannot be assailed on the ground that certain aspects were not considered or the relevant provisions were not brought to the notice of the Supreme Court.

19. In Hamer Sultan (died) and Others Vs. Puviyarasu @ Jaganathan (died) and others (S.A.No.750 of 2009 dated 28.09.2011), it was contended that in view of Pondicherry Limitation (Repeal of Local Laws) Act 1994, a suit can be filed within a period of one year from the commencement of the aforesaid Act. In that case, the Hon'ble Mr. Justice R.S. Ramanathan relying upon the decision of the Hon'ble Supreme Court in Syndicate Bank Vs. Prabha D. Naik (supra), has held that the French Civil Code is impliedly repealed after coming into force of the Limitation Act, 1963 from 01.01.1964. His Lordship further held that for Pondicherry, the Indian Limitation Act, 1963, alone will apply.

20. Subsequently, in N. Thirugnanasambandam and another Vs. R. Sundararaj and another (S.A.No.279 of 2010 dated 26.04.2012) also, it was argued that as per the Pondicherry Limitation (Repeal of Local Laws) Act, suits based on longer



period of French Law Limitation can be filed within one year from the date of commencement of the said special enactment i.e., on or before 29.02.1996. But the Hon'ble Mr. Justice R.S. Ramanathan has observed that after pronouncement of the judgment in the case of Syndicate Bank Vs Praba D. Naiyak and another (supra), it cannot be contended that the parties in that case are governed by French Code Civil and as per the Pondicherry Limitation (Repeal of Local Laws) Act, a suit filed on or before 29.02.1996 is well within the time. Further, His Lordship has held that the Indian Limitation Act, 1963 alone will apply to the Pondicherry. The relevant portion of the said judgment is extracted hereunder.

'16. Admittedly, the property is situate in Pondicherry and Article 2262 of the French Code Civil prescribes the period of thirty years for a suit for recovery of possession based on title. If the parties are governed by Article 2262 of the French Code Civil, which came into effect from 01.08.1995 and as per section 4 of the said amendment Act, the suit filed on or before 29.02.1996 is well within the time and on that basis, the courts below held that the suit was filed in the year 1995 well before 29.02.1996 and therefore, the suit was not barred by limitation. According to me, the finding of the courts below that the parties are governed by French Code Civil and the Limitation Act was not applicable to them, prior to 01.08.1995 is not correct, having regard to the law laid down by the Honourable Supreme Court in the judgment reported in (2001) 4 SCC 713 in the case of Syndicate Bank Vs. Prabha D. Naik and another]. In the above said judgment, the Hon'ble Supreme Court was dealing with the Portuguese Code Civil Law and wherein also the period of limitation prescribed is different from that of the period prescribed in the Law of Limitation 1963 and having regard to section 29(2) of the Limitation Act 1963, the Honourable Supreme Court held that after passing of the Limitation Act 1963, and after Goa became part of India, the Portuguese Code Civil stands repealed and the parties are governed by Indian Limitation Act, 1963. Therefore, after pronouncement of the judgment in the case of Syndicate Bank Vs. Prabha D. Naiyk and another reported in (2001) 4 SCC 713, it cannot be contended that the parties herein are governed by French Code Civil and as per the French Code Civil, 30 years period is prescribed for a suit for recovery of possession, based on title and as per Pondicherry Limitation (Repeal of Local Laws) Act, a suit filed



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on or before 29.02.1996 is well within the time and therefore, the suit is filed within time cannot be accepted. According to me, the Indian Limitation Act alone will apply to the parties and they are governed by Indian Limitation Act and therefore, we will have to see whether the appellants have prescribed title to the suit property by virtue of adverse possession as claimed by them.'

21. But in *Saroja (died) and Others Vs. A.Ramakichenane (supra)*, the Hon'ble Mr. Justice S. Vaidhyanathan has taken a contrary view. In paragraph Nos. 26 and 27 of the Judgment, His Lordship has observed as follows:

'26. The contention of the appellants / defendants that French Code by no stretch of imagination can be construed as law, cannot be accepted and it was invoked when the Limitation Act, 1963 came into force, but also continued to be in force till the Puducherry Limitation (Repeal of Local Laws) Act, 1994 came into effect. It cannot be construed that there is an implied Repeal when there is an express enactment for that purpose. In *Syndicate Bank case* (cited *supra*), the Apex Court, while dealing with Portuguese Law and Portuguese Code, also referred to the French Law. According to the appellant, only the Portuguese provisions have been considered, even though there was reference to French Law and it cannot be construed as a binding precedent to reject their claim.

27. As the subsequent enactment has not been brought to the attention of the Apex Court, the French Code that protects the interest of the citizens like that of the respondent/plaintiff would be in operation. The respondent / plaintiff has filed the suit within 30 years, well within the period of limitation.'

22. In view of the conflicting decisions with regard to the applicability of Pondicherry Limitation (Repeal of Local Laws) Act, 1994, I am of the view that the following question may be referred to the Division Bench for authoritative pronouncement.

"Whether the Pondicherry Limitation (Repeal of Local Laws) Act, 1994 will have any effect after pronouncement of the judgments by the Hon'ble Supreme Court in *Syndicate Bank Vs. Prabha D. Naik* and another (*supra*) and *Gothamchand Jain Vs. Arumugam @ Tamilarasan* (*supra*)."

23. Therefore, the Registry is directed to place the papers before My Lord, The Hon'ble, The Chief Justice to



consider for constitution of Division Bench for the aforesaid purpose.

Sd/-
Assistant Registrar (CS-VI)

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Sub Assistant Registrar

vsa

To

1. The Registrar Judicial, High Court, Madras
2. The Section Officer, Judicial Department, High Court, Madras.

+1cc to Mr.R.G.Narendhiran, Advocate SR.No.62010

Rev.Apl.No.60 of 2018
in
S.A.No.1217 of 2000

GMV (26/09/2018)