

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 22.12.2017

Pronounced on:30.01.2018

Coram

The HONOURABLE MR.JUSTICE P.RAJAMANICKAM

S.A.No.1217 of 2000

Assodai ... Appellant/Defendant

Vs.

Subramanian ... Respondent/Plaintiff

Prayer:- 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, confirming the Judgment and Decree, dated 30.06.1999 made in O.S.No.929 of 1995 on the file of the learned I Additional District Munsif, at Pondicherry.

For Appellant : Mr.R.Venkatesalu
For Respondent : Mr.R.G.Narendhiran

JUDGMENT

This second appeal has been filed by the defendant against the judgment and decree passed in A.S.No.151 of 1999 on the file of the Second Additional District Judge, Pondicherry, dated 24.01.2000, confirming the judgment and decree passed in O.S.No.929 of 1995 on the file of the First Additional District Munsif, Pondicherry, dated 30.06.1999.

2.The respondent 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 defendant from alienating the suit property. The learned III Additional District Munsif, Pondicherry, by his judgment dated 24.12.1996 has dismissed the said suit. Aggrieved by the same, the plaintiff 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 sides' counsel, the learned Principal District Judge,

Pondicherry had sent the said suit to the First Additional District Munsif, Pondicherry for disposal. Accordingly, the First 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 defendant has filed an appeal in A.S.No.151/1999 on the file of the II Additional District Judge, Pondicherry. The said appeal was dismissed, confirming the judgment and decree passed by the learned First Additional District Munsif, Pondicherry, dated 30.06.1999. Aggrieved by the same, the defendant has preferred the present second appeal. For the sake of convenience, the parties are referred to as described before the trial court.

3.The averments made in the plaint are in brief as follows:

The defendant is the owner of the suit property. On 20.05.1982, the plaintiff and the defendant entered into a sale agreement in respect of the suit property. The defendant has agreed to sell the suit property at the rate of Rs.500/- per kuzhi and in pursuance of the said agreement, the plaintiff has paid a sum of Rs.3,000/- as advance. The agreement was reduced into writing on 27.05.1982. The possession of the suit property was also handed over to the plaintiff on the same day. It was also agreed that the defendant should furnish FMB, correct R.S number and patta number in respect of the suit property and receive the balance sale consideration at the time of registration of the sale deed. As part performance of the said sale agreement, the plaintiff has discharged the mortgage debt on 27.05.1982 itself. Subsequently, the plaintiff verified the revenue records and found that the survey number for the suit property is R.S.No.39/16 and cadastre Number is 1329/2 and the extent of the property is 10 kuzhies. The plaintiff is ready and willing to pay the balance consideration for the remaining 4 kuzhis at the rate of Rs.500/-, as agreed initially between the parties. The plaintiff is always ready and willing to perform his part of the agreement. On several occasions, the plaintiff approached the defendant and requested to execute a sale deed, after receiving the balance sale consideration. But the defendant did not come forward for executing the sale deed by saying lame excuses and hence, finally, on 06.08.1995, the plaintiff requested the defendant to execute a sale deed and at that time also, the defendant gave only evasive reply. Thereafter, the plaintiff came to know that the defendant is making arrangements to sell the suit property to another person. Hence, the suit.

4.The averments made in the written statement are, in brief, as follows:

The defendant denies the allegation that she has agreed to sell her property to the plaintiff at the rate of Rs.500/- per kuzhi and received a sum of Rs.3,000/- as advance and executed the sale agreement, dated 27.05.1982. It is false to state that the possession of the suit property was handed over to the plaintiff on the same day. The defendant is an illiterate lady and is not capable of signing and she used to put only thumb impression and hence, the suit agreement is a forged document. The alleged agreement is vague as to the sale price, extent of the property and the time within which, it has to be performed and hence, the said agreement is not valid under Law. Therefore, the defendant prayed to dismiss the above suit.

5. Based on the aforesaid pleadings, the learned III Additional District Munsif, Pondicherry, has framed necessary issues and tried the suit. During trial, on the side of the plaintiff, the plaintiff examined himself as P.W.1 and also examined 3 more witnesses as P.Ws.2 to 4 and marked Exs.A.1 to A.8. On the side of the defendant, the defendant examined herself as D.W.1 and marked Exs.B.1 to B.4 as exhibits.

6. The learned III Additional District Munsif, Pondicherry, after considering the materials placed before him found that the plaintiff has failed to prove the execution of the sale agreement and consequently dismissed the suit by the judgment dated 27.12.1996.

7. Aggrieved over the same, the plaintiff has preferred an appeal in A.S.No.70 of 1997 on the file of the Principal District Judge, Pondicherry. The learned Principal District Judge, Pondicherry, by the judgment dated 08.12.1998, has allowed the said appeal and remanded the matter to the First Additional District Munsif, Pondicherry with a direction to recast the issues and dispose of the suit in accordance with law, after giving sufficient opportunities to both parties for adducing further evidence. After receipt of the records, the learned First Additional District Munsif, Pondicherry has recasted the issues and after giving opportunities to both parties for adducing further evidence, 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 defendant has preferred an appeal in A.S.No.151/1999 on the file of the II Additional District Judge, Pondicherry. The said appeal was dismissed by the judgment dated 24.01.2000, confirming the judgment and decree passed by the learned First Additional District Munsif, Pondicherry, dated 30.06.1999. As against the said judgment and decree, the defendant has filed the present second appeal.

8. At the time of admitting the Second Appeal, this Court has formulated the following substantial question of law :

(i). Whether the Courts below committed

serious irregularity in decreeing the suit as prayed for by erroneously holding that the suit is not barred by limitation and that the case is governed by French Law of Limitation?

(ii) Whether the plaintiff is entitled to discretionary relief of specific performance when he approached the court after a delay of 13 years and whether such exercise of discretion is not perverse?

(iii) Whether the suit is barred by limitation?.

9. Heard both sides.

10. The learned counsel appearing for the appellant/defendant has contended that the provisions of the Limitation Act, 1963 governs the law of limitation so far as the Union Territory of Pondicherry is concerned and not Article 2262 of the French Code Civil. He further submitted that Article 54 of the Limitation Act, 1963 would apply in the matter of filing of the suit for specific performance, but the courts below have erroneously held that only the Article 2262 of the French Code Civil would apply. He further submitted that as per Article 54 of the Limitation Act, 1963, the suit for specific performance of the contract should be filed within 3 years from the date of agreement, whereas, in this case, the Ex.A.1, sale agreement was said to have been executed on 27.05.1982, but the suit has been filed on 14.08.1995 i.e after 13 years and hence, the suit is barred by limitation. In support of the aforesaid contention, he relied upon the decision in Gothamchand Jain Vs. Arumugam @ Tamilarasan [(2013) (10) SCC 472)].

11. The learned counsel for the respondent/plaintiff on the contrary, contended that since Article 2262 of the French Code Civil is a local law within the meaning of Section 29(2) of the Limitation Act, 1963, its provisions have to be read with regard to limitation and as per the said Article 2262 of the French Code Civil, the period of Limitation is 30 years for instituting a suit and as such, the present suit is not barred by limitation. In support of the said contention, he relied upon the following decisions:

(i) Kandasami Mudaliar Vs. Muthukrishna Moorthy and another, [(1993) 1 MLJ 672]

(ii) Palaniraja and others Vs. Jayalakshmi [(1994) 1 MLJ 404].

12. In the decisions cited by the learned counsel for the respondent/plaintiff, this Court has held that Section 29 (2) read with Section 3 of the Limitation Act, 1963, has the

effect of preserving the period of limitation made available earlier under the French Code Civil and in view of Article 2262 of the French Code Civil, which would be a local law, within the meaning of Section 29(2) of the Limitation Act, 1963, its provisions have to be read into the schedule to the Limitation Act mutatis-mutandis . It was further held that viewed thus, under Article 2262 of the French Code Civil, the period of limitation is 30 years and that period would be available to the plaintiff for instituting the suit. But in the decision relied upon by the learned counsel for the appellant/defendant that is in Gothamchand Jain Vs. Arumugam @ Tamilarasan (supra), the Honourable Supreme Court of India has held that the Limitation Act, 1963 was passed by the Parliament on 05.10.1963 and by that time, the Union Territory of Pondicherry had become part of India and sub-section (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 and hence, by virtue of the Limitation Act, 1963, the French Law of Limitation was impliedly repealed. For proper appreciation, the relevant portions of the said judgment are extracted hereunder:

"9.The Government of Union Territories Act, 1963 (20 of 1963) was enacted to provide for Legislative Assemblies and Ministries for the Union Territories. It received the assent of the President on 10.05.1963. The Limitation Act, 1963 was passed by Parliament on 05.10.1963. By that time, the Union Territory of Pondicherry had become part of India. Sub-section (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 01.01.1964.

11.This Court also held in Syndicate Bank case that it cannot but hold that in the wake of the factum of the Limitation Act coming into existence from 01.01.1964, 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 Augusto De Piedade Barreto V. Antonio Vicente Da Fonseca stood overruled. This Court also held that there is one general law of limitation for the entire country, being the 1963 Act, and the Portuguese Civil Law cannot be termed to be a local law or a special law

applicable to the State of Goa, Daman and Diu, prescribing a different period of limitation within the meaning of Section 29(2) of the Limitation Act and the question of saving of local law under the Limitation Act, 1963 does not and cannot arise.

13.The Pondicherry (Extension of Laws) Act, 1968, as amended, has adopted several such legislations in the UT of Pondicherry, but the Act which governs limitation is the general law of the land that is the Limitation Act. Consequently, it is not Article 2262 of the French Code Civil that applies to the suit in question, but Article 54 of the 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 Limitation Act, 1963 is clearly barred. Since the suit itself is barred by law of limitation, the other questions of law framed by the High Court were rightly not answered. The appeal, therefore, lacks merit and is accordingly dismissed."

13.From the aforesaid decision of the Honourable Supreme Court of India, it is clear that the French Law of Limitation, which had been in force till 1964 was impliedly repealed by the Limitation Act, 1963 and therefore for filing a suit for specific performance, Article 54 of the Limitation Act, 1963 alone will apply and not Article 2262 of the French Code Civil. Article 54 of the Limitation Act, 1963 says that the suit for specific performance of contract has to be filed within 3 years from the date fixed for the performance or if no such date is fixed, when the plaintiff has notice that performance is refused. In this case, in Ex.A.1, sale agreement, time has not been fixed for the performance of the contract and hence, the limitation will start from the date on which, the plaintiff has notice that the performance is refused by the defendant. The case of the defendant is that she did not execute Ex.A.1, sale agreement and she is an illiterate lady and she used to put only thumb impression. So, the burden is upon the plaintiff to prove the execution of Ex.A.1, sale agreement.

14.When the plaintiff examining himself as P.W.1, he has stated that the defendant has agreed to sell the suit property and she has signed in Ex.A.1, sale agreement. But the defendant, when she was examined as D.W.1, has denied that she has signed in Ex.A.1, sale agreement. Further, she has stated that she is an illiterate lady and she cannot sign and she used

to put only thumb impression. During cross-examination of D.W.1, it was suggested that one teacher by name Ariputhiri taught her upto 5th standard. The plaintiff also examined the said Ariputhiri as P.W.2. P.W.2 has deposed that he was working as teacher for 30 years and he took tuition privately for the defendant and hence, she can read and write in Tamil. He further deposed that he only wrote Ex.A.1, sale agreement and the defendant has signed in Ex.A.1 in his presence. But P.W.2 has not produced any documentary evidence to show that he took tuition privately to the defendant. So, in the absence of any such evidence, the oral evidence of the P.W.2 cannot be accepted.

15. When the defendant has specifically taken a stand that she is an illiterate lady, the plaintiff should have taken steps to produce some documentary evidence to show that she is capable to sign. But he failed to produce any documentary evidence to show that the defendant has studied upto 5th standard and she could put her signature.

16. The attendant circumstance also is not supporting the plaintiff's case. In paragraph No.14 of the plaint, the plaintiff has specifically pleaded that he has discharged the mortgage loan on the date of sale agreement itself, i.e on 27.05.1982. But, in Ex.A.1, sale agreement, it is not specifically stated that on that date, the petitioner has discharged the mortgage debt. Further, Ex.A.2 (mortgage deed) is not a registered document. So, it is not admissible in evidence. Even if it is assumed that the said document can be used for collateral purpose, in the said document, it is stated that possession of the suit property was handed over to the mortgagee Arumugam. If that being so, the contention of the plaintiff that possession of the suit property was handed over to him on the date of agreement cannot be accepted. Further, the mortgagee, who has been examined as P.W.3 has stated in his evidence that on the date of Ex.A.1, sale agreement, he has paid Rs.3,000/- to discharge the mortgage debt. But in Ex.A.5, mortgage deed, it is specifically stated that the mortgage was made for Rs.2,000/- and in lieu of interest, the mortgagee has to enjoy the property. Therefore, even as per the said mortgage deed, the mortgagor has to repay only Rs.2,000/-. But, as per the evidence of P.W.3, Rs.3,000/- was paid to him. The said contradiction also raised a doubt with regard to the alleged execution of mortgage by the defendant and discharge made by the plaintiff.

17. It is also to be pointed out that according to the plaintiff, the suit property is measuring about 10 kuzhies and he has been in possession for about 13 years. But, he has not produced any other document to show that he has been in possession of the said property. Therefore, looking from any angle, the contention of the plaintiff that the defendant has executed Ex.A.1, sale agreement and also handed over the

possession of the suit property cannot be accepted.

18.It is also to be pointed out that even though the plaintiff has filed the suit after 13 years, he has not chosen to issue any pre-suit notice, expressing his readiness and willingness to perform the contract and calling upon the defendant to execute the sale deed. Under the said circumstances, the oral evidence of the plaintiff that he has approached the defendant on 06.08.1995 and asked her to execute the sale deed, but she gave an evasive reply, cannot be accepted. Since the execution of the Ex.A.1, sale agreement itself is denied by the defendant, the plaintiff should have filed a suit for specific performance within 3 years from the date of alleged sale agreement. Admittedly, the plaintiff has filed the suit after 13 years. In view of the decision of the Honourable Supreme Court of India in Gothamchand Jain Vs. Arumugam @ Tamilarasan (supra), the suit is barred by limitation. Therefore, the suit is liable to be dismissed. But without considering the aforesaid facts, the courts below have decreed the suit. Therefore, this second appeal has to be allowed. Accordingly, the substantial questions of law are answered.

19.In the result, this second appeal is allowed. The judgments and decrees passed by the courts below are set aside. The suit in O.S.No.929 of 1995 on the file of the First Additional District Munsif, Pondicherry is dismissed. No costs.

Sd/-

Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

vs

1.The II Additional District Judge, Pondicherry.

2.The I Additional District Munsif, Pondicherry

3. The Section Officer V.R.Section,
Madras High Court, Madras(+2 copies)

+1 cc to Mrs.Usha Raman Advocate sr 7156

+1 cc to Mr.R.G.Narendhiran Advocate sr 6690

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