

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 07.08.2018

Pronounced on: 16.08.2018

CORAM

THE HONOURABLE MS. JUSTICE P.T.ASHA

C.R.P(NPD).No.529 of 2006

Anandhanandham ... Plaintiff/Petitioner

Vs.

1.Muniammal

2.Elumalai

3.Arumugam ... Defendants/Respondents

(Note: Dispensed with Regarding R1 & R3 vide order dt.28.3.2018 made herein).

Prayer ::

Civil Revision Petition filed under Article 227 of the Constitution of India against the Judgment and Decree of the learned District Munsif, Polur in O.S.No.266 of 1997 dated 29.07.2004.

For Petitioner : Mr.Sharath Chandar
for Mr.V.Raghavachari

For Respondents : R1 - Died
R2 - No appearance

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O R D E R

The above Civil Revision Petition is filed invoking the provisions of Article 227 of the Constitution of India, challenging the Judgment and Decree dated 29.07.2004 of the learned District Munsif, Polur, in O.S.No.266 of 1997. The petitioner has adopted this procedure as it is his contention

that his remedy to file a regular appeal is barred by the provisions of Section 96(4) of the Code of Civil Procedure.

2. As this Court was of the opinion that the remedy open to the petitioner to challenge the Judgment and Decree in O.S.No.266 of 1997 is only by way of a regular appeal and not by invoking the superintending powers of this court under Article 227 of the Constitution of India, this Court had directed the learned counsel for the petitioner to first address his arguments on the maintainability of the revision. Therefore, this Court at the outset is considering the Revision on maintainability.

3. A brief narration of the facts relevant to consider the maintainability or otherwise of the revision is reproduced herein below.

4. The unsuccessful plaintiff, who is the Revision Petitioner, had filed this suit O.S.No.266 of 1997 for recovery of a sum of Rs.8,340/- due on a Promissory Note dated 05.06.1994. The said Promissory Note was executed by the defendant, Kannagounder in favour of one Rajasekar of Nedunkunam. The Revision Petitioner had obtained an assignment of this Promissory Note from the said Rajasekar on 01.03.1996. Despite demands made by the Revision Petitioner, the said Kannagounder failed to repay the amounts due under the Promissory Note. This left the Revision Petitioner with no other alternative except to institute the suit.

5. The sole defendant died pending the suit and his legal heirs were brought on record as defendants 2 to 4. The written statement filed by the 1st defendant was adopted by the 3rd defendant, the 2nd respondent herein. The defence to the Revision Petitioner's claim was that the Promissory Note and the subsequent assignment of the Promissory Note was false. The jurisdiction of the Court was also questioned as neither the pro note nor the made over mentioned the place of execution.

6. The learned District Munsif, Polur, dismissed the suit and aggrieved over the same, this Civil Revision Petition has been filed.

7. In order to consider whether the remedy of the Revision Petitioner is by way of a Revision Petition or by way of an appeal under Section 96(1) of the Code of Civil Procedure, (hereinafter referred to as CPC), it is necessary to extract the provisions of Sections 96(1) and 96(4) of CPC.

(i) Section 96(1): Appeal from original decree:- Save where otherwise expressly provided in the body of this Code or by any other law for the time being in force, an appeal shall lie from every

decree passed by any Court exercising original jurisdiction of the Court authorized to hear appeals from the decisions of such Court.

(ii) Section 96(4): No appeal shall lie, except on a question of law, from a decree in any suit of the nature cognizable by Courts of Small Causes, when the amount or value of the subject-matter of the original suit does not exceed [ten thousand rupees].

8. From a reading of the above provisions, it is clear that an appeal lies from every decree passed by any Court exercising original jurisdiction to the Court authorised to hear appeals from such Court. An exception to this general rule is carved out in Sub-Clause 4.

Section 96(4) elucidates that no appeal will lie from a decree in any suit which is of a nature cognizable by the Courts of Small Causes when the value of the subject matter of the original suit does not exceed Rs.10,000/- except on a question of law. Therefore, it is clear that a regular appeal will not lie in the following circumstances.

(a) When the decree is from a suit of a nature cognizable by the Small Causes Court;

(b) When the Cost or value of the subject matter of the original suit does not exceed Rs.10,000/-.

However, in case a question of law arises, then even in the above two circumstances an appeal would lie.

9. Section 15 of the Provincial Small Causes Court, 1887 provides that the Court of Small Causes shall not take cognizance of suits specified in the 2nd Schedule, but shall try all suits of a civil nature where the value does not exceed Rs.1,000/-.

Section 16 provides exclusive powers to the Court of Small Causes to deal with such suits. The 2nd Schedule details 44 categories of suits which are not cognizable by the Court of Small Causes.

10. Mr. Sharath Chandar, Advocate appearing for the Counsel for the Petitioner has assisted this Court by providing the various judicial pronouncements relating to the scope of Section 96(4) and Section 102 of CPC.

11. The forerunner of the various Judicial precedents is the Judgment of the Full Bench reported in the case of Soundaram Ayyar and Another vs. Sennia Naicken and Others reported in 23 Mad. 548 and 10 MLJ 329.

The Full Bench was answering a reference and the question that require the pronouncement by the Full Bench was "whether a suit for rent is a suit of the nature cognizable in Courts of

Small Causes, within the meaning of Section 586 of the Code of Civil Procedure, it being admitted that the notification required by Clause 8 of the second schedule of the Provincial Small Causes Act, (Act IX of 1887) has been issued for all the Courts".

12. Section 586 referred therein is similar to Section 102 as it originally stood. Under the provision of Section 102 "no second appeal would lie in any suit of the nature cognizable in the Courts of small causes, when the amount or value of the subject matter of the Original Suit does not exceed Rs.500/-".

13. Section 96(4) has the similar provision with an addition added in the form of an exception namely the question of law. The Full Bench had observed as follows:-

The words "any suit of the nature cognizable" as used in Section 586 of the code may be paraphrased thus:-

"Any suit relating to a subject matter over which a Court of Small Causes would have jurisdiction if the claim were within the pecuniary limits of its jurisdiction".

The Full Bench has also observed that the words "of a nature cognizable" referred only to the subject matter of the suit as distinguished to the amount of the claim. Ultimately, the reference was answered in the affirmative.

14. This Judgment was quoted with approval in the Judgment reported in the case of K. Joseph Thompson and Another vs. Nallathampi Nadar reported in (1980) 2 MLJ 389.

The facts of this case was that the suit for recovery of money was dismissed against which the plaintiff had preferred an appeal. The value of the suit was a sum of Rs.856.96p. On appeal, the learned Subordinate Judge rejected the suit on the ground that an appeal would not lie in view of Section 96(4) of the Code of Civil Procedure. This Order was challenged by the plaintiff and after relying on the Judgment of the Full Bench extracted supra, the learned Judge allowed the Revision, set aside the Judgment and Decree of the lower Court and remitted the appeal back to the Lower Court for dismissal, holding that only a regular appeal would lie as the suit in question was not one of the nature cognizable by the Small Causes Court.

15. In the Judgment reported in the case of P.Thanka Nadar vs. Nesamony Nadar reported in (1983) 2 MLJ 415, the issue involved was whether the application seeking the benefits of the provisions of Tamil Nadu Debt Relief Act, 1976 involved a point of law and thereby giving jurisdiction to the Lower Appellate

Court to entertain the appeal though the suit is of a small cause nature and coming within the provisions of Section 96(4) of the Code of Civil Procedure. This was the case where the plaintiff had filed the Civil Revision Petition contending that the lower Appellate Court did not have the jurisdiction to entertain the appeal as the suit is of a small cause nature inasmuch as the amount claimed was only Rs.1,000/- and only if there is a point of law, an appeal would lie. The learned Judge repelled this argument of the plaintiff and remitted the matter back to the trial Court, stating that the lower Appellate Court had the jurisdiction to entertain the appeal. In the judgment reported in the case of Chinnakannu Pillai alias Narayanaswami Pillai Vs. Ramasamy Pillai reported in (1989) 1 Law Weekly 143, this Court had allowed the Revision and set aside the Judgment and Decree of the Lower Appellate Court, since this Court was of the opinion that no question of law was raised and the suit being one of the nature cognizable by the Small Causes Court only a Revision would lie.

16. In the Judgment reported in the case of A.N.Shanmugam and another vs. A.V.Ramanathan Rao reported in (1995) 1 Law Weekly 376, this Court had reversed the order of the lower Appellate Court which had entertained an appeal on the belief that there was a question of Law. On the second appeal being filed before this Court, this Court had observed that the second appeal is not competent under Section 102 of the Code of Civil Procedure, as the Lower Appellate Court had entertained the appeal as if on a question of Law. Ultimately, exercising suo motu powers under Section 115 of the Code of Civil Procedure, this Court had converted the second appeal into a Civil Revision Petition.

17. In the Judgment reported in the case of Govinda Koundar Vs. P.Natarajan & Another reported in (2004) 2 MLJ 513, this Court had held as follows:-

10. Since it is Section 96(4) of the CPC, which is relevant for consideration, it has become necessary on the part of this Court to extract the Section: "No appeal shall lie except on a question of law from a decree in any suit of the nature cognizable by the Court of Small Causes when the amount or value of the subject matter of the original suit does not exceed Rs.10,000/-".

11. The above provision of law is very clear and unambiguous and needs no clarity or clarification meaning thereby that no appeal shall lie from any suit of the nature cognizable by the Court of Small Causes when the amount or value of the subject matter of the

suit does not exceed Rs.10,000/- unless on a question of law.

18. The High Court of Kerala in a Judgment reported in the case of T.Rajappan Achari vs. Madhava Kammathi reported in 2005 1 KLT 293 had an occasion to consider the maintainability of an appeal under Section 96(4) of the Code of Civil Procedure. The suit filed therein was for a recovery of damages and the Trial Court had decreed the suit for Rs.2,150/- together with interest at the rate of 12% per annum. This decree was taken on appeal and the Appellate Court held that the appeal was not maintainable in view of Section 96(4) of the Code of Civil Procedure, as the value of the subject matter of the Original Suit did not exceed the sum of Rs.3,000/-.

19. Extracting the provisions of Section 96(4) of the Code of Civil Procedure, the Court had held as follows:-

"3. In this revision, it is contended that the interpretation given by the appellant court to Section 96(4) of the Code of Civil Procedure is wrong and the appellate court was not justified in relying on the decision in Parivaram Panchavat's case, as that decision turned on the interpretation of Section 102 of the Code of Civil Procedure. In the alternative, it is also argued that the decision in Parivaram Panchavat's case requires reconsideration".

Ultimately, the Court had allowed the Civil Revision Petition and the Order passed by the Appellate Court was set aside and the Appellate Court was directed to consider the appeal afresh.

20. A conspectus of the above Judicial pronouncements and a reading of Section 96(4) of the Code of Civil Procedure makes it very clear that an appeal would lie from every decree to the Court authorized to hear the appeals and the only exception was the one provided in Section 96(4) where a regular appeal will not lie in the following circumstances:-

(a) Where the subject matter of the suit is of the nature cognizable by the Small Causes Court which implies that if the subject matter relates to any of the suits specified in the second schedule, an appeal would lie.

(b) Secondly, where the cost or value of the subject matter of the suit does not exceed Rs.10,000/-.

However, even if these two circumstances were to exist, if a question of law arises then an appeal would lie irrespective of the fact that the suit is of a nature cognizable by a Small Causes Court and of a value less than Rs.10,000/-. In the case on hand no question of Law arises for consideration, therefore it is only an appeal under Section 96(1) CPC that would lie against the judgment and decree in O.S. No.266 of 1997.

21. In the result the Civil Revision Petition is dismissed. The petitioner is directed to take a return of the papers for representing the same before the appropriate Appellate Court. On such representation, the Appellate Court shall consider the delay in the light of Section 14 of the Limitation Act, 1963. No Costs.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

msvm

To

The District Munsif,
Polur,
Thiruvannamalai District.

+1cc to Mr.V.Raghavachari Advocate, S.R.No.56281

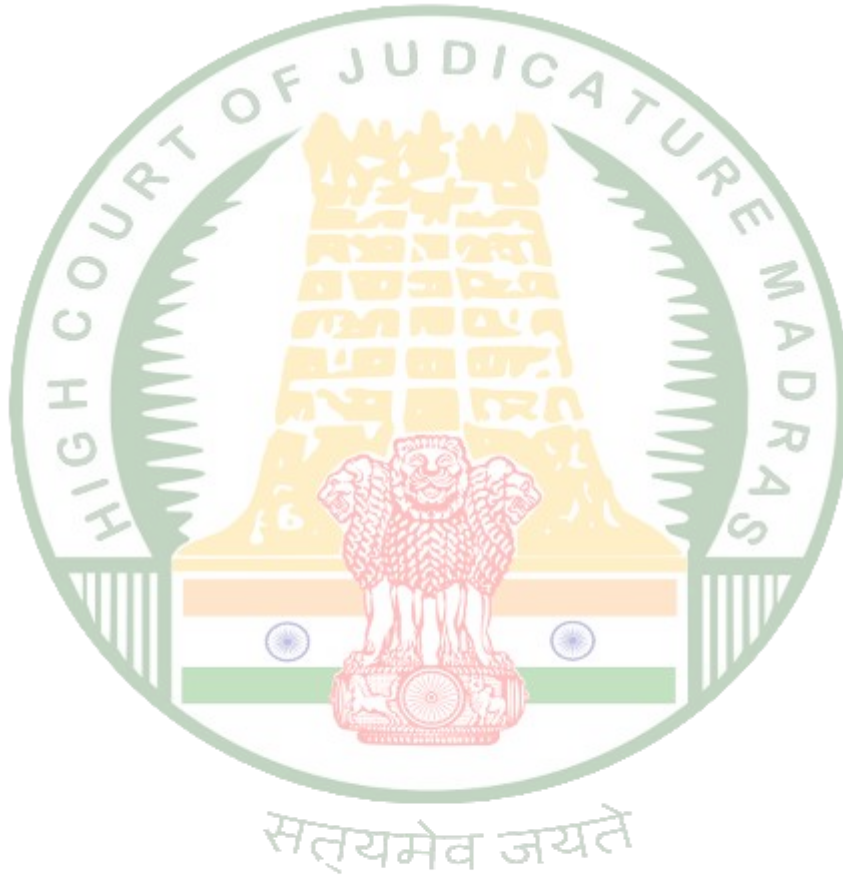
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