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IN THE HIGH COURT OF JUDICATURE AT MADRAS

JUDGMENT RESERVED ON : 30.11.2021

JUDGMENT DELIVERED ON : 17.12.2021

CORAM

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

S.A.No.89 of 2012

C.Devaraj ... Appellant/Defendant

...Versus...

R.Rajan ...Respondent/Plaintiff

PRAYER: This Second Appeal is filed under Section 100 of C.P.C., against the judgment and decree in A.S.No.18 of 2010 dated 31.03.2011 on the file of the learned Subordinate Judge, Nilgiris at Udthagamandalam, confirming the judgment and decree made in O.S.No.25 of 2004 dated 26.06.2008 on the file of the learned District Munsif, Kotagiri.

For Appellant :: Mr.K.F.Manavalan

For Respondent :: Mr.Niranjan Rajagopalan
for M/s.G.R.Associates

J U D G M E N T

The defeated defendant is the appellant herein.

2(a). The respondent/plaintiff has filed a suit in O.S.No.25 of 2004 before the learned District Munsif, Kotagiri, seeking recovery of money on the ground that the amount paid under Ex.A1/agreement, dated 11.03.1993, entered into between the appellant and the respondent could not be fortified and asked for re-fund of the amount.

(b). During the course of trial, on behalf of the plaintiff, he examined himself as P.W.1 and Exs.A1 to A4 were marked and on behalf of the defendant, defendant examined himself



as D.W.1 and no document was marked on his side.

(c) After perusing both oral and documentary evidence adduced by the plaintiff, the trial Court has decreed the suit. Aggrieved against the said decree passed in the suit, the defendant has filed an appeal suit in A.S.No.18 of 2010 before the learned Subordinate Judge, Nilgiris, Udthagamandalam and the learned Judge, by an order dated 31.03.2011, has dismissed the said appeal.

3. It is the specific plea of the appellant/defendant that the suit claim is barred by limitation and relied upon clause-VI of the agreement, which was entered between the parties under Ex.A1 that for cutting the trees, the District Collector has rejected permission in the year 1995 and thereafter, the suit was instituted in the year 2003 and it is out of limitation. The plea of limitation raised by the appellant/defendant stands negated by both the Courts below and hence, the Second Appeal.

4. In this Second Appeal, notice of motion was ordered by this Court on 06.02.2012. The respondent entered appearance through his Advocate. Additional typed set of papers have also been filed.

5. After hearing the learned counsel for the appellant/defendant, following substantial questions of law are framed:-

"1. Whether the respondent could lay a suit 25.09.2003 in respect of an ex-gratia payment of Rs.25,000/- on 11.03.1993 under Ex.A1?

2. Whether the ex-gratia payment of Rs.25,000/- by the appellant to the respondent on 08.07.2003 i.e., almost 10 years after the monies were advanced on 11.03.1993 under Ex.A1 could be construed as an acknowledgement of debt in the absence of any express acknowledgement of debt and/or promise to pay to enable the respondent to lay the suit on 25.09.2003?

3. Whether the Courts below erred in finding that there is a nexus between the agreement dated 15.10.1991 between appellant with a third party, Mother Superior, Nazareth Convent, and the agreement dated 11.03.1993 between the appellant and the respondent under Ex.A1 when the agreement dated 15.10.1991 of the appellant with the Nazareth



Convent was not even a part of the record or the said Nazareth Convent were not even arrayed a party?

4. Whether the appellant was estopped in pleading limitation merely because of the ex-gratia payment made by him on 08.07.2003 to the respondent much after the expiry of 3 years from the date of the agreement dated 11.03.1993?"

6. The learned counsel for the respondent/plaintiff relied upon the substantial questions of law.

7. The learned counsel for the appellant/defendant would contend that both the Courts below have committed an error without looking into the clause VI of Ex.A1/agreement entered into between the appellant/defendant and respondent/plaintiff. Further, he would contend that P.W.1, in the cross examination, has admitted that even in the year 1995, the Revenue Authority/District Collector has rejected the permission to cut the Eucalyptus trees and hence, the suit is hopelessly barred by limitation.

8. The case of the respondent/plaintiff, as projected in the evidence given by him as P.W.1, is that an amount of Rs.25,000/- has been paid on 08.07.2003 and that was treated as an acknowledgement of debt and consequently, the suit has been laid.

9. According to the learned counsel for the appellant/defendant, a sum of Rs.25,000/- paid on 08.07.2003 is an ex-gratia payment and not an acknowledgement of debt and therefore, relied upon the provisions of Sections 18 & 19 of the Limitation Act and also relied upon the decision of the Hon'ble Supreme Court reported in AIR 1999 SC 1947 Further, he would also draw my attention to the answers elicited in the cross examination of P.W.1.

10. The sum and substance of the contents of the learned counsel for the appellant/defendant is that the said sum of Rs.25,000/- was paid only an ex-gratia payment and it is not an acknowledgement of debt, since in the year 1995, the District Collector has rejected the permission for cutting of Eucalyptus trees in R.S.No.2728 & 2729, which belongs to the Nazareth Convent. Hence, if any payment is made during the subsistence of the contract, it can be termed as acknowledgement of debt. As per the pleadings and as per the evidence of P.W.1, if any payment



made after three years, which cannot be termed as acknowledgement of debt and hence, the learned counsel for the appellant submitted that the suit is barred by limitation.

11. Per contra, the learned counsel for the respondent/plaintiff would contend that the suit is not based upon the acknowledgement of debt, as projected by the appellant/defendant and he would draw my attention to paragraph No.10 of Ex.A1/Agreement entered into between the plaintiff and the defendant. The cause of action of the suit arose on 13.01.2003, when the contract in favour of the defendant was terminated by the Convent and subsequently, the defendant has acquired Rs.25,000/- on 20.08.2003 and hence, he would contend that though in clause VI of Ex.A1/agreement, it is mentioned as refusal of permission by the revenue authority/District Collector, it includes the legal proceedings also.

12. As per Ex.A3/letter dated 13.01.2003, Nazareth School has written a letter to the defendant by expressing their inability to obtain the permission and therefore, they have terminated the contract and on such termination, the School has given an amount of Rs.25,000/- to the defendant and hence, the cause of action for the plaintiff arose only on 13.01.2003. Further, on a perusal of records, it is seen that the defendant has given a sum of Rs.25,000/- to the plaintiff on 08.07.2003 and hence, the cause of action for this suit arises only on 13.01.2003 and subsequent payment made thereon. The suit was filed on 25.09.2003. As per the admission of P.W.1, the cutting order was rejected in the year 1995. During the cross examination, Writ Petition Nos.9023 & 13402 of 1995 were referred to by P.W.1.

13. Whether the payment of Rs.25,000/- made by the defendant to the respondent/plaintiff is an ex-gratia payment as contended in the written statement or is an acknowledgement of earlier debt or whether it is refund of the amount based upon the alleged cause of action on 13.01.2003 in view of the termination of the agreement of the appellant/defendant with the School Authority.

14. On perusal of the recital of agreement-Ex.A1 dated 11.03.1991, I find that "by virtue of agreement dated 15.10.1991, Superior, Nazareth Convent, Udhagamandalam at Nilgiris, a party has entered into an agreement to cut the Eucalyptus trees with R.Rajan" and there is a clause that the 2nd party shall obtain Form-II permit from the concerned authorities for the Transportation of the Timber and on receipt of cutting order from



the 1st party, he has to carry out the job within the stipulated time. If cutting permit cannot be obtained from the concerned authorities, the 1st party shall refund the advance amount received to the 2nd party. The permission for cutting the trees was rejected by the competent authority in the year 1995 and there was a statutory appeal to the District Collector. Thereafter, Writ Petitions also seem to have been filed as could be seen from the cross-examination of P.W.1.

15. It appears that the Mother Superior of Nazareth Convent has decided that in view of the disposal of one of the writ petition to terminate the contract, has re-paid a sum of Rs.25,000/- to the party of 'A' part, as could be seen from Ex.A2 and in turn, the said amount of Rs.25,000/- has been paid to the respondent/plaintiff Rajan.

16. The contention of the learned counsel for the appellant/defendant is that a sum of Rs.25,000/- paid by the Convent, which is the owner of the Eucalyptus trees in Survey Nos.2728 and 2729, is an ex-gratia payment made over to the plaintiff and it is not an acknowledgement of debt, since such a payment was made on 08.07.2013, i.e., after the expiry of the period of limitation viz., on rejection of the permission for cutting order by the competent authorities in the year 1997.

17. However on perusal of the agreement, as extracted supra, I find that the agreement entered into between the plaintiff and the defendant is only by virtue of agreement dated 15.10.1991 by the Superior, Nazareth Convent with the defendant herein, who in turn has entered into Ex.A1-agreement with the plaintiff and therefore, both the Courts below have rightly come to the conclusion that the suit agreement is in continuation and in pursuance of the agreement of the defendant with the Convent and therefore, the cause of action arose only after the Convent terminated the contract and not before that. Though in the year 1995 the permission for cutting of the Eucalyptus trees was rejected, there was an appeal and further, W.P.Nos.9023 and 13402 of 1995 were said to have been pending before this Court only after the Mother Superior of the Nazareth School Convent has terminated the agreement entered into with the defendant and return the advance so paid and hence, I find that a sum of Rs.25,000/- paid by the defendant to the plaintiff is not an ex-gratia payment.

18. At the risk of repetition, however, for the sake of convenience, Ex.A1-agreement was entered into between the appellant/defendant and the respondent/plaintiff and an advance



amount of Rs.1 lakh has been paid to the appellant/defendant. On 08.07.2003, the appellant/defendant has returned a sum of Rs.25,000/- and the respondent/plaintiff has filed a suit claiming balance of Rs.75,000/- with interest calculating at Rs.85,125/- on 25.09.2003.

19. On a close scrutiny of the recital in Ex.A1 and Ex.A3, both the Courts below have rightly come to the conclusion that the cause of action for the respondent/plaintiff arose only under Ex.A3-letter, dated 13.01.2003 letter written by the Mother Superior Nazereth Convent to the defendant. In view of the recitals as referred above, the suit agreement is based upon the outcome of the said agreement entered into between the defendant and Mother Superior and therefore, the findings rendered by both the Courts below that there is a nexus between the agreement of Nazareth Convent and the appellant/defendant in one hand and the agreement of the respondent/plaintiff under Ex.A1 on the other hand.

20. In view of the specific recitals in the said agreement and on consideration of entire facts and circumstances of the case, I find that the appellant/defendant is not a title holder or patta holder of the land in Survey Nos.2728 and 2729 of Udhagamandalam, while the Nazereth Convent is the absolute owner of the said property and the standing trees. The Nazareth Convent and the appellant/defendant had entered into an agreement dated 15.10.1991 and thereby, the respondent/plaintiff had agreed to cut the standing tress at Rs.4,10,000/- and the appellant/defendant has paid Rs.25,000/- to Nazareth Convent under agreement dated 15.10.91.

21. On perusal of records, it is further seen that the Mother Superior of Nazareth Convent had to obtain permission from the concerned Authorities and the appellant/defendant, after receiving the copy of permission from Nazareth Convent, had to cut off the tress and carry away. From the perusal of records, it is further seen that the appellant/defendant, who had got the right to cut off the trees under the said agreement dated 15.10.1991, has assigned such right to the respondent/plaintiff herein under Ex.A1-agreement dated 11.03.1993. A careful perusal of Ex.A1-agreement, dated 11.03.1993 would clearly reveal that the appellant/defendant, who has got the right under agreement dated 15.10.1991, has assigned his right of cutting the trees in favour of respondent/plaintiff under Ex.A1-agreement dated 11.03.1993.



22. It is seen that under Ex.A3 letter dated 13.01.1993, the Motor Superior of Nazareth Convent has expressed her inability to obtain the permission and therefore, she has terminated the contract and refunded Rs.25,000/- to the appellant/defendant. Therefore, it is seen that only under Ex.A3 letter dated 13.01.2003, the original contract dated 15.10.1991 has been terminated and therefore, the cause of action for the plaintiff arose only on 13.01.2003 and not in the year 1995, as alleged by the appellant/defendant.

23. Hence, the reasons assigned by both the Courts below appears to be just and proper. On factual position, as extracted above with regard to recital in Ex.A1-Agreement and the termination of the contract between the other party under Ex.A3-letter, all the substantial questions of law are held in negation against the appellant/defendant. Accordingly, the Second Appeal is devoid of merits and the same is liable to be dismissed.

24. In the result,

[i] This Second Appeal is dismissed.

[ii] The judgment and decree dated 31.03.2011 passed by the learned Subordinate Judge, Nilgiris at Udthagamandalam, in A.S.No.18 of 2010, confirming the judgment and decree dated 26.06.2008 passed by the learned District Munsif, Kotagiri, in O.S.No.25 of 2004, are confirmed.

[iii] No costs.

Sd/-

Deputy Registrar(CS)

// True Copy //

Sub Assistant Registrar

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To

1.The Subordinate Judge,
Nilgiris at Udthagamandalam.

2.The District Munsif, Kotagiri.

3.The Section Officer,
V.R.Section, High Court, Madras.



+1cc to Mr.K.F.Manavalan, Advocate SR.No.68091

+2cc to M/s.G.R.Associates, Advocate SR.No.69109,68465

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NMI (CO)

CB(06/01/2022)