



S.A.No.1234 of 2011

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.03.2023

CORAM

THE HONOURABLE MR. JUSTICE V. LAKSHMINARAYANAN

S.A.No.1234 of 2011

and

M.P.No.1 of 2011

K.Subramanian

...Appellant/Respondent/Defendant

Vs.

The Commissioner,
Nemili Panchayat Union,
Nemili,
North Arcot District.

...Respondent/Appellant/Plaintiff

PRAYER: Second Appeal filed under Section 100 of the Code of Civil Procedure against the Judgment and Decree dated 31.12.2009 in A.S.No.23 of 2009 on the file of the learned Subordinate Judge, Ranipet, Vellore District, reversing the Judgment and Decree dated 28.09.2006 in O.S.No.241 of 1996 on the file of the learned District Munsif, Arakonam.



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For Appellant : Mr.N. Manoharan
for Mr.P.Krishnan

For Respondent : No appearance

JUDGMENT

The defendant in the suit is the appellant. The appeal arises against the Judgment and Decree dated 31.12.2009 in A.S.No.23 of 2009 on the file of the learned Subordinate Judge, Ranipet, Vellore District in reversing the Judgment and Decree dated 28.09.2006 in O.S.No.241 of 1996 on the file of the learned District Munsif, Arakkonam.

2.The facts leading to the appeal are that there is a property situated in Sankarampadi Village Panchayat of Arakkonam Taluk, Vellore District, belonging to the plaintiff. On this property, there are several trees in the lake bunds and ridges of Kalkuttai and Vallikuttai. There are trees in the compound of the Panchayat Union School also. The defendant/appellant was elected as a President of Sankarampadi Panchayat and was functioning as the President.



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3.By way of a public auction on 25.08.1986, the appellant had confirmed the sale of velikathan/thorny trees in favour of one Sadagoban. The sale was for a sum of Rs.2,000/-. The appellant had received the said sum on 14.10.1986. There were several complaints lodged against the manner in which the sale was conducted. Finally, the District Collector of the then North Arcot District found irregularities and fixed the value for the velikathan trees at Rs.14,817.60p. As the appellant was responsible for the sale of these items at above rate, the District Collector directed recovery of Rs.12,817.60p together with interest @ 12% per annum from 17.07.1986 till the date of payment. This was in and by proceedings dated 30.11.1989 in Na.Ka.Pa.No.a(1)/8364/1988.

4.The appellant challenged this order by way of a Writ Petition in W.P.No.15613 of 1989. In the said Writ Petition, a direction has been given to deposit a sum of Rs.10,000/- on or before 11.09.1991. As the order was not complied with, W.M.P.No.22832 of 1989 stood



dismissed. Since the appellant did not deposit the amount, the plaintiff on the direction of the District Collector dated 30.11.1989 had presented the suit.

5.The suit was presented on 25.04.1996. The prayer in the suit was for payment of Rs.28,613.72p together with future interest @12% per annum from the date of the suit till the date of realisation.

6.The defendant filed his Written Statement. He took a stand that the entire proceedings had taken place while he was the President of the Panchayat Union during the year 1986 and 1987. According to him, the present suit, without taking permission from the Government, is not maintainable. He further alleged that the plaintiff ought to have filed the suit within one year and the suit has not been filed within a period of one year i.e., either from the date of auction or from the date of the order of the District Collector i.e., on 30.11.1989. Hence, the suit is barred by time.



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7.The defendant further pleaded that he had conducted auction of velikathan trees pursuant to a direction given on 12.05.1986 in Na.Ka.E-1-2469/89 dated 02.05.1986. Prior to the conducting of auction, due publication by way of “tom tom” was done. According to him, several persons participated in the auction and the auction was confirmed in favour of the highest bidder. According to him, the entire amount collected from the auction has been deposited with the Panchayat office and therefore, there is no illegality, irregularity or impropriety in the auction which was conducted on 25.08.1986.

8.The defendant further submitted that the fixation of Rs.14,817.60p by the District Collector was improper and he has not adopted any procedure known to Law. The basis of assessment according to him was exorbitant and without any basis. However, he conceded the fact that he appeared before the District Collector and produced records and the District Collector had passed an order only after hearing both sides.



9.The defendant alleged that since he belongs to a different political party, out of their vengeance, the present suit had been filed. He further stated that the plaintiff attempted to recover the amount by resorting to the Revenue Recovery Act, though it is inapplicable.

10.The defendant further admitted that the Writ Petition which was filed challenging the order of the District Collector fastening the liability on him came to be dismissed as withdrawn. He stated that due to the change in the Government, he is being harassed by way of the present suit. He also brought to the notice of this Court that challenging the revenue recovery proceedings he filed W.P.No.5606 of 1997 and the same was pending consideration. On this basis, he sought for dismissal of the suit.

11.The learned trial Judge framed the following issues for consideration:

"(1)Whether this suit is maintainable in Law?

(2)Whether the suit is hit by Law of limitation?



*(3)Whether the plaintiff is entitled for the amount
prayed for?*

*(4)Whether the suit is bad for non joinder of
Mr.Sadagopan?*

(5)Whether the suit has no cause of action?

*(6)Whether the amount claim by the plaintiff is
excessive?*

(7)To what other relief the plaintiff is entitled?"

12.On the side of the plaintiff, one witness by name P.Ananthan was examined as PW1 and Ex.A.1 to Ex.A.5 were marked. On the side of the defendant, he examined himself as DW1 and Ex.B.1 to Ex.B.8 were marked.

13.The learned trial Judge held that the suit is barred by limitation and therefore, he dismissed the suit. Aggrieved by the same, the respondent herein, preferred an Appeal Suit before the Subordinate Judge, Ranipet, Vellore District. The learned Subordinate Judge on



placing reliance upon Article 112 of the Limitation Act held that the period of limitation is 30 years and the suit filed is very much in time.

He further gave a finding that as the Order of the District Collector having become final, the defendant is bound to pay a sum of Rs.10,000/- and on that basis, decreed the suit for recovery of Rs.10,000/- together with interest @ 12% per annum from the date of auction till the date of realisation. Aggrieved over the same, the present Second Appeal has been filed.

14.At the time of admission, the following Substantial Questions of Law have been framed:

"(1)Whether the Lower Appellate Court correct in holding that the respondents/plaintiff suit was filed in time by attracting the provisions of Article 112 of the Limitation Act, especially, the suit was not filed by the State or on behalf of the same as contemplated under Section 79 of CPC?"



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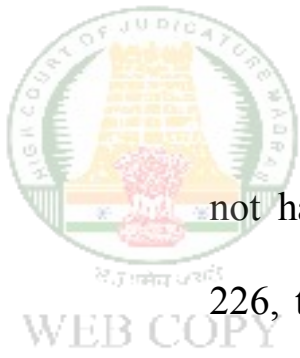
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(2)Whether the Lower Appellate Court correct in fixing the quantum of liability at Rs.10,000/- which has the conditional amount while granting interim orders in Writ proceedings by this Court?

(3)Whether the Lower Appellate Court erred in not rendering any finds or discussion over the findings rendered by the Trial Court in respect of quantum of liability non joinder of successful bidder Sadagopan was fatal to the suit?"

15.Heard Mr.N. Manoharan, learned counsel appearing on behalf of Mr.P.Krishnan, learned counsel for the appellant.

16.The learned counsel appearing for the appellant would argue that the suit is barred by time, as the cause of action for filing a suit for recovery of money, arose on 30.11.1989 when the District Collector fastened the liability on the appellant. This suit for recovery of money



not having been presented within a period of 6 years as per Section 226, the same is barred by time. The second plea would be that the appellant had acted in a bonafide manner for bringing the property for auction and ten persons had participated in the same and the auction was conducted in a fair manner.

17.I am afraid that I am not able to able to agree with the contentions raised by the learned counsel for the appellant. It is on record that challenging the order of the District Collector dated 30.11.1989, the petitioner filed a Writ Petition in W.P.No.15613 of 1989 on 12.12.1989 and obtained a Stay of the proceedings of the District Collector. The order of Stay was modified by way of an order dated 11.09.1991. A direction was given that a sum of Rs.10,000/- to be deposited with the 1st respondent. Subsequently, an appeal seems to have been preferred against the said order in W.A.No.1349 of 1991. In the said Writ Appeal, further four weeks time was taken for depositing of the amount. In other words, the interim stay granted on 12.12.1989 continued well into December 1991 or atleast till the date of the order



passed in Writ Appeal on 08.11.1991. Giving the benefits to the appellant that the appeals have been dismissed on 08.11.1991 that date should be reckoned for filing of the suit. This suit has been presented on 15.07.1996.

18.Applying Section 226 of the Tamil Nadu Panchayat Act, the suit had been filed in July 1996 is well within the time. The defendant had, immediately on being served the orders of the District Collector, filed a Writ Petition and obtained Stay on 12.12.1989. The said order was in force till 11.09.1991 when it was modified by the High Court. Even if I were to take the earlier date for the convenience of the plaintiff, the suit is still being filed within a period of six years from the date of the order fastening the liability, excluding the time when there were orders of Stay.

19.The time period when the Stay was in operation has to be excluded by virtue of Section 15(1) of the Limitation Act, 1963. I have to point out that Section 226 of the Tamil Nadu Panchayat Act,



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1994 would apply only if the amount is due to a Panchayat. Here is the case where the trees which had been under the control of the Government, by virtue of Section 132 read with Section 124 of the Tamil Nadu Panchayat Act, vest with them only on the basis of a specific Government Order. If they are not so vested, it continues to be the property of the Government.

20.The period of limitation for the Government, to initiate proceedings is 30 years, when the period would begin to run for a similar suit filed by a private person. The cause of action to file the suit for recovery of money commenced on 30.11.1989. Therefore, the suit could have been filed within a period of 30 years from 30.11.1989. I had referred to Section 226 of the Tamil Nadu Panchayat Act, because the learned counsel appearing for the appellant would argue that it is a special period of limitation.

21.In the light of Stay granted by this Court it makes no difference whether Section 226 of the Tamil Nadu Panchayat Act, or



whether it is under Article 112 of the Limitation Act. Either the way, the suit is in time. Therefore, I rejected the argument that the suit is barred by time.

22.The next submission of the learned counsel appearing for the appellant that he had brought the property for auction in a bonafide manner and therefore, he should not be held responsible. I am not willing to be persuaded to this argument also. The order of the District Collector is dated 30.11.1989. Prior to this order, the District Collector had conducted an enquiry and fastened the liability on the appellant. The appellant, not being satisfied with the same, challenged the said order before the High Court and had obtained an interim order. For the reasons best known to him, he did not prosecute it further. To a specific question asked by the learned counsel for the appellant whether there is any pleading against the order of the District Collector, he conceded that there is no pleading in his statement regarding his alleged bonafide auction in bringing the property for sale.



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23.The District Collector had applied his mind and come to a conclusion that the property worth about Rs.14,817.69p had been knocked off by mere a sum of Rs.2,000/-. In the last para of his order, he had directed recovery of the said amount from the appellant. As already stated, as the order already has been challenged, it had failed. What the appellant could not succeed in the Writ Petition the same plea cannot be resorted to in the Second Appeal.

24.This appeal arises against the simple suit for recovery of money and no plea of bonafide had been framed or gone into by the trial Court or the Lower Appellate Court. A new plea of bonafide cannot be raised for the first time in the Second Appeal. The reasons being, it requires pleading and foundational oral or documentary evidence.

25.The trial Court misdirected itself and applied the wrong provision under the Limitation Act and held the period of limitation, insofar as the Government is concerned, is 3 years. That has been rightly reversed by the Lower Appellate Court. In fact, instead of



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decreeing the suit for the entire amount, the Lower Appellate Court has shown sympathy on the appellant and had decreed it only for a sum of Rs.10,000/- with interest @ 12% per annum. I do not find any illegality or irregularity or perversity in the order of the Lower Appellate Court. The appellant, having been found liable, cannot raise the plea of limitation or bonafides as stated above.

Hence, this Second Appeal stands dismissed. As the respondent has not engaged any Counsel in the appeal, no costs are awarded in the appeal. The Judgment and Decree of the Lower Appellate Court in A.S.No.23 of 2009 dated 31.12.2009 in reversing the Judgment and Decree of the Trial Court in O.S.No.241 of 1996 dated 28.09.2006 stands confirmed. No costs. Consequently, connected Miscellaneous Petitions is closed.

15.03.2023

Index : Yes/No
Internet : Yes/No
Speaking order / Non speaking order
mps



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To
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1.The Subordinate Judge,
Ranipet,
Vellore District.

2.The District Munsif,
Arakonam.



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V. LAKSHMINARAYANAN, J,

mps

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