IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.11.2024

CORAM:

THE HONOURABLE MS.JUSTICE R.N.MANJULA

S.A.No.1427 of 2011

S.C.Rajendran ... Appellant / Plaintiff

Vs.

1.The United India Insurance Co.Ltd.,
No.24, Whites Road,
Chennai.

2.The United India Insurance Co.Ltd.,
Branch Office,
No.91, Kumaran Road,
Tirupur. ... Respondents / Defendants

Prayer: Second Appeal is filed under Section 100 of the Code of Civil Procedure, to set aside the judgment and decree dated 22.07.2011 passed in A.S.No.22 of 2010 on the file of the learned Additional Subordinate Judge, Tirupur, confirming the judgment and decree dated 30.11.2009 passed in O.S.No.674 of 1993 on the file of the learned District Munsif, Tirupur.

For Appellant : Mr.Kingston Jerold

For Respondents : No appearance

JUDGMENT

This Second Appeal has been filed to set aside the judgment and decree dated 22.07.2011 passed in A.S.No.22 of 2010 on the file of the learned Additional Subordinate Judge, Tirupur, confirming the judgment and decree dated 30.11.2009 passed in O.S.No.674 of 1993 on the file of the learned District Munsif, Tirupur.

2. Heard Mr.Kingston Jerold, learned counsel for the appellant and perused the materials available on record.

3. **The brief facts of the plaint runs as under:**

The appellant is the plaintiff. He has filed a suit for declaration that he is entitled to be indemnified and compensated the value of the goods and godown destroyed by the fire accident on 24.04.1988 in terms of the Fire Insurance Policy No.170601/538/01/1/01570/87 (R.T.No.350306) and No.170601/538/01/1/01775/86 (R.T.No.350712). The said suit has been dismissed by the Trial Court and the First Appeal preferred by the plaintiff was also dismissed by the First Appellate Court by confirming the judgment of the Trial Court. Hence, the plaintiff has filed this Second Appeal.

3.1. The plaintiff was doing a business in waste cotton and he has been maintaining the books of accounts in the ordinary course of business. The plaintiff has got a godown to stock the goods used as waste cotton in an area measuring 40feet x 60 feet. The plaintiff has insured his stock for a sum of Rs.59,000/-. The above construction of the thatched godown was insured for a sum of Rs.6,000/- and totally for Rs.65,000/- in Policy No.170601/538/01/1/01570/87 (R.T.No.350306). The premium for the policy of Rs.1,196/- has been duly paid by the plaintiff under receipt No.350306 dated 07.10.1987 and the coverage period is between 7.10.1987 to 06.10.1988. As the godown was improved and he has taken another policy for Rs.35,000/- on 30.10.1987 under policy No.170601/538/01/1/01775/86 (R.T.No.350712) and the coverage period is between 31.10.1987 and 30.10.1988. The premium for the policy has been properly paid by the plaintiff. As per the terms of the policy, the respondent Company has agreed and undertaken to make good the loss in terms of the money for Rs.1,00,000/- assured, if the goods are destroyed or damaged by fire.

3.2. On 24.04.1988, at about 5 a.m. there was a fire broke out in the godown of the plaintiff and the goods stocked there were completely destroyed. The loss and damage due to fire has been valued at Rs.89,680/-. The plaintiff has submitted a claim statement to the second defendant for a sum of Rs.89,680/-. A complaint has also been given about the fire accident in Tiruppur South Police Station and same was registered in Crime.No.281 of 1988 under Section 435 of IPC. The defendants were not prepared to accept the appraisal made by the Surveyor and wantonly delayed the settlement of the claim to the plaintiff. The defendants are under legal obligation to indemnify the plaintiff by paying a sum of Rs.89,680/- towards the loss and damages sustained by the plaintiff. The defendants are evading to honour the policies. The plaintiff issued lawyer notice dated 02.03.1990 to the defendants and and the same was received by the defendants, but they did not give any reply. Hence, the plaintiff has filed a suit for declaration to declare his entitlement to get the claim amount.

4. <u>The short facts pleaded in the Written Statement of the defendants are as under:</u>

The suit itself is not maintainable. As per the terms of the policy, the plaintiff has to move the defendants for arbitration to settle the claim and the suit is barred by limitation also. For recovery of money, no suit for declaration can be filed. The Court Fee paid is not correct. The cause and the course of the fire accident as narrated in the FIR is totally false. After the accident, the defendants have worked out and assessed the total loss due to fire accident was at Rs.15,165/- and they were ready and willing to settle the said amount. But, the plaintiff did not come forward to receive the said amount.

4.1. The plaintiff has manipulated the accounts for getting the higher compensation. The other parties who stocked the goods namely cotton in the plaintiff's godown got their claim settled as per the norms and calculation adopted by the defendants. Only the plaintiff has refused to get settlement for Rs.15,165/- as assessed by the defendants. The insurance policy does not cover the fire risk for thatched godown where the plaintiff had stored his stocks. The plaintiff does not have any insurable interest for the goods destroyed in fire. The suit has been wrongly filed for declaration and the suit is liable to be dismissed.

5. On the basis of the the rival pleadings and documents produced, the following issues have been framed for trial:

"*1. Whether the suit as framed is maintainable?*

2.Whether the plaintiff is entitled to the relief as prayed for?

3.To what other reliefs?"

6. During the course of the trial, on the side of the plaintiff, one witness has been examined as P.W.1 and Exhibits A1 to A17 were marked. No oral or documentary evidence has been adduced on the side of the defendants.

7. After hearing both sides submission and perusing the materials available on record, the Trial Court has dismissed the suit. A First Appeal has been filed by the plaintiff challenging the judgment of the Trial Court and that also got dismissed. Now, this Second Appeal has been filed by the plaintiff by raising the following substantial questions of law:

"1. Whether the suit is not maintainable in view of Section 34 of the Specific Relief Act as need by the Courts below?

2. Whether the Courts below had to follow the order in C.R.P.No.1253 of 2005, a revision filed against the amendment of plaint, while deciding the suit on merits? and

3. Is not the Courts below empowered to grant relief to the appellant on the basis of admission of the respondents made in their written statement?"

8. So far as the first substantial question of law is concerned, the Section itself would read as under:

*"**<u>34. Discretion of Court as to declaration of status or right</u>** -- Any person entitled to any legal character, or to any right as to any property, may institute a suit against any person denying, or interested to deny, his title to such character or right and the Court may in its discretion make therein a declaration that he is so entitled, and the plaintiff need not in such suit ask for any further relief:*

Provided that no Court shall make any such declaration where the plaintiff, being able to seek further relief than a mere declaration of title, omits to do so."

9. When the appellant / plaintiff has filed a suit, he is aware of the fact that without getting substantial relief, he could not seek a direction against the defendants to disburse the amount claimed by him. For the best reasons known to the plaintiff, he has not framed the suit in such a way that the plaint is inclusive of prayer for a consequential injunction. The Trial Court has rightly applied the proviso to Section 34 to render a finding that the relief of declaration cannot be granted when the plaintiff was able to seek further relief than mere declaration. But, the plaintiff has omitted to so. This case is a classic example where the plaintiff has knowingly omitted to seek the relief for consequential injunction, despite he knows pretty well that the relief of mere declaration, even if it is granted, will not come for his rescue.

10. The First Appellate Court has also rightly appreciated the above legal position and had chosen to accept the stand of the Trial Court. However, it is seen that the plaintiff has attempted to amend the plaint by way of paying higher Court Fee for considering the suit for recovery of money. Though the amendment application was allowed and the amendment has been carried out by paying additional Court Fee, the respondents / defendants filed a Civil Revision Petition by challenging the said order in C.R.P.No.1253 of 2005. In the said Civil Revision Petition, an order has been passed on 03.01.2007 by setting aside the order passed in I.A.No.135 of 2005. It appears that the plaintiff has filed a Special Leave Appeal before the Hon'ble Supreme Court challenging the orders passed in the Civil Revision Petition and the Special Leave Appeal was also dismissed.

11. The learned counsel for the appellant / plaintiff submitted that even as per the observation made by the First Appellate Court, the suit is not barred by limitation because the plaintiff has presented the suit on 23.04.1991 which is well within the limitation of three years. Only because the suit has been returned and subsequently represented in the year 1993, it has been taken on file on 16.12.1993. But the said fact was omitted to be noticed by the High Court while passing the order in C.R.P.No.1253 of 2005.

12. But the said grievance of the appellant / plaintiff cannot be addressed by way of filing this Second Appeal and by raising the above point as the substantial question of law. The plaintiff who has lost C.R.P.No.1253 of 2005, has rightly preferred the Special Leave Appeal before the Supreme Court and it was dismissed.

13. Had the plaintiff rightly paid the Court Fee at the first instance by framing the suit itself as recovery of money, his suit would have been saved. The plaintiff as an after thought, has filed an Amendment Petition and thereafter, he did not effectively made his submission before the High Court in C.R.P.No.1253 of 2005 and thus he had missed the bus. Now, the order of the High Court made in C.R.P.No.1253 of 2005 and the order dismissing the Special Leave Appeal by the Hon'ble Supreme Court stares at the plaintiff and that cannot be overlooked.

14. The First Appellate Court has properly appreciated all these facts and has chosen to give due respect to the order of the High Court made in C.R.P.No.1253 of 2005. In fact, the First Appellate Court has given a reasonable relief of returning the excess Court Fee paid by the plaintiff as he could not maintain the relief of recovery of money as amended by him. The second question of law will not arise.

15. The third question of law with regard to appreciation of evidence will not arise when the suit of the plaintiff is hit by proviso to Section 34 of the Specific Relief Act and hence, the appellant fails on that point itself.

16. As this Second Appeal does not make out any question of law, much less a substantial question of law, it stands dismissed and the order passed by the learned Additional Subordinate Judge, Tirupur dated 22.07.2011 passed in A.S.No.22 of 2010 is confirmed. No costs.

Speaking order / Non-speaking order **12.11.2024**
Index : Yes / No
Neutral Citation : Yes / No
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To

1.The Additional Subordinate Judge,
Tirupur.

2.The District Munsif,
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R.N.MANJULA, J.

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