

(2011) 05 KL CK 0011

In the High Court Of Kerala

Case No : Regular Second Appeal No. 78 of 2004

Alappuzha Ananthapuram Thirumala and Adhikari V. Krishna
Vadhyar

APPELLANT

Vs

P.L. Salim

RESPONDENT

Date of Decision : 23-05-2011

Acts Referred:

Citation : (2011) 05 KL CK 0011

Hon'ble Judges : Sasidharan Nambiar, J

Bench : Single Bench

Advocate : R. Lakshmi Narayan, for the Appellant; J. Om Prakash, for the Respondent

Final Decision : Dismissed

Judgement

M. Sasidharan Nambiar, J.—The Plaintiff in O.S.761/1997 on the file of Munsiff Court, Cherthala is the Appellant. Respondent is the Defendant. Under Ext.A1 agreement dated 8.4.1994, Appellant permitted Respondent to catch fish from the property belonging to the Appellant for a total consideration of Rs. 75,000/-. Ext.A1 was executed incorporating the terms and conditions of the permission granted to the Respondent. Under Ext.A1 Rs. 47,650/-, out of the total consideration of Rs. 75,000/- was paid as advance and the balance of Rs. 22,350/- is to be paid on or before 15.6.1994. Respondent was permitted to catch fish for the period from 17.8.1993 to 16.8.1994. Ext.A1 agreement provides that Respondent has right to catch fish during that period and if any third party raises any claim or objection, it is to be faced by the Respondent at his expenses after the expiry of the period, Respondent would loss his right to catch fish. The suit was instituted for realisation of Rs. 22,350/-, the balance amount agreed to be paid under Ext.A1 before 15.6.1994, contending that Respondent did not pay the amount and therefore Appellant is entitled to realise it with interest at 12%. Appellant contended that cause of action for the suit arose on 8.4.1994 the date of the suit and on 16.8.1994, date on which the

period stipulated in the agreement expired and on 7.7.1995, the date when Ext.A3 notice was sent demanding the amount. Respondent resisted the suit contending that Ext.A1 was not executed by him and in any case suit is barred by time as it was not instituted within the period of three years from 15.6.1994.

2. Learned Munsiff on the evidence of PW1, D Ws. 1 to 4, Exts.A1 to A4 and B1 to B4 dismissed the suit finding that though under Ext.A1 agreement Respondent is liable to pay Rs. 22,350/- claimed in the plaint, the suit should have been instituted within three years from 15.6.1994 and as it was instituted only on 11.8.1997 it is barred by time. Appellant challenged the judgment before Sub Court, Cherthala in A.S.54/1999. Learned Sub Judge on reappreciation of the evidence dismissed the appeal and confirmed the judgment of the trial court, additionally finding that as Ext.A1 is not registered, no decree could be passed based on Ext.A1 and in any case the suit is barred by time. Plaintiff filed this Second Appeal challenging the judgment.

3. The appeal was admitted formulating the following substantial question of law.

When the period of contract covered by Ext.A1 was admittedly from 17.8.1993 to 16.8.1994, was not the suit filed on 11.8.1997 within the period of limitation and are not the courts below wrong in holding that the suit is barred by limitation?

4. Learned Counsel appearing for the Appellant and the Respondent were heard.

5. The argument of the learned Counsel is that a reading of Ext.A1 agreement establishes that Appellant permitted Respondent to catch fish for a total consideration of Rs. 75,000/- and the period fixed was from 17.8.1993 to 16.8.1994. It is argued that a reading of Ext.A1 shows that Respondent has right to catch fish till 16.8.1994 and therefore the suit filed within three years from the date of expiry of the said period provided under Ext.A1 is within the time and findings of the courts below is not sustainable.

6. A reading of Ext.A1 makes it absolutely clear that under the agreement Appellant permitted Respondent to catch fish for the period 17.8.1993 to 16.8.1994. The total consideration was Rs. 75,000/-. It specifically provided that out of the consideration, Rs. 47,650/- was paid at the time of execution of the agreement in addition to the deposit of Rs. 5000/- and the balance of Rs. 22,350/- is to be paid on or before 15.6.1994. Though the consequence of non payment on or before 15.6.1994 is not provided, it is clear from Ext.A1 that Appellant could have instituted a suit for realisation of the amount even on 16.6.1994, if the Respondent failed to pay the amount as agreed. Appellant could have approached the court to prevent Respondent from catching fish after 15.6.1994. The submission of the learned Counsel appearing for the Appellant could have been accepted if Ext.A1 provided for payment of the balance amount on or before 16.8.1994, the expiry of the period. On the other hand, Ext.A1 makes it absolutely clear that to catch fish till 15.6.1994 Respondent had to pay the advance of Rs. 47,650/- and to enable him to catch fish for the subsequent period, he has to deposit the balance of Rs. 22,350/- on or before 15.6.1994.

Ext.A1 did not enable the Respondent to continue catching fish subsequent to 15.6.1994, without payment of the balance amount. In such circumstances, the submission of the learned Counsel for the Appellant that the suit could be instituted only after the expiry of the period provided under Ext.A1 cannot be accepted. Ext.A1 makes it clear that Rs. 22,350/- was due for payment to the Appellant on 15.6.1994. Therefore the period of limitation would start to run on 16.6.1994. The period for instituting the suit for realisation of the amount is three years. As the suit was instituted only on 11.8.1997, courts below were correct in holding that the suit is barred by time. Hence there is no merit in the appeal.

The appeal is dismissed, but in the circumstances of the case without costs.