(1996) 12 KL CK 0030

In the High Court Of Kerala

Case No : A.S. No. 289/90

Angamali Chit Fund (P) Ltd. APPELLANT

Vs

Pius Abraham and Others RESPONDENT

Date of Decision : 06-12-1996

Acts Referred:
Limitation Act, 1963 — Article 109, 120, 37, 60, 62

Citation : AIR 1997 Ker 156 : (1999) 96 CompCas 411

Hon'ble Judges : P.A. Mohammed, J;K.A. Mohammed Shafi, J

Bench : Division Bench

Advocate : K.C. John and K.K. John, for the Appellant; Jolly T. Kuriakose, for the Respondent

Judgement

K.A. Mohammed Shafi, J.—The Plaintiff in O.S. No. 157/87 on the file of the Subordinate Judge''s Court, Ernakulam is the Appellant. The suit was filed for recovery of money due under the chitty hypothecation deeds executed by the Respondents-Defendants in the suit.

2. The Respondents were subscribers in the chit conducted by the Appellant as foreman and they have executed three chitty hypothecation deeds marked as Exts. A-1 to A-3 in the suit in favour of the Appellant. The fact that the Respondents defaulted payment of the instalments due under the chit from 16th instalment onwards and the Appellant filed the above suit for realisation of the entire amount with interest due for the instalments from 16 to 50 is not in dispute. It is the common case that the 16th instalment was due on 7th September 1983 and the Appellant filed the above suit on 27th February 1987 claiming recovery of the amount due for the instalments 16 to 50 with interest.

3. The Respondents contended that the instalments 16 to 21 are barred by limitation since the Appellant is entitled to claim only the instalments which fell due within three years prior to the date of filing of the suit.

4. Though the Appellant contended that since Exts. A-1 to A-3 registered

mortgage deeds are executed by the Respondents securing the payment of instalments due under the chits, Article 62 of the Limitation Act is applicable which provides limitation of 12 years from the due date, the lower Court rejected that contention, and accepting the contention of the Respondents that Article 37 of the Limitation Act is applicable to this case and as such instalments fell due beyond three years from the date of suit are barred by limitation, passed the impugned decree and judgment in favour of the Appellant for the instalments due from 22 to 50 with interest thereon.

5. It is well settled that for filing a suit for realisation of money charged on the immovable property, the period of limitation is 12 years when the money became due, from the decision of the Privy Council in AIR 1932 207 (Privy Council) . The recitals in Exts. A-1 to A-3 hypothecation deeds executed by the Respondents establish that they are registered mortgage deeds charging the immovable property for the payment of the balance instalments due under the chitty transaction. Article 37 of the Limitation Act is applicable only to chitty hypothecation bonds pure and simple executed without charging the immovable property for the due and proper payment of the instalments or offering immovable property as security.

6. In the decision in Moitheen Abdu v. Narayana Iyer (1951) 6 D.L.R. Trav-Cochin 303 a Division Bench of the Travancore-Cochin High Court has observed as follows:

Article 109 which is the article intended for recovery of amounts charged on immovable properties provides for a period of twelve years from the date on which the amount accrues due. This can be applied to instalment bonds as well as to non-instalment bonds. In such cases the principle underlying Article 60, Limitation Act can be extended to cases of charges contemplated by Article 109. The period of limitation for each instalment will be twelve years and the cause of action for each will arise on the date on which instalment falls due.

7. In the decision in Krishna Pillai v. Padmanabhan 1955 KLT 840 a Division Bench of the Travancore-Cochin High Court has observed as follows:

The more serious point raised by learned Counsel is the question of limitation in respect of the instalments 14 to 18. These had accrued due before the date of the demand for lump and also fell outside the period of 12 years from date of suit. It is admitted that Article 120 of the Limitation Act VI of 1100 (Travancore) governs the case. That Article provides inter alia for recovery of money due under hypothecation bond payable in instalments but with the condition attached that the whole will be due if default be made in one or more instalments. The period provided for such suit is 12 years, as regards each of the instalments from the time it accrued due but as regards the whole, from the date of demand in writing therefore provided that the demand was made after the default and on or before the date on which the last instalment fell due.

Therefore, it is clear from the above decisions of the Travancore-Cochin High

Court that the period of limitation in respect of hypothecation bonds executed offering immovable property as security for payment of the chitty instalments is 12 years from the date of default of each instalment.

8. As already noted in this case by no stretch of imagination it can be contended that the chitty hypothecation bonds Exts. A-1 to A-3 executed by the Respondents in favour of the Appellant are not mortgage deeds and they are only simple bonds securing payment of future instalments due under the chit. Therefore, Article 62 and not 37 of the Limitation Act applies to the facts of this case and as such the period of limitation to file suit claiming the defaulted instalments as well as the entire balance instalments after default in a lump is 12 years from the date of default. Therefore, the finding of the lower Court that instalments 16 to 21 which fell due upto 27th February 1984 are barred by limitation is not sustainable since the 16th instalment fell due on 7th September 1983 and above suit is filed on 27th February 1987, well within the period of limitation provided under Article 62 of the Limitation Act. Therefore, the Appellant is entitled to the entire claim made in the suit.

9. The Counsel for the Respondents submitted that even though the 16th instalment fell due on 7th September 1983, the Appellant demanded the amount in a lump only by Ext. A-4 notice dated 17th October 1986 and therefore, the Appellant is entitled to claim interest on the entire balance amount only from 17th October 1986 and the claim of interest on the consolidated amount from 7th September 1983 onwards viz. the date of default of 16th instalment is unsustainable.

10. The Counsel for the Appellant submitted that the Appellant has claimed interest on the consolidated amount only from 17th October 1986, the date of Ext. A-4 notice demanding payment of the entire amount in a lump and interest is not claimed on the consolidated amount from 7th September 1983 viz. the date of default of 16th instalment, as contended by the Respondents.

11. A perusal of the plaint filed by the Appellant in this case and the reliefs claimed therein establishes that the Appellant has claimed interest on the consolidated amount only from the date of Ext. A-4 notice and not from the date of default of the 16th instalment. Therefore, this contention of the Respondents is also untenable.

12. From the foregoing discussions it is clear that the Appellant is entitled to the entire claim made in the suit and the lower Court is in manifest error in rejecting the claim for the amount due for the instalments 16 to 21 as barred by limitation. Hence the decree and judgment of the lower Court are modified and the suit is decreed for an amount of Rs. 1,28,917 with interest on Rs. 91,000 at 12 percent per annum from the date of plaint till realisation against the Respondents personally and by sale of the plaint schedule properties with cost in the suit. The parties are directed to bear their respective costs in this appeal.

