(1980) 12 MAD CK 0009

In the Madras High Court

Case No : App No. 53 of 1976

C.P. Krishnan Nair APPELLANT

Vs

The National Small Industries Corporation Ltd. and others RESPONDENT

Date of Decision : 02-12-1980

Acts Referred:

Specific Relief Act, 1877 — Section 11(a)

Citation : (1980) 12 MAD CK 0009

Hon'ble Judges : Sethuraman, J

Bench : Single Bench

Advocate : Ayyar and Dolia and S.P.L. Palanlappa, for the Appellant; R.D. Indirasenan, N. Rosi Naidu, R. Vedantham and J. Satyanarayanan for Respts. No.1, for the Respondent

Judgement

Sethuraman, J.—This appeal has been filed by the first defendant in O.S. No. 8221 of 1972 in the City Civil Court, Madras. The suit was

for recovery of Rs. 767.17, and for possession of certain machineries or in the alternative of their value of Rs. 12,149.48 with interest. The

National Small Industries Corporation, Bombay (P), Ltd., supplied to the first defendant two machines, viz., (1) One complete unit Log Bandsaw

mills and (2) Log Band Mill with 52 HP motor and starter, under two agreements, dt. 11th March, 1959 and 7th December, 1959, marked

respectively as Ex.A1 and A2. The first defendant took delivery of the machines. As a result of an amalgamation and conversion into a public

company, the plaintiff, the National Small Industries Corporation Ltd., became the successor of the original contracting party, viz., the National

Small Industries Corporation, Bombay Pvt. Ltd. The total value of the two machines came to Rs. 1,46,529.67. The agreement was in the form of a Hire Purchase agreement and it allowed the payment of the price in monthly instalments over a period of 12 months. The first defendant paid a

major portion of the amount due under the two agreements leaving a balance of Rs. 173.58 in respect of the Log Brandsaw Mills and Rs.

1,197.90 in respect of the Log Band Mill. Contrary to the agreement the first defendant is said to have sold the machineries to the second

defendant, who in turn sold them to the third defendant without reference to, or obtaining the consent of, the plaintiff. Alleging that the first

defendant had no right to alienate the machinery and that the plaintiff was entitled to the possession of the two items of machinery or their value, the

claim as mentioned above was made in the suit. The first defendant in his written statement contended that the machines were purchased for Jaya

Saw Mills and Mysore Timber Mills respectively, that Mysore Timber Mills was a partnership concern, while Jaya Saw Mills was a Hindu

undivided family concern, that the payment was made by the respective Mills separately, that there has been wrong appropriation of the payments

and that Mysore Timber Mills had paid the entire amount. It was also the plea that the suit was barred by limitation.

2. The second defendant contested the claim on the ground that there was no contract between him and the plaintiff and that he was not

responsible for any amount that may be due from the first defendant.

3. The third defendant did not file any written statement. However, he appeared through counsel. The trial Court framed the following issues--

1. Whether all the amounts paid by the first defendant were not properly credited as alleged in paras. 4 and 5 of the written statement?

2. Whether the suit claim is barred by limitation?

3. To what relief.

4. The trial Judge, viz., III Assistant Judge, City Civil Court, Madras, came to the conclusion that all the amounts paid by the first defendant were

properly given credit to and that the suit was in time. He, therefore, decreed the suit for possession or in the alternative for Rs. 12,149.48. He,

however, held that the claim, in so far as it related to Rs. 766.17 was not supported by any evidence and had to be rejected. The first defendant

has come forward with the present appeal contesting the decree that was passed by the Court below.

5. The learned counsel for the appellant took up before me two points, viz., that the payments had not been properly given credit to and that the

suit was barred by limitation. As far as the amounts paid not having been properly given credit to is concerned, the learned counsel was not in a

position to place before me any material on the basis of which it can be held that the amounts paid had not been properly adjusted in the accounts.

It has been found by the Court below that it was the first defendant, who entered into the contract. In Ex.A1, he described himself as the

proprietor of Mysore Timber Mills and in Ex.A2, he gave the address as ''care of Mysore Timber Mills''. In neither of these agreements did he

state that he was entering into the agreements on behalf of any partnership, which carried on the business in the name of Mysore Timber Mills. He

himself admitted in the witness box that the agreements had been entered into by him. He had not described the capacity in which he entered into

the contract as if it was on behalf of any partnership. The plaintiff was, therefore entitled to appropriate the amounts paid on the basis that the first

defendant was the only person who was responsible for making the payments and not any partnership. It is not in dispute that if the payments were

to be taken as having been made by the first defendant in respect of the two contracts, then there is nothing wrong in the decree. Therefore, I do

not find that there is any scope for interference in so far as it has been found that the first defendant had not paid all the instalments and that there

was a default.

6. In so far as the sum of Rs. 766.17 is concerned, it has not been decreed. There is no appeal by the plaintiff. Thus, the suit in effect was only for

possession of the machinery or in the alternative, for their value. It has already been found that the amounts paid had been properly credited by the

plaintiff and that a balance was due under the two agreements. The question that survives for consideration is whether the suit for recovery of the

machinery or its value is within time.

7. It is in this connection that my attention was drawn to the following Articles of the Limitation Acts, 1963, viz., Art. 68, 69, 91and 113:--

Description of Period of Time from which period

suit limitation begins to run

68. For specific moveable three years When the person

property lost, having the right to the

or acquired possession of the

by theft, or property first

dishonest misappropriation learns in whose

or conversion possession it is.

69. For other three years When the property is

specific movable property wrongfully taken.

91. For compensationï¿½ three years When the person

having

(a) for wrong- he right to the

fully taking or possession of the

detaining any property first learns in

specific movable property whose possession it is.

lost, or acquired by theft, or

dishonest misappropriation

or conversion

91 (b). for three years When the property is

wrongfully wrongfully taken or

taking or injuring or wrongfully injured, or when the

detaining any other detainer''s possession

specific movable property becomes

unlawful.

113. Any suit three years When the right to sue

for which no accrues.

period of limitation is provided

elsewhere in this

Schedule

As far as Art. 91 is concerned, it cannot be held to apply to the facts here, because the suit is not for compensation, but for possession of the

machinery, which was the subject-matter of the Hire Purchase agreement. Art.

113would have to be applied only if it is found that no period of

limitation has been provided elsewhere in the schedule. We are thus left with Arts. 68and 69 and only in cases they did not apply , it would be

necessary to seek support from Art. 137.

8. Before considering the Articles, the question as to the rights of the parties under a Hire Purchase agreement may be examined. As pointed out in

a recent unreported Bench decision of this Court in Bell Alloy Steel Pvt. Ltd. v. National Small Industries Corpn. Ltd. App. No. 775 of 1975,

dated 8th February, 1980, rendered by Ramanujam and Venugopal, JJ. there is a distinction between a contract of purchase and a contract of hire

purchase. The contract of hire purchase is one of the variations of the contract of bailment, but it is a modern development of commercial life, and

the rules with regard to bailments, which were laid down before any contract of hire purchase was contemplated, cannot be applied simpliciter,

because such a contract has in it not only the element of bailment but also the element of sale. At common law the term ''hire purchase'' properly

applies only to contracts of hire concerning an option to purchase, but it is often used to describe contracts which are in reality agreements to

purchase chattels by instalments, subject to a condition that the property in them is not to pass until all instalments have been paid. See. Halsbury''s

Laws of England, 3rd Edn. at page 510, para 823.

9. in G.J. Subbarayulu and Another Vs. A. RM. A.N. Annamalai Chettiar,), this Court was concerned with a contract under which there was a

delivery of a cinema projector with accessories, subject to the payment of an agreed price in instalments. It was expressly provided in the contract,

as is commonly found in the case of hire purchase agreements, that the ownership of the machine should not pass until the price was paid in full. As

there was failure to pay the instalments, there was a termination of the contract, and the owner filed a suit, which was in substance one for delivery

of the cinema projector and its accessories and, in case the delivery could not be obtained, for recovery of their value. There was a decree for

delivery within a period of 14 days of the projector or in the alternative for the payment of Rs. 2,250 being the value of such a projector and its

accessories. The defendants in the suit construed the decree as giving them an option to retain the projector on payment, of Rs. 2,250 and, therefore, deposited the amount into Court. The plaintiff-decree-holder refused to accept it, and applied in execution for an order directing delivery

of the projector. It was held that the defendants held the projector and its accessories in a fiduciary capacity and were trustees within the meaning

of S. 11 (a) of the Specific Relief Act, 1877. It was held also that the defendants were under a duty to deliver the article to the plaintiff and that the

plaintiff was entitled to such order for delivery in his favour. That was a case where there was a termination of the contract within the period during

which the price was payable in instalments. In the present case the price had not been fully paid. There was a small balance representing the last

instalment due. In such a case, under the agreement between the parties, the property in the machinery did not pass until the last instalment was

paid and, therefore, the plaintiff continued to be the owner of the property.

10. The present case is an action in trover. To maintain an action in trover, the plaintiff must establish that he had title to the goods in question and

that he was entitled to possession thereof when he called upon the defendants to deliver possession. See L.J. Leach and Company Ltd. Vs.

Jardine Skinner and Co., It is not in dispute that in this case the property in the goods did not pass to the defendants on account of the non-

payment of all the instalments as provided by the agreements.

11. The Privy Council in L.P.E. Pugh v. Ashutosh Sen 56 I.A. 93 has construed the scope and content of the word ''conversion'' occurring in Art.

68 in that case there was an agreement granting a mining lease in favour of the appellant over an area called ''Pathargarda''. The lease contemplated

an additional area in Gaurigram being also granted. However, there was no actual agreement in respect of Gaurigram. The lessee granted a sub-

lease and the sub-lessee continued the workings even in Gaurigram. Another party, who had obtained a lease of Gaurigram, filed a suit against the

sub-lessee, the appellant before the Privy Council, for damages for conversion of coal raised by him from Gaurigram. The fact that the sub-lessee

carried on mining in Gaurigram bona fide was not in dispute. The question was whether Art, 48or Art. 49 of the Indian Limitation Act, 1908

corresponding to Art. 68and 69 of the Limitation Act, 1963 would apply. The contention was that Art. 48 did not apply, because, the conversion

was not dishonest. At page 101 of the judgment the Privy Council held that, whether the conversion was innocent or dishonest, it was nevertheless

a conversion falling within the scope of Art. 48 in that case or Art. 68 of the present Act . This decision was followed in Adjai-Coal Co., Ltd. v.

Pannalal Ghose 57 I.A. 144.

12. Art. 69applies only to suits in respect of ''other specific movable property''. Reading Articles 68and 69 together, it is clear that Art. 69 would

apply to a suit for recovery of specific movable property, which is other than the specific movable property described in Art. 68. Specific movable

property described in Art. 69 must be the property , which is not lost to the owner as a result of theft, dishonest misappropriation, or conversion.

See T.M. Talyarkhan v. Gangadas Dwarakadas 60 Bom. 848. This decision has been approved by the Supreme Court in K.S. Nanji and Co. v.

Jatashankar Doss 1962-1-S.C.R. 492. Thus, this is a case where it cannot fall within Art. 69, because it is a case of conversion falling within Art.

68.

13. Construing the corresponding Article under the Limitation Act, 1908, viz., Art. 48, the Bombay High Court in K.M. Talayarkhan v. Gangadas

Dwarakadas 60 Bom. 848 has held that in cases where there has been successive conversion of the same property by different persons, each of

these conversions gives rise to an independent cause of action, and that the barring of one of them by the statute of limitation has no effect on the

others and that this is so because of the fact that the effect of the law of limitation in respect of injuries to movable property is merely to destroy the

plaintiff''s right of action but not to divest him of his ownership in the property. The last column of the entry relating to the Art. 68 in the Limitation

Act describes the starting point of limitation as ""when the person having the right to the possession of the property first learns in whose possession

it is.

14. In the present case, there is evidence to show that the plaintiff became aware of the sale of the machinery contrary to the terms of the

agreements as early as 21st February, 1968. In the light of the decision of the Bombay High Court in K.M. Talayarkhan v. Gangadas Dwarakadas

60 Bom. 848, it would have been open to plaintiff to describe as to when the successive transfers took place and if the last of the transfers was

within the period of limitation, then the plaintiff would be entitled to recovery of the machineries under Art. 68. Unfortunately the plaint does not

contain any allegation about the dates on which the successive transfers have taken place. The suit itself came to be filed in September, 1972.

When the plaintiff became aware of the transfer of the machinery even in February, 1968, the period of three years would expire by 20th

February, 1971. The suit has been filed long after that date and it is clearly barred.

15. It is indeed unfortunate that the plea of limitation taken up in this case has to be upheld. But, there is no answer to this plea. It is deplorable that

the hire purchaser of the machinery is in a position to walk away with the goods without paying one of the instalments. If only the plaintiff-

corporation had been a little more vigilant, it would not have had to suffer from the effect of the plea of limitation. Even in February, 1968, it

threatened to take criminal proceedings. Unfortunately, it stopped with the threat and did not take appropriate action within the time allowed under

the law. The result is that the suit has to fail and the decree passed by the court below has to be set aside in view of the fact that the defendants are

guilty of conversion of the machineries, I can only direct that they should bear the costs both in this Court as well as in the court below. The result

is, the suit will stand dismissed with no order as to costs throughout. The appeal is allowed accordingly.

