
(2005) 04 MAD CK 0132

In the Madras High Court

Case No : C.R.P. (PD) No. 1517 of 2004

C.R. Sivanandam, C.R. Sankar, C.R. Kannan and R. Devambal	APPELLANT
Vs	
V.R. Kushal Doss and Others	RESPONDENT

Date of Decision : 21-04-2005

Acts Referred:

Constitution of India, 1950 — Article 227

Citation : (2006) 1 BC 335 : (2005) 3 CTC 687 : (2005) 3 MLJ 236 : (2005) 3 RCR(Civil) 524

Hon'ble Judges : S. Sardar Zackria Hussain, J

Bench : Single Bench

Advocate : R. Subramanian, for the Appellant; P. Rathinadurai, for R1, for the Respondent

Final Decision : Dismissed

Judgement

S. Sardar Zackria Hussain, J.—The revision petitioners are the defendants 2 to 4 and 6 in O.S.No.268 of 1984 on the file of Sub Court, Vellore. The learned Subordinate Judge, Vellore, passed an order in O.S.No.268 of 1984 on 28.4.2004 stating that the Sub Court has got territorial jurisdiction to try the suit. Aggrieved against the order, present revision petition has been filed by the revision petitioners.

2. The first respondent as plaintiff filed the suit to recover the amount due on the five promissory notes executed by the defendants 1 to 3 in favour of the plaintiff and his father, mother, sister and wife. The father, mother, sister and wife of the plaintiff have assigned the promissory notes in favour of the plaintiff for valuable consideration.

3. During the pendency of the suit, the first defendant died. The defendants 5 to 10 were added as legal representatives of the deceased first defendant. The suit was resisted in written statement filed by the third defendant raising several grounds that all the suit promissory notes were executed at Madras and to have

jurisdiction at Vellore, the plaintiff obtained assignment of the pronotes in his favour at Vellore. The written statement filed by the third defendant was adopted by the defendants 2, 4, 6, 7 and 10. The defendants 5, 8 and 9 filed additional written statement.

4. The trial Court framed issue No.1 that "Whether the Sub Court, Vellore has no jurisdiction to try the suit?" besides some other issues. When the case stood for trial, the second defendant on his behalf and on behalf of other contesting defendants filed the petition in I.A.No.503/93 to try the above issue with regard to the jurisdiction as preliminary issue and which was allowed. Pursuant to such order, the issue No.1 was tried as preliminary issue.

5. Before the trial Court, on behalf of the plaintiff documents Exs.A-1 to A-30 were marked and the plaintiff examined himself as P.W.1. On behalf of the defendants, the third defendant was examined as D.W.1 and one P.C.Sellappan as D.W.2. The trial Court after considering the oral and documentary evidence, accepting the case of the plaintiff, ordered that the said Court has got territorial jurisdiction to try the suit. The said order is under challenge in this revision.

6. The Learned counsel for the revision petitioners/defendants 2, 3, 4 and 6 vehemently contended that inasmuch as the suit promissory notes were executed only at Madras, in that the defendants 1 to 3 are carrying on business in the name and style of "C.R.Lingam and Company" at Madras and are residing only at Madras and the attesting witnesses to the promissory notes were also residents of Madras, the Sub Court, Vellore has no territorial jurisdiction to try the suit. According to the learned counsel, inasmuch as it is only the Court at Madras, which has got jurisdiction, the order of the trial Court finding that only the Sub Court, Vellore which, has got jurisdiction is not proper.

7. Learned counsel for the first respondent/plaintiff argued that the father, mother, sister and wife of the plaintiff as well the plaintiff are only residents of Vellore and since the money for the promissory notes were advanced only at Vellore and the suit promissory notes were also executed at Vellore, it is only, the Sub Court, Vellore, which has got the territorial jurisdiction to try the suit and according to the learned counsel, such a case was clearly set out in the plaint.

8. The learned counsel for the first respondent/plaintiff relied on the following decisions:-

(1) Alopri Prasad and Sons Pvt. Ltd. and Another Vs. Harish Chandra and Another, , wherein it is held as follows:-

"The jurisdiction of the Court, that is, the maintainability of the suit, is governed by Section 20(c) of the CPC which lays down that a suit can be instituted in a court where the cause of action, wholly or in part, has arisen. What is meant by "cause of action" has not been defined in the Code but it has been a subject of numerous decisions and the meaning of this expression can now be said to be beyond controversy. "Cause of action" is the bundle of facts which a party must

prove before he can obtain a decree in his favour. For determination of "cause of action" one need not consider the evidence which a party or the parties may adduce in the case; one should consider the material facts which must be pleaded and proved in the case and not any ancillary point which may arise. See Baroda Oil Cakes Traders Vs. Parshottam Narayandas Bagulia and Another, . What are the material points in issue depend to a large extent, upon the pleadings contained in the plaint. At occasions it may become necessary to look into the pleas raised by the defendant. The initial jurisdiction of the court depends upon the pleadings in the plaint, though if on consideration of the written statement it appears that the Court has no jurisdiction to entertain the suit, the plaint can be returned for presentation to a proper court and in suitable circumstances the suit can also be dismissed. "

(2) Abdul Kareem v. National Insurance Co. Ltd., Coimbatore reported in 1983 LW 709, in which this Court has held as follows:-

"Under Section 20(c) if part of the cause of action arose for filing of the suit, that court could have jurisdiction. In this case, admittedly subrogation took place at Coimbatore. It should also be noted in this connection that it will be open to the defendant-revision petitioner to contend that there is no valid subrogation in the eye of law. In such an event, even if it is found that the petitioner had caused damages, in so far as there is no valid subrogation in the eye of law, the suit is liable to be dismissed. Therefore, looked at from this point of view, undoubtedly, the subrogation has a great bearing, that being a part of the cause of action which has arisen in Coimbatore."

9. The plaintiff is the resident of Vellore. As per the plaint, it is averred that the defendants 1 to 3 executed five promissory notes as follows:-

(1) A promissory note in favour of the plaintiff's father V.M. Ramasami Naidu for Rs.39,500/- on 15.4.1980,

(2) A promissory note in favour of the plaintiff's mother Navaneetha Ammal for Rs.6,500/- on 15.4.1980,

(3) A promissory note in favour of the plaintiff's sister D. Muthulakshmi Ammal for Rs.2,000/- on 15.4.1980,

(4) A promissory note in favour of the plaintiff's wife V.K. Thilagam Ammal for Rs.16,000/- on 8.4.1983 and

(5) A promissory note in favour of the plaintiff for Rs.15,000/- on 15.4.1980.

With regard to the promissory notes executed in favour of the plaintiff and his father, mother and sister of the plaintiff, the interest upto 31.11.1981 have been paid by the defendants 1 to 3 and duly endorsed on 4.8.1982. With regard to the promissory notes executed in favour of the plaintiff and his sister, the defendants 1 to 3 have also sent demand draft dated 25.1.1984 for Rs.150/- and Rs.20/- respectively drawn on Union Bank of India, Sowcarpet Branch, Madras. In

respect of the promissory note in favour of the plaintiff's wife, no amount was paid. It is further averred in the plaint that the father, mother, sister and wife of the plaintiff have assigned the promissory notes for valuable consideration in favour of the plaintiff on 4.4.1984.

10. In the cause of action paragraph 15 of the plaint, it is stated that the cause of action for the suit arose at Vellore, where the defendants 1 to 3 borrowed amounts on the above said five promissory notes from the Plaintiff and his father, mother, sister and wife at Vellore on 15.4.1980, 15.4.1980, 15.4.1980, 8.4.1983 and 15.4.1980 respectively and paid interest for the promissory notes executed in favour of the plaintiff and his father, mother and sister upto 30.11.1981 and endorsed on 4.8.1982 and the father, mother, sister and wife of the plaintiff assigned the above said promissory notes in favour of the plaintiff on 4.4.1984. Since the amounts due on the promissory notes were not paid despite the lawyer notice caused on 25.1.1984, the suit came to be filed on 28.11.1984 in respect of the above said five promissory notes in Sub Court, Vellore. The suit is still pending.

11. The suit is resisted in the written statement among several other grounds that the Sub Court, Vellore has no territorial jurisdiction to try the suit, inasmuch as all the suit promissory notes were executed only at Madras. The written statement was filed only on 25.9.1985 and the additional written statement was also filed. The trial Court has also framed an issue with regard to the jurisdiction and the contesting defendants filed I.A.No.503 of 1993 to try the issue with regard to the territorial jurisdiction as preliminary issue and it was allowed and accordingly Issue No.1 was tried as preliminary issue.

12. The fact remains that the father, mother, sister and wife of the plaintiff as well the plaintiff are the residents of Vellore. Admittedly, the defendants 1 to 3 borrowed amounts from them and executed the promissory notes. Hence, in such a case, naturally, such a borrowal could have been only at Vellore after executing the promissory notes at Vellore. Merely, because, the defendants 1 to 3 are carrying on business in the name and style of "C.R. Lingam and Company" at Madras and also residents of Madras and the witnesses to the promissory notes are at Madras, it cannot be said that the suit promissory notes were executed at Madras. It is unacceptable that the creditor should go over to borrower and advance the loan amount on promissory notes.

13. It is admitted that the plaintiff is a resident of Vellore. In any event, since the promissory notes executed in favour of the father, mother, sister and wife of the plaintiff have been assigned to the plaintiff, who is a resident of Vellore and as such, it is only the Sub Court, Vellore, which has got territorial jurisdiction to try the suit in respect of the amounts due on the five promissory notes.

14. Merely because, it is not mentioned in the promissory notes that they were executed at Madras, no inference can be drawn that the suit promissory notes were executed at Madras. Despite the fact the money suit was filed as early as

28.11.1984, still the suit is pending in view of the dilatory tactics adopted by the defendants and by filing petition. Therefore, there is no reason to interfere with the order of the trial Court that it is only the Sub Court, Vellore, which has got territorial jurisdiction to try the suit and such order being not erroneous, cannot be interfered with.

15. In the result, this Civil Revision Petition fails and is dismissed, confirming the order dated 28.4.2004 in O.S.No.268 of 1984 passed by the Sub Court, Vellore. No costs. The Sub Court, Vellore is directed to dispose the above suit by the end of July, 2005.