
(2012) 08 MAD CK 0166

In the Madras High Court

Case No : C.R.P. (NPD) . No. 2506 of 2012 and M.P. No. 1 of 2012

J. Revathi and S. Jayakkodi

APPELLANT

Vs

S. Murugesan

RESPONDENT

Date of Decision : 02-08-2012

Acts Referred:

Chit Funds Act, 1982 — Section 4, 64(3), 76

Citation : (2012) 5 LW 229

Hon'ble Judges : G. Rajasuria, J

Bench : Single Bench

Advocate : Meenakumari, for the Appellant; D. Krishnakumar, for the Respondent

Judgement

Honourable Mr. Justice, G. Rajasuria

1. Animadverting upon the judgment and decree dated 01.02.2007 passed by the learned Subordinate Judge, Dharapuram in A.S.No.42 of 2005 confirming the judgment and decree dated 28.03.2003 passed by the learned District Munsif, Dharapuram in O.S.No.84 of 2000, this civil revision petition is focussed. Heard both sides

2. A summation and summarisation of the relevant facts, germane for the disposal of this civil revision petition would run thus:

a) The respondent herein filed the suit seeking recovery of a sum of Rs.13,594/-.

b) Written statement was filed.

c) Whereupon trial was conducted. Ultimately the suit was decreed. As against which, appeal was filed by the defendant for nothing but to be dismissed by the appellate authority confirming the judgment and decree of the trial court.

d) Being aggrieved by and dissatisfied with the same, this revision has been focussed.

3. The learned counsel for the revision petitioners placing reliance on the grounds of revision would put forth and set forth her arguments to the effect that the court had no territorial jurisdiction to deal with the matter and the suit itself was barred by limitation.

Accordingly, she would pray for the dismissal of the suit after setting aside the judgments of both the courts below.

4. Per contra, in a bid to torpedo and pulverise the arguments as put forth on the side of the revision petitioners/defendants, the learned counsel for the respondent/plaintiff would pilot his arguments, which could succinctly and precisely be set out thus:

Both the courts below took into account the fact that the chit even though was conducted in Karur District, the chit subscription amounts were collected by the second defendant from the plaintiff at Tharapuram. The last payment of subscription was made on 10.08.1996 and within three years from that date, the suit was filed, which fact was upheld by both the courts below, warranting no interference in this revision.

5. The points for consideration are as under:

1. Whether the suit was barred by limitation and whether the Tharapuram court had no territorial jurisdiction to entertain the suit?

2. This court suo motu raised the point as to whether the suit filed based on unregistered chit in violation of Sections 4 and 76 of the Chit Funds Act is tenable?

6. Heard both sides further on that newly added point also .

7. Regarding limitation point is concerned, it is quite obvious and axiomatic from the available evidence and records that it is the specific case of the plaintiff that the last collection of the subscription by D2 from the plaintiff was on 10.08.1996 and hence, in such a case, within the three years time, the suit was filed and it cannot be held that the suit was barred by limitation.

8. So far as the territorial jurisdiction is concerned, both the courts below gave a concurrent finding to the effect that the court at Tharapuram had jurisdiction because part of the cause of action had arisen in Tharapuram area and it had territorial jurisdiction to deal with the matter and in respect of which, I could see no perversity or illegality in the judgments of both the courts below.

9. Accordingly, Point No.1 is decided in favour of the plaintiff and as against the defendants.

Point No.2 :

11. The learned counsel for the respondent would submit that for the first time, this court had raised the issue No.2 and in fact, such a plea was not taken by the defendants before both the courts below and hence such a plea would not arise.

Over and above that he would also cite an unreported judgment of this court passed in S.A.No.559 of 2008 dated 07.07.2010 and certain excerpts from it would run thus:

10. The trial court had found, on facts, that the chits were unregistered. It had also found that there were discrepancies, while comparing the documents filed by the plaintiff and the documents filed by the defendants. Even though the defendants had filed Exs.B1 to B8 to show that the four chits, in respect of which the plaintiffs has made his claim, had been registered, the trial court had found that they cannot be taken as sufficient evidence, without other supporting documents for accepting the claim of the defendants.

10. It had also been held that they do not relate to the entries in the pass books given to the plaintiff. Therefore, the claim of the defendants that the suit is not maintainable in view of Section 64(3) of the Chit Funds Act, 1982 had not been accepted by the trial court. In such circumstances, the trial court had decreed the suit, as prayed for by the plaintiff, by its judgment and decree, dated 7.2.2007, made in O.S.No.172 of 2004."

A mere perusal of the said decision would clearly show that this point was not argued before the said court and no decision was rendered on it. As such, in respect of this point is concerned, the doctrine of sub silentio could be focussed as against the said judgment.

11. At this juncture, I would like to extract the relevant portion from Salmond Jurisprudence in 12th Edition at Page No.155:

The earlier case the court before whom the precedent is cited may be reluctant to hold that its predecessor failed to consider a point directly raised in the case before it (o), and this reluctance will be particularly pronounced if the sub silentio attack is levelled against not one case but a series(p).

We now turn to the wider question whether a precedent is deprived of its authoritative force by the fact that it was not argued, or not fully argued, by the losing party. If one looks at this question merely with the eye of common sense, the answer to it is clear. One of the chief reasons for the doctrine of precedent is that a matter that has once been fully argued and decided should not be allowed to be reopened. Where a judgment is given without the losing party having been represented, there is no assurance that all the relevant considerations have been brought to the notice of the Court and consequently the decision ought not to be regarded as possessing absolute authority, even if it does not fall within the sub silentio rule.....

If there is a general exception for unargued cases, the sub silentio rule turns out to be merely a particular application of a wider principle.

12. In the cited unreported judgment, the defendant is trying to wriggle out of his liability from the suit by pointing out that the suit transaction was based on registered chit over which, the Registrar of Chits under the Chit Funds Act had

jurisdiction and not the civil court, for which the court held that since the evidence would speak to the effect that it was not registered, only civil court had jurisdiction. This point No.2 supra was not raised in that case to the effect that based on an unregistered chit no suit would lie.

13. But here, the Point No.2, which I raised is based on Sections 4 and 76 of the Chit Funds Act.

14. A mere poring over and perusal of those provisions would clearly show that there is a legal embargo as against such conducting of unauthorised chits, which is punishable under law.

15. My mind is reminiscent and redolent of the following maxims:

(i) *Ex turpi causa non oritur actio* ? (Out of a base (illegal or immoral) consideration, an action does (can) not arise.

(ii) *Ex dolo malo non aritur actio* - (Out of fraud no action arises; fraud never gives a right of action. No court will lend its aid to a man who founds his cause of action upon an immoral or illegal act.

(iii) *Ex nudo pacto non oritur actio* : No action can arise from a bare agreement.

(iv) *In pari delicto potior est conditio possidentis* (defendentis) - In a case of equal or mutual fault (between two parties) the condition of the party in possession (or defending) is the better one. Where each party is equally in fault, the law favours him who is actually in possession. Where the fault is mutual, the law will leave the case as it finds it.

The sum and substance of these maxims would be to the effect that no legal cause of action would arise out of an illegal act.

16. I would like to extract the relevant portion from Broom's Legal Maxims, Tenth Edition by Herbert Broom at page Nos.499 and 501.

In *Collins v. Blantern* (m) [2 Wils.341: See 1 Sm.L.C., 13th Ed., p.406] which is a leading case to show that illegality may well be pleaded as a defence to an action on a bond, it was alleged that the bond had been given to the obligee as an indemnity for a note entered into by him for the purpose of inducing the prosecutor of an indictment for perjury to withhold his evidence. For the plaintiff, it was contended that the bond was good and lawful, the condition being singly for the payment of a sum of money, and that no averment should be admitted that the bond was given upon an unlawful consideration not appearing upon the face of it; but it was held that the bond was void ab initio, and that the facts might be specially pleaded; and it was observed by Wilmot, C.J., delivering the judgment of the Court, that "the manner of the transaction was to gild over and conceal the truth; and whenever Courts of law see such attempts made to conceal such wicked deeds, they will brush away the cobweb varnish and show the transactions in their true light". And again, "this is a contract to tempt a man to transgress the law, to do that which is injurious to the community: it is void

by the common law; and the reason why the common law says such contracts are void is for the public good: you shall not stipulate for iniquity.".....

.....at page
Nos.501 & 502:

As a general rule, then, a contract cannot be made the subject of an action if it be impeachable on the ground of dishonesty, or as being opposed to public policy if it be either contra bonos mores, or forbidden by the law (d). In answer to an action founded on such an agreement, the maxim may be urged, ex maleficio non oritur contractus (e) a contract cannot arise out of an act radically vicious and illegal; "those who come into a court of justice to seek redress must come with clean hands, and must disclose a transaction warranted by law" (f); and "it is quite clear, that a court of justice can give no assistance to the enforcement of contracts which the law of the land has interdicted (g).

17. The plaintiff, who admittedly, subscribed to the unauthorised chit conducted by the defendants cannot file a suit for recovery of money from them and the court cannot extend its help in that regard.

18. Hence, it is quite obvious and axiomatic that the suit should not have been entertained by both the courts below. This is purely a law point based on admitted and indubitable facts and hence this court in revision was justified in framing that issue and deal with it. In the result, the judgment and decrees of both the courts below are set aside and the suit filed by the plaintiff shall stand dismissed. However, there shall be no order as to costs. Consequently, the connected miscellaneous petition is closed.