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(2015) 01 SC CK 0004

In the Supreme Court Of India

Case No : C.A. No. 1085 of 2015 (Arising out of SLP(C) No. 30348 of 2013)

Kamalakar Eknath Salunkhe — APPELLANT

Vs

Baburav Vishnu Javalkar and Others — RESPONDENT

Date of Decision : 12-01-2015

Acts Referred:
Civil Procedure Code, 1908 (CPC) — Section 80, 9A

Citation : (2015) 2 MhLj 886 : (2015) 2 RCR(Civil) 676 : (2015) 3 SCALE 34 : (2015) 7 SCC 321

Hon'ble Judges : H.L. Dattu, C.J.;Arjan Kumar Sikri, J.

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. Leave granted. This appeal arises out of the judgment and order passed by the High Court of Judicature at Bombay in Writ Petition No. 7459 of 2012, dated 19.12.2012. By the impugned judgment and order, the High Court has dismissed the writ petition filed by the Plaintiff/appellant herein and upheld the order passed by the Trial Court in Special Civil Suit No. 129 of 2011, dated 13.03.2012, whereby the Trial Court had concluded that the plea of limitation can be decided as a preliminary issue Under Section 9A of the Code of Civil Procedure, 1908 (for short, "the Code") and thereby, allowed the parties to lead evidence for determination of the same.

2. The parties in the appeal are referred as arrayed before the Trial Court. The Appellant is the Plaintiff and the Respondents are the Defendants.

3. The facts, in brief, are: the Defendants Nos. 1 to 3 agreed to sell the suit schedule property situated at Mouje Takli Taluka, Pandharpur, District Solapur by an agreement of sale in favour of the Plaintiff for the total consideration of Rs. 12,00,000/-. The Plaintiff in part-payment of the aforesaid agreed consideration had paid Rs. 10,00,000/- to the Defendants Nos. 1 to 3 and secured the possession of suit property. The Plaintiff, on apprehension that the Defendants Nos. 1 to 3 are intending to sell the suit schedule property, filed a Regular Civil

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Suit No. 472 of 2002 inter alia seeking permanent injunction restraining the Defendants Nos. 1 to 3 from alienating the suit property. During the pendency of the suit, the Defendants Nos. 1 to 3 sold the suit property in favour of the Defendants Nos. 4 to 6. In light of the said development, the Plaintiff filed an application before the Civil Judge (Junior Division), Pandharpur to permit him to withdraw the suit with liberty to file fresh suit for specific performance. The said application was allowed by the learned Civil Judge by order dated 15.09.2010.

4. Subsequently, the Plaintiff had filed Special Civil Suit No. 129 of 2011 for specific performance of the aforementioned agreement. Along with the suit the Plaintiff had filed an application for injunction restraining the Defendants Nos. 1 to 3 from alienating the suit schedule property to the third parties during the pendency of the suit. After service of notice, the Defendants Nos. 1 to 3 and Defendants Nos. 4 and 5 had filed respective applications inter alia requesting the Court that the issue of limitation which determines jurisdiction of the Trial Court be framed as a preliminary issue before considering the suit on merits.

5. The Plaintiff in his defence had stated that since the plea of limitation would be a mixed a question of law and fact, it would require to be considered along with the other issues on merits of the Plaintiffs case and thus, cannot be decided at the threshold as a preliminary issue. The Trial Court, upon consideration of the pleas advanced, has concluded that the issue of limitation as preliminary issue requires to be framed Under Section 9A of the Code to determine the maintainability of the suit and accordingly, had passed order dated 13.03.2012.

6. Aggrieved by the framing of the issue of limitation as a preliminary issue Under Section 9A of the Code, the Plaintiff had filed Writ Petition No. 7495 of 2012 before the High Court. By the judgment and order, dated 19.12.2012, the High Court has dismissed the writ petition preferred by the Plaintiff and upheld the framing of preliminary issue on maintainability of the suit by the Trial Court The High Court further observed that no prejudice would be caused to the Plaintiff since the said preliminary issue would be decided after granting opportunity of hearing to both the sides.

7. Aggrieved by the aforesaid judgment and order of the High Court, the Plaintiff is before us in this appeal.

8. The short point that falls for our consideration and decision in this appeal is whether the question of limitation could be considered as preliminary issue Under Section 9A of the Code.

9. At the outset, it would be profitable to notice the relevant provision under the Code. Section 9A is a State amendment to the Code, inserted by Section 3 of the Maharashtra Act No. 65 of 1977. The said provision reads as under:

"9A. Where at the hearing of application relating to interim relief in a suit, objection to jurisdiction is taken such issue to be decided by the court as a preliminary issue:

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(1) Notwithstanding anything contained in this code or any other law for the time being in force, if at the hearing of any application for granting or setting aside an order granting any interim relief, whether by way of stay, injunction, appointment of a receiver or otherwise, made in any suit, on objection to jurisdiction of the court to entertain such suit is taken by any of the parties to the suit the court shall proceed to determine at the hearing of such application the issue as to the jurisdiction as a preliminary issue before granting for setting aside the order granting the interim relief. Any such application shall be heard and disposed of by the court as expeditiously as possible and shall not in any case be adjourned to the hearing of the suit.

(2) Notwithstanding anything contained in Sub-section (1), at the hearing of any such application the court may grant such interim relief as it may consider necessary, pending determination by it of the preliminary issue as to the jurisdiction."

10. Shri Vinay Navare, Learned Counsel for the Plaintiff, would submit that by way of a State amendment, Section 9A has been inserted in the Code, which provides that if an objection as to the jurisdiction of the Court is taken in the course of proceedings in an interim application, the Court ought to decide the said issue of jurisdiction as a preliminary issue before proceeding with the merits of the application. He would submit that since the scope for framing of preliminary issue by the Court is limited to the question of jurisdiction only, by virtue of the aforesaid state amendment to the Code, the Courts below have erred by framing the preliminary issue to include determination of the issue of limitation and therefore, the judgment(s) and order(s) passed by the Court below are erroneous.

11. Per contra, Learned Counsel for the Defendants would support the judgment(s) and order(s) passed by the Courts below.

12. We have heard Learned Counsel for the parties to lis and also perused the judgment(s) and order(s) passed by the Courts below.

13. Section 9A of the Code requires the Court to decide the issue as to jurisdiction before final adjudication on the application for interim relief. The language employed in Section 9A is clear and unambiguous. Section 9A(1) contemplates that when a person makes an objection to jurisdiction of the Court, the Court shall determine such objection on jurisdiction as a preliminary issue before proceeding with the application for interim relief. It further provides that such application raising an objection as to the jurisdiction of the Court ought to be heard and disposed of as expeditiously as possible and prohibits adjournment of such issue till the hearing of the suit. Section 9A(2) provides that the Court shall have the power to grant interim relief, as it may deem appropriate, pending determination of such preliminary issue regarding jurisdiction before it.

14. The provision, read in its entirety, neither contemplates nor refers to any circumstance where an objection besides the jurisdiction of the Court may be

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determined as a preliminary issue. It only contemplates the issue of jurisdiction to be framed and determined as a preliminary issue by the Court.

15. This Court in Hari Prasad Mulshanker Trivedi Vs. V.B. Raju and Others, , in context of the expanse of the term "jurisdiction" has observed that:

"28....Though the dividing line between lack of jurisdiction or power and erroneous exercise of it has become thin with the decision of the House of Lords in the Anisminic case, (1967) 3 WLR 382 we do not think that the distinction between the two has been completely wiped out. We are aware of the difficulty in formulating an exhaustive rule to tell when there is lack of power and when there is an erroneous exercise of it. The difficulty has arisen because the word "jurisdiction" is an expression which is used in a variety of senses and takes its colour from its context, (see per Diplock, J., at p. 394 in the Anisminic case)..."

(emphasis supplied)

16. The expression "jurisdiction" in Section 9A is used in a narrow sense, that is, the Court''s authority to entertain the suit at the threshold. The limits of this authority are imposed by a statute, charter or commission. If no restriction is imposed, the jurisdiction is said to be unlimited. The question of jurisdiction, sensu stricto, has to be considered with reference to the value, place and nature of the subject matter. The classification into territorial jurisdiction, pecuniary jurisdiction and jurisdiction over the subject-matter is of a fundamental character. Undoubtedly, the jurisdiction of a Court may get restricted by a variety of circumstances expressly mentioned in a statute, charter or commission. This inherent jurisdiction of a Court depends upon the pecuniary and territorial limits laid down by law and also on the subject-matter of the suit. While the suit might be barred due to non-compliance of certain provisions of law, it does not follow that the non-compliance with the said provisions is a defect which takes away the inherent jurisdiction of the Court to try a suit or pass a decree. The law of limitation operates on the bar on a party to agitate a case before a Court in a suit, or other proceedings on which the Court has inherent jurisdiction to entertain but by operation of the law of limitation it would not warrant adjudication.

17. To aid the discussion, a reference may be drawn to the Statement of Objects and Reasons of Section 9A of the Code. The said statement reads as under:

"... the Bombay City Civil Court for the purposes of granting interim relief cannot or need not go into the question of jurisdiction. Sometimes declaratory suits are filed in the City Court without a valid notice Under Section 80 of the Code of Civil Procedure, 1908. Relying upon another judgment of the High Court recorded on the 7th September, 1961 in Appeal No. 191 of 1960, it has been the practice of the City Court to adjourn a notice of motion for injunction in a suit filed without such valid notice, which gives time to the Plaintiff to give the notice. After expiry of the period of notice, the Plaintiff is allowed to withdraw the suit with liberty to file a fresh one. In the intervening period, the Court grants an ad interim

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injunction and continues the same. This practice of granting injunctions without going into the question of jurisdiction even though raised, has led to grave abuse. It is therefore proposed to provide that if a question of jurisdiction is raised at the hearing of any application for granting or setting aside an order granting an interim relief, the Court shall determine that question first." 18. Thus, with the intention to put the aforesaid practice to rest, the State legislature introduced Section 9A by the amendment Act of 1969 requiring the Court to decide the issue of jurisdiction at the time of granting or vacating the interim relief. In other words, the legislature inserted Section 9A to ensure that a suit which is not maintainable for want of jurisdiction of the concerned Court, ought not be tried on merits without first determining the question of maintainability of the suit as to jurisdiction of the Court, approached by the Plaintiff, as a preliminary issue.

19. The provision contemplates that when an issue of jurisdiction is raised, the said issue should be decided at first as expeditiously as possible, and not be adjourned to a later date. The primary reason is that if the Court comes to finding that it does not have jurisdiction vested in it in law, then no further enquiry is needed and saves a lot of valuable judicial time.

20. A perusal of the Statement of Object and Reasons of the Amendment Act would clarify that Section 9A talks of maintainability only on the question of inherent jurisdiction and does not contemplate issues of limitation. Section 9A has been inserted in the Code to prevent the abuse of the Court process where a Plaintiff drags a Defendant to the trial of the suit on merits when the jurisdiction of the Court itself is doubtful,

21. In the instant case, the preliminary issue framed by the Trial Court is with regard to the question of limitation. Such issue would not be an issue on the jurisdiction of the Court and, therefore, in our considered opinion, the Trial Court was not justified in framing the issue of limitation as a preliminary issue by invoking its power Under Section 9A of the Code. The High Court has erred in not considering the statutory ambit of Section 9A while approving the preliminary issue framed by the Trial Court and thus, rejecting the writ petition filed by the Appellant.

22. In light of the aforesaid, we take exception to the judgment and order passed by the High Court. Accordingly, we pass the following order. The appeal is allowed. The impugned judgment(s) and order(s) passed by the High Court and the Trial Court are set aside. We request the Trial Court to proceed with the trial, in accordance with law, as expeditiously as possible.

Ordered accordingly.

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