(2015) 10 MAD CK 0178

In the Madras High Court

Case No : S.A.(MD) No. 889 of 2014 and M.P.(MD) No. 1 of 2014

K.R. Ganapathy APPELLANT

Vs

The Tamilnadu Electricity Board and Others RESPONDENT

Date of Decision : 28-10-2015

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 41 Rule 31
Criminal Procedure Code, 1973 (CrPC) — Section 161

Citation : (2015) 10 MAD CK 0178

Hon'ble Judges : M. Duraiswamy, J.

Bench : Single Bench

Advocate : R. Sundar Srinivasan, for the Appellant; R. Velmurugan, Government Advocate, for the Respondent

Final Decision : Dismissed

Judgement

M. Duraiswamy, J.—The above Second Appeal arises against the judgment and decree passed in A.S. No. 58 of 2007, on the file of the District Court, Sivagangai, confirming the judgment and decree passed in O.S. No. 66 of 1994, on the file of the Subordinate Court, Devakottai. The defendant is the appellant. The respondents 1 and 2 were the plaintiffs. The third respondent was impleaded in the first appeal in A.S. No. 58 of 2007.

2. The plaintiffs filed the suit in O.S. No. 66 of 1994 for recovery of a sum of Rs. 90,094/- together with interest at 6% p.a. The brief case of the plaintiffs is as follows:

"According to the plaintiffs, the defendant was working as Inspector of Assessment in the Tamil Nadu Electricity Board, Devakottai. The defendant had misappropriated and defalcated heavy and huge amount of the Tamil Nadu Electricity Board during his service in Devakottai. The defendant was suspended from service from 12.09.1988. After an elaborate departmental enquiry, the defendant was dismissed from service on 12.09.1990. Even after his suspension and dismissal, the defendant did not remit or pay the defalcated amount misappropriated by him while he was in service. The defendant had actively participated in the departmental enquiry and he was fully aware of the suspension and dismissal from service. The defendant was dismissed from service for defalcation of Board''s amount by misplacing the relevant records, for not properly accounting the collection. Due to the misappropriation made by the defendant, the Tamil Nadu Electricity Board had incurred heavy loss. In these circumstances, the plaintiffs filed the suit for recovery of Rs. 90,094/-."

3. The brief case of the defendant is as follows:

"According to the defendant, the enquiry was not conducted properly and it was conducted in an arbitrary manner, without giving sufficient opportunity to him. The defendant had not misappropriated any amount belonging to the Tamil Nadu Electricity Board and he is not liable to pay any amount. The plaintiffs had initiated criminal proceedings against the defendant before the Judicial Magistrate, Devakottai in C.C. Nos. 49 to 51 of 1993 and the same are pending. When the Criminal Cases are initiated against two persons, the suit was filed only against the defendant. The defendant is not liable to pay any amount to the Tamil Nadu Electricity Board. The suit is not maintainable. In these circumstances, the defendant prayed for dismissal of the suit."

4. Before the trial Court, on the side of the plaintiffs, three witnesses were examined and 26 documents Exs. A.1 to A.26 were marked and on the side of the defendant, D.W.1 was examined and one document Ex. B.1 was marked. The trial Court, after taking into consideration the case of both sides, decreed the suit. Aggrieved over the judgment and decree of the trial Court, the defendant preferred an appeal in A.S. No. 58 of 2007, on the file of the District Court, Sivagangai and the lower Appellate Court also confirmed the judgment an decree of the trial Court and dismissed the appeal. Aggrieved over the concurrent findings of the Courts below, the defendant has filed the above Second Appeal.

5. Heard Mr. R. Sundar Srinivasan, learned Counsel appearing for the appellant, Mr. R. Velmurugan, learned Government Advocate, appearing for the respondents 1 and 2 and Mr. T.V. Sivakumar, learned Counsel appearing for the third respondent.

6. The appellant has raised the following Substantial Questions of Law in the Second Appeal:

?(1) Whether the judgment of the learned Subordinate Judge without framing points for determination as contemplated under Order 41 Rule 31 C.P.C., which resulted in miscarriage of justice is sustainable?

(2) Whether the judgment and decree of the learned Courts below which are on the face of it perverse and not based on any materials available before the Court is sustainable?

(3) Whether the Courts below are justified in decreeing the suit when even according to plaint allegations, the alleged misappropriation came to the

knowledge of the respondents 1 and 2 on 28.06.1990 and the suit has been filed within 3 years therefrom whereas the suit has been filed only on 11.04.1994 i.e., after 3 years and in the said background, whether the Courts below are justified in not finding that the suit is barred by limitation?

(4) Whether the Courts below are justified in not venturing to find out whether the details of alleged misappropriation were established?

(5) Whether the Courts below are justified in placing reliance upon xerox copies of alleged bogus receipts marked as Exs. A-6 to A-8, A-10, A-12 to A-26 when the originals were not produced and no basis for letting secondary evidence was made?

(6) Whether the Courts below are justified in accepting the alleged bogus receipts when the persons to whom they were allegedly issued were not examined?

(7) Whether the Courts below are justified in not attaching due importance in the discrepancies regarding the quantum of misappropriation in the Section 161 Cr.P.C., statement, legal notice marked as Ex. A.-3, dismissal order Ex. A.2 and the amount claimed in the plaint?

(8) The reliance upon the Expert Report which has not been marked for coming to the conclusion that the appellant is guilty of issuing bogus receipts by the Courts below is legally sustainable?"

7. Pursuant to the decree granted in favour of the plaintiffs in O.S. No. 66 of 1994, the plaintiffs filed an execution petition in E.P. No. 53 of 2007, on the file of the Subordinate Court, Devakottai and the property belonging to the defendant was brought to sale. The third respondent was the successive bidder in the Court auction held on 06.06.2005 and the sale was also confirmed in his favour. Subsequently, the third respondent has filed an application E.A. No. 79 of 2007 for delivery of possession and the same is pending. The third respondent got himself impleaded before the lower Appellate Court in A.S.NO.58 of 2007.

8. Mr. R. Sundar Srinivasan, learned Counsel appearing for the appellant contended that the suit is barred by limitation for the reason that the alleged misappropriation came to the knowledge of the plaintiffs on 28.06.1990 and the suit was filed only on 11.04.1994 i.e., after three years.

9. Since the learned Counsel appearing for the appellant raised the issue with regard to the limitation as the main ground, this Court directed the Registry to call for the records to verify the actual date of filing of the suit.

10. Mr. T.V. Sivakumar, learned Counsel appearing for the third respondent submitted that the suit was filed on 24.06.1993 and not on 11.04.1994 as contended by the learned Counsel for the appellant. Even in the certified copy of the decree in O.S.NO.66 of 1994, date of filing of the suit has been mentioned as 11.04.1994.

11. Pursuant to the orders of this Court, the original records were placed before this Court and on verification of the original plaint, this Court finds that the plaintiffs have filed the suit on 24.06.1993 itself and not on 11.04.1994 as contended by the appellant. Even assuming that the plaintiffs had the knowledge of the misappropriation on 28.06.1990, since they have filed the suit on 24.06.1993 itself, it is well within time and the suit is not barred by limitation. Therefore, the contention raised by the appellant is rejected.

12. It is the case of the plaintiffs that the defendant had misappropriated the sum of Rs. 90,094/- and he alone is responsible for the amount collected by him. After having collected the amount from the consumers, the defendant did not remit the amount to the Department, therefore, he was suspended from the service and a domestic enquiry was conducted and after the departmental enquiry, the defendant was dismissed from service by order dated 12.09.1990. After the enquiry, the Enquiry Officer found that the defendant had committed misappropriation. Hence, a criminal complaint was also filed against the appellant and another person.

13. The contention of the appellant that since the criminal cases are pending, the civil action should not be proceeded, cannot stand. In the civil proceedings initiated by the plaintiffs, the civil Court has to see whether the plaintiffs have discharged their burden of proof. In the case on hand, the plaintiffs by examining three witnesses and marking 26 documents, established their claim against the defendant. In the case on hand, the pendency of the criminal cases shall not stand in the way of the plaintiffs getting a decree as against the defendant. It is also brought to the notice of this Court that the defendant had not challenged the departmental action. It is also not in dispute that the defendant has been entrusted with a duty to collect the amount on behalf of the Board. The defendant has not given proper explanation for the allegation made against him. When the entrustment of money was proved by the plaintiffs, the defendant should explain the reasons for not depositing the amount before the Board. In the case on hand, the defendant has not given any acceptable explanation for not depositing the amount collected by him. When the defendant had failed to account for the collected amount, the Courts below have rightly come to the conclusion that the defendant had misappropriated the amount. The Courts below have rightly decreed the suit.

14. In these circumstances, I do not find any ground much less any substantial question of law to interfere with the concurrent findings of the Courts below. The Second Appeal is liable to be dismissed. Accordingly, the same is dismissed. However, there shall be no order as to costs. Consequently, the connected Miscellaneous Petition is also dismissed.

