(1999) 01 KL CK 0031

In the High Court Of Kerala

Case No : A.S. No. 601 of 1995

Mar Appraem Kuri Company Ltd. APPELLANT

Vs

Tomy and Another RESPONDENT

Date of Decision : 06-01-1999

Acts Referred:
Chit Funds Act, 1982 — Section 4

Citation : (1999) 96 CompCas 718

Hon'ble Judges : S. Marimuthu, J

Bench : Single Bench

Advocate : N. Subramaniam and M.S. Narayanan, for the Appellant;

Final Decision : Allowed

Judgement

S. Marimuthu, J.—This appeal is directed questioning the judgment and decree delivered by the Additional Sub-Judge, N. Paravur, in O. S. No. 612 of 1993, dated August 31, 1994. The plaintiff is the appellant. The suit was filed by the plaintiff-company represented by its chairman, located at Trichur town, for recovery of the future kuri amount of two kuries amounting to Rs. 45,300 from the defendants. Notice in this appeal was served on both the defendants. However, they have not appeared nor are they represented by any counsel.

2. The facts as narrated by N. Subramaniam, learned counsel for the appellant, are, in short, as follows : The plaintiff-chitty company started two kuries in their branch office at Bangalore on April 5, 1988, and September 15, 1987, in which the first respondent/first defendant joined as a subscriber and he bid chits and received the bid amounts in both the chits. As security for the prized amounts, he executed exhibits A-1 and A-2 mortgage deed with his wife, second defendant, in favour of the appellant/plaintiff. The defendants defaulted in payment. Hence, the suit was filed. When the matter came up for trial before the court below, a contention was raised by the defendants/respondents that the plaint chitty was started in Bangalore and, therefore, only the Central Chit Funds Act, 1982, is applicable (which came into force on January 2, 1984). But, to

conduct the above-said two chitties no sanction was accorded nor had they been registered in accordance with Section 4 of the Central Chit Funds Act and, therefore, the plaintiff kuri transaction is illegal. Yet another contention raised by the defendants was that the Sub-Court, N. Paravur, has no jurisdiction since both the kuries were started at Bangalore. It was also contended by the defendants that the chairman of the chitty company was not competent to institute the suit. Along with the above contentions, questions relating to limitation and the claim of interest were also raised by the defendants. The trial judge held that even though both kuries were started during the pendency of the stay order granted by the High Court of Karnataka as per exhibit A-9, both kuries lost their legal effect and enforcement after the dismissal of the writ petition filed challenging the above-said Central Act. He also held that the chairman of the chitty company was not competent to file the suit. On the above-said two grounds, he dismissed the suit.

3. Mr. Subramaniam, learned counsel for the appellant, submitted that the Central Chit Funds Act of 1982, came into force on January 2, 1984, in the State of Karnataka. Challenging the validity of the said Act, writ petitions were filed before various High Courts including the High Court of Karnataka, In one of the petitions in the batch O. P. No. 18169 of 1986, originally, stay was granted by the Karnataka High Court on July 8, 1986. When the stay was in force, both the above kuries were started by the appellant on April 5, 1988, and September 15, 1987. Finally, the above said original petition was dismissed by the Karnataka High Court on April 29, 1988, and that case was reported in Visalam Chit Fund Ltd. v. Union of India AIR 1989 KARN 125 : [1990] 67 Comp Cas 203. Challenging that order of the Karnataka High Court in the batch, the matter was taken before the Supreme Court, which affirmed the order of the Karnataka High Court on July 13, 1993, and there was no stay granted by the Supreme Court while the matter was pending there. The judgment of the Supreme Court is M/s. Shriram Chits and Investment (P.) Ltd. Vs. Union of India and others, . Despite the above facts and also the decisions of the Karnataka High Court and the apex court, according to counsel, when there is derogation or non-compliance with Section 4 of the Central Chit Funds Act, 1982, the party who erred can be imposed only a penalty u/s 76 of the Act and by the non-compliance with Section 4, the chitty already commenced could not become void or invalid or illegal. In support of this contention, he also drew my attention to similar provisions in the Foreign Exchange Regulation Act, 1973, where if any violation of section 31 of the Act is committed, only a penalty can be imposed u/s 56 of the Act and the acquisition itself cannot become illegal or void. If really, it is the intention of the legislation that such violation or non compliance with Section 4 would make the transaction void, a specific provision to that effect would have been incorporated in such Act and, therefore, in the absence of such specific provision in the Act, by no stretch of imagination, can it be said that the said transaction would become void or illegal. In support of this contention, he referred to the provision in Section 5 of the Cochin Kuries Act, 1107 M, E,, which was repealed by the Kerala

Chitties Act, 1973, where a specific provision u/s 4 is incorporated as per which, for any violation of Section 4, not only a fine amount is imposed, but also the transaction itself will become void. He also contended that there is similar specific provision in the Kerala Land Reforms Act, 1963, and, as per Section 74(2), if the lease is created after January 1, 1970, it becomes invalid. In support of the above contentions based on the statutory provisions, he also invited my attention to some of the settled proposition of law. In Dalbara Singh and others Vs. Chhaja Singh and another, it has been held that when a sale is effected during the pendency of an injunction order, the sale cannot be invalidated and the parties are only liable for penal consequences. The Punjab and Haryana High Court in the above said decision had followed the principle already laid down by the Lahore High Court in Lal Chand v. Sohan Lal AIR 1938 Lah 220. Our High Court in Balakrishnan v. Babu [1994] 1 KLT 947 has laid down as follows (headnote) :

"If the contract is illegal under the statute either expressly or impliedly, it is undoubtedly void. The position is different when a statute merely imposes a penalty on the parties to the contract without declaring it to be either illegal or void."

4. So on account of the above provisions of law, both statutory and settled, as rightly contended by learned counsel for the appellant the view taken by the trial court is erroneous and it cannot be upheld by this court.

5. The next contention advanced by him is that the Sub-Court, N. Paravur, has jurisdiction to try the suit. For this contention, Section 20 of the CPC can be reproduced hereunder :

"20. Other suits to be instituted where defendants reside or cause of action arises.--Subject to the limitations aforesaid, every suit shall be instituted in a court within the local limits of whose jurisdiction-(a) the defendant, or each of the defendants where there are more than one, at the time of the commencement of the suit, actually and voluntarily resides, or carries on business, or personally works for gain ; or

(b) any of the defendants, where there are more than one, at the time of the commencement of the suit, actually and voluntarily resides, or carries on business, or personally works for gain, provided that in such case either the leave of the court is given, or the defendants who do not reside, or carry on business, or personally work for gain, as aforesaid, acquiesce in such institution ; or

(c) the cause of action, wholly or in part, arises."

6. With the above Section 20 of the Code of Civil Procedure, counsel for the appellant also placed reliance on the decisions in John v. Oriental Kuries Ltd. [1994] 2 KLT 353 and Oommen Panicker v. Muthoot Mini Chitty Fund [1995] 83 Comp Cas 910 : [1995] 1 KLT 401 [FB]. The principle laid down in the above said

decisions and the provision u/s 20 of the CPC extracted above are obviously clear that the trial judge has jurisdiction to try this suit. He also advanced an argument on the doctrine of equity. His contention would be that the conduct of the parties, viz., respondents, steps into the shoes of equity, which, no doubt, with all force accelerates in favour of the case of the appellant. What he means is that even after the disposal of the original petition by the High Court of Karnataka on April 29, 1988, the respondents paid the instalments up to August 2, 1989, and August 6, 1989, in both the kuries. That conduct of the respondents certainly will attract the doctrine of equity. To strengthen this contention, he placed reliance on a judgment of the Bombay High Court in Ardesir Bejonji Surti v. Syed Sirdar Ali Khan ILR [1909] 33 Bom 610. There, in a transaction, the document had to be registered. However, the said document was not registered. But the parties had acted upon the covenants of the document. In such a situation, examining the conduct of the parties, the Bombay High Court held that the said conduct clearly attracts the doctrine of equity and nothing can be said adverse. The principle laid down by the Bombay High Court, in fact, is followed by this court in a latest appeal in A. S. No. 533 of 1991 decided on November 16, 1998.

7. Regarding the competency of the chairman of the company to file the suit, my attention was drawn to resolution No. 4 of exhibit A-8, a copy of the decision taken by the director board dated September 12, 1991, as per which the chairman is authorised to sue and to be sued and, hence, the chairman, on behalf of the company, has filed the suit and exhibits A-1 and A-2 were executed in his favour as chairman and still he continues as chairman. In short, the contention of learned counsel is, in all respects, that the chairman is a competent person and, therefore, the finding in that regard by the trial judge that he is incompetent to prosecute the case is erroneous. That contention of learned counsel is perfectly correct on account of the above materials. In substance, the contention of learned counsel for the appellant would be that the dismissal of the suit by the trial judge is erroneous and irregular and, therefore, it cannot be supported by this court. Coming to the case of the appellant once again, I feel that the documents produced on their side as exhibits A-1 to A-9 are sufficient to grant a decree as prayed for in the appeal. In the result, the judgment and decree of the trial judge are set aside and the suit is decreed as prayed for by allowing this appeal with costs.

8. Order of C. M. P. No. 4469 of 1985 in A. S. No. 601 of 1995 dismissed.