(1969) 04 MAD CK 0037

In the Madras High Court

Case No : Letters Patent Appeal No. 1 of 1968

P.N. Rangaswamy Naidu — APPELLANT

Vs

P.N. Venkataramana Dharmasthapanam, Coimbatore by Managing Trustee Dr. C.A. Vijayaraghavan — RESPONDENT

Date of Decision : 09-04-1969

Acts Referred:
Limitation Act, 1908 — Section 14, 15

Citation : (1970) ILR (Mad) 69

Hon'ble Judges : Veeraswami, J;Ramaprasada Rao, J

Bench : Division Bench

Advocate : R. Kesava Iyengar and K.V. Sankaran, for the Appellant; V. Ratnam, for the Respondent

Final Decision : Allowed

Judgement

Veeraswami, J.—This is a Letters Patent Appeal from the judgment of Alagiriswami J., in a second appeal Venkatramana Ayyangar v. Rangaswami Naidu (1968) 2 M.L.J. 8 and turns on limitation. The suit, out of which the second appeal arose, was for recovery of arrears of rent for the period from April 15, 1953 to May 8, 1956 at the stipulated rate per annum, and was instituted on April 3, 1959. An earlier proceeding filed by the Respondent, who is the Plaintiff, was pleaded to save limitation. The lower appellate Court, differing from the trial Court, held the suit to be out of time. Alagiriswami J., was of opinion that the dismissal of the earlier proceeding gave rise to a fresh cause of action as on March 18, 1958, and agreed with the trial Court. But the learned Judge granted leave to appeal.

2. On November 26, 1953, the Respondent instituted Original Suit No. 48 of 1954 on the file of the Court of the Subordinate Judge at Coimbatore for recovery of possession and meane profits, on the ground that the Defendant who was the lessee, had sustained forfeiture and the suit was transferred to the Court of the District Munsif at that place. Pending that suit, the Defendant was

appointed receiver with a direction to render accounts and deposit; the realisation into Court. During the pendency of the suit, the Madras Cultivating Tenants Protection Act came into force and, taking advantage thereof, the Plaintiff filed a petition in the Revenue Court for eviction, on the ground that the Defendant had defaulted in payment of rent. An eviction order followed on May 2, 1956, which was executed resulting in delivery on May 8, 1956. On August 31, 1956, the suit for meane profits was decreed and, on February 8, 1957, the Plaintiff withdrew from Court Rs. 3,375, which was in deposit made by the receiver. But, on March 18, 1958, the Defendant?s appeal was allowed and the suit for meane profits stood dismissed. It is not in dispute that the Plaintiff restituted into Court the sum of Rs. 3,375 thereafter as a result. Then came the suit now under consideration.

3. Alagiriswami J. as well as the Courts below him accepted that Section 14 of the Indian Limitation Act, 1908 had no application, and, as we mentioned, the first appellate Court considered that neither Section 15 would apply. Alagiriswami J., as far as we can gather from the judgment, did not appear to dissent from that view but the learned Judge thought that the Plaintiff?s cause of action, which had merged in the decree in the earlier suit, was revived, when the appeal therefrom was allowed and the suit was dismissed, and thus the process gave rise to a fresh cause of action with a new start of limitation.

4. Neither side before us placed reliance either on Section 14 or Section 15 of the Limitation ACT. The Appellant however, urges that there was no room for application of the merger theory, in the absence of identity of causes of action and that, in point of fact, there was no accord and satisfaction followed by nullification thereof by judicial pronouncement in relation to the identical claim. In our opinion, the contention is correct. The principle of exclusion of time, for purposes of limitation, based on accord and satisfaction which has been set aside, is as it seems to us, by itself, an exception to the general rule that the Limitation Act is exhaustive in its scope and application and no addition on equitable ground can be made to the exclusions and deductions expressly provided for by the Act. There is another analogous principle founded on equity, which seems to have been recognised by a long line of judicial decisions and which should, therefore, be taken as a recognised departure by way of an addition to the statutory exclusion of time. The basis of the principle is that the litigant, who is pitted against a plea of limitation, had been prevented by a binding direction or order, or perhaps a circumstance beyond his control, from suing on the cause : See Mussumat Ranee Surno Moyee v. Shooshe Mokhee (1868) 12 M.I.A. 244 and the decisions which followed it. Huro Pershad Roy v. Gopal Das Dutt (1868) 12 M.I.A. 244, Sheriff v. Dina Nath Mookerjee I.L.R. (1882) Cal. 255 and Sundaramma v. Abdul Khader I.L.R.(1932) Mad. 490 are, however, illustrative of inapplicability of this principle. The facts in Sheriff v. Dina Nath Mookerjee I.L.R (1882) Cal. 255 appear to resemble those in the present case. The earlier suit there was, as here, one in ejectment and for measne profits which was decreed. On appeal, however, the decree was upset and the suit was

dismissed. The question was whether a suit brought thereafter for recovery of rent due for six years was in time. It would be, if the earlier decree which was later reversed, could be said to have prevented the Plaintiff from instituting a suit for recovery of rent. Following Huro Pershad Roy v. Gopal Das Dutt (1885) J.L.R. 12 Cal. 258 the Calcutta High Court held that the Plaintiff was not protected from the operation of the law of limitation during the pendancy of his earlier suit and that it was barred except as to the arrears accruing within three years preceding the suit. The ground of the decision was that the earlier claim of the Plaintiff in the suit was founded on wrongful possession, while the suit for recovery of rent had, as its basis, the relationship of landlord and tenant. In a pointed reference to this aspect, the Court observed (at page 262):

The Plaintiff?s cause of action accrued long before the time of the former case. There was no period during which the tenancy ceased to exist. We cannot extend the time of suit on the ground that he brought a suit improperly, on the allegation that the relationship of landlord and tenant between the him and the tenant did not exist.

That is precisely the position in the case before us. Sundaramma v. Abdul Khader I.L.R (1932) Mad. 490 decided by a Full Bench of this Court, categorically laid down that the Court, cannot add to the statute of limitation on equitable grounds to suspend limitation. In that case, there was a mortgage decree passed on March 27, 1922, which was put in execution by a petition therefore on October 2, 1922. The mortgagor''s title to the hypotheca having been contested in another suit, it ended in a decree on January 15, 1923. But on appeal however, it was reversed on August 16, 1927. A further execution petition in enforcement of the mortgage decree was filed on September 23, 1927 which was held to be out of time by the Full Bench. This was on the view:

The decree-holder could put in his application for execution, sell the property with the blot on the title for what it was worth, or have it recorded that the property was legally extinct (...) and then apply for a personal decree: and to say that in these circumstances execution has been stayed, is to wrest the expression entirely away from its ordinary meaning.

What is in point is that, unless the earlier decree could be said to prevent or stand in the way of instituting a-suit or pursuing a remedy, the limitation in respect of which has already started, the running of time is not suspended or excluded. That, in view of the earlier decree, the suit which ought to have been filed was bound to be dismissed on merits is no ground for it cannot be reasonably said that it had the effect of preventing institution, at least for saving time. It may be mentioned in passing that Sundaramma v. Abdul Khader (1932) I.L.B. 56 Mad. 490 (F.B.) approved the principle of Ammathayi Ammal v. Sivarama Pillai (1924) 48 M.L.J. 74 Satyanarayana Brahmam v. Seethayya I.L.R. (1926) Mad. 417 and dissented from Kolluri Lakshminarayana Vs. Kambhampati Lakshmipathi and Another, . Lakshminarayana v. Lakshmipathi (1927) 53 M.L.J. 520 was a suit instituted on October 11, 1922 on a promissory note executed on

April 3, 1914. There was a renewal on February 4, 1917 and an acknowledgement on June 26, 1919. In that year, a suit to declare the promissory note void on certain grounds was decreed. But the promise succeeded in the appeal which was allowed on October 13, 1919. It was held that, because of the earlier decree, the Plaintiff could, not institute the suit before its actual reversal, and therefore, it was in time. But Sundaramma v. Abdul Khader I.L.R.(1932) Mad. 490 (F.B.), declined to accept that the case was correctly decided. It is unnecessary to notice the facts in Ammathayi Ammal v. Sivarama Pillai (1924) 48 M.L.J. 74 and Satyanarayana Brahmam v. Seethayya I.L.R (1926) Mad. 417 which are sufficiently set out in Sundaramma v. Abdul Khader I.L.R (1932) Mad. 490 (F.B.) and it will suffice to say that they established the proposition accepted by the Full Bench in Sundaramma v. Abdul Khader I.L.R.(1932) Mad. 490 that, in order to exclude time, the earlier decree should have the effect of preventing institution of the subsequent suit in relation to the same or identical-cause of action. Narayan Jivangouda Patil v. Puttabai (1944) 2 M.L.J. 358 is another illustration of this rule. In that case, a certain person who was in adverse possession of a property sued for declaration of his title thereto, questioning the validity of the adoption of another who claimed adversely. Pending that suit, there was an interim junction obtained by the Plaintiff against interference with his enjoyment of the property. The litigation which eventually went up to the Privy Council ended on November 4, 1932, upholding the adoption and dismissing the suit. The adopted son sued immediately thereafter for recovery of possession. The Privy Council, to which the parties once again resorted, held that it was out of time. Rejecting the contention to the contrary, it was held that the interim injunction did not prevent the adopted son from filing a suit for recovery of possession. This is what the Privy Council said (at page 362.):

Sir Thomas Strangman contended strongly that since the title of the contending parties was involved in the suit it would be quite futile to institute a suit for possession. Their Lordships are unable to appreciate this point, for the institution of a suit can never be said to be futile, if it would thereby prevent the running of limitation.

Sirajul Haq Khan and Others Vs. The Sunni Central Board of Waqf, U.P. and Others, , in effect, approved the principle of Narayan Jivangouda Patil v. Puttabai (1944) 2 M.L.J. 358 and Sundaramma v. Abdul Khader I.L.R.(1932) Mad. 490.

5. The Plaintiff?s earlier suit was founded on tort, that is to say, he went to Court with the claim that the Defendant was in wrongful possession and was liable to mesne profits. The suit out of which the present appeal arises was one founded on the landlord and tenant relationship between them and was for recovery of rent. The cause of action for the second suit was, therefore rested on contract. We fail to see how the decree in the earlier suit, until it was reversed in appeal, in any way prevented the Plaintiff from instituting his second suit based on the claim of entirely a different nature. Alagiriswami J., thought that, after all, the

Plaintiff got a decree for money which, either as damages or as rent he was entitled to, and, therefore, it was an extreme technicality to expect the Plaintiff to institute a suit for recovery of rent during the subsistence of the earlier, decree. With due respect we are unable to concur, for the statute of limitation is concerned with institution and time begins to run from the point of time the particular cause of action arises and has nothing to do with the merits of the proceeding instituted. It may be that the Plaintiff could have thought that, since he had obtained a decree for damages, there was no need for him to institute a suit for recovery of rent; but, (sic) the less he should have realised that in case the earlier decree was reversed, the later suit would have to be instituted on a different cause. We are unable to share the view of the learned Judge, therefore, that the Plaintiff was either prevented by the earlier decree or by the doctrine of accord and satisfaction thereby. As a matter of fact, when the causes of action for the two suits were different in nature, there can be no room for applying the doctrine of accord and satisfaction. It should follow that the proposition of merger which the learned Judge accepted cannot apply.

6. Actually, the argument for the Respondent did not precisely proceed on accord and satisfaction followed by nullification thereof. What is stated is even short of the satisfaction of a particular cause of action by payment, if a decree is obtained on that basis, that should be regarded as a justification in equity for the Plaintiff not to have filed the suit which he knew, in view of the earlier decree, would be dismissed, and looking at the matter from that standpoint, the Plaintiff was entitled to exclusion of the time occupied by the earlier litigation, though on a different cause of action. We do not think that we can accede to the contention which in our opinion, cannot be maintained, for the reasons we have already given. Further, it seems to us that the argument mixes up two different causes of action as the same or as identical in terms of money claim, and fails to keep in view the distinction between the institution of a suit from the standpoint of saving limitation and the merits of such a suit which never turn on limitation.

7. Before concluding, we would like to point out, over again, that the cause of action that was extinguished by the decree in the ealirer suit was one founded on wrongful possession and damages and, when the decree was reversed, by no conceivable means it could be looked upon as having revived or brought about a new cause of action based on the existence of the relationship of landlord and tenant. There was nothing to stand in the way of the Plaintiff instituting the suit for recovery of rent in time, at least for saving limitation, as was remarked by the Privy Council in Narayan Jivangouda Patil v. Puttabai (1944) 2 M.L.J. 358 if not for any other reason.

8. We allow the appeal with costs throughout.

