

(2006) 09 MAD CK 0084

In the Madras High Court

Case No : C.R.P. (PD) (MD) No. 235 of 2004 and C.M.P. (MD) No. 2168 of 2005

R. Gopalakrishnan and Lakshmi Bai

APPELLANT

Vs

Ulaganayagi, Ambalavanan and Lakshmi Narayanan

RESPONDENT

Date of Decision : 29-09-2006

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 14 Rule 2, Order 14 Rule 2(2)

Citation : (2007) 2 LW 438

Hon'ble Judges : K. Venkataraman, J

Bench : Single Bench

Advocate : A. Shanmugam, for the Appellant; G. Sridhar, for the Respondent

Final Decision : Dismissed

Judgement

K. Venkataraman, J.—This Civil Revision Petition is directed against the order of the learned II Additional District Munsif, Tirunelveli dated

26.8.2004 in I.A. No. 228 of 2004 in O.S. No. 252 of 2004.

2. The petitioners herein, who are the petitioners in I.A. No. 228 of 2004 and defendants 1 and 2 in O.S. No. 252 of 2004, has filed the said I.A.

to raise and hear the following preliminary issues:

(1) Whether the suit is bad for non-joinder of firm Sri Thangam Finance and all other partners, both existing and retired partners.

(2) Whether the suit is bad for mis-joinder of defendants 1 and 2 consequent to their retirement on 31.7.1997.

(3) whether the suit is barred by limitation?

(4) Whether the defendants 1 and 2 ceased to be liable in consequent to the transactions made by the plaintiff with existing partners of the firm.

3. The said application has been filed in the suit that has been laid by the

respondents herein for recovery of certain amounts from the petitioners

and one Sannasi. The said application has been resisted by the respondents by filing a detailed counter. The learned II Additional District Munsif,

Tirunelveli by his order dated 26.8.2004 dismissed the said application and hence, questioning the correctness of the said order, the present Civil

Revision Petition has been filed.

4. Mr. A. Shanmugam, learned Counsel appearing for the petitioner, has vehemently contended that the learned Trial Judge, on misconception of

law and on facts, dismissed the said application. The learned Counsel has further submitted that under Order 14 Rule 2 CPC., the learned Trial

Judge is bound to decide the preliminary issues and failure to do so is erroneous.

5. Per contra, Mr. G. Sridhar, learned Counsel appearing for the respondent, has contended that preliminary issues sought to be decided at the

first instance as mentioned in the application cannot be decided independently and all the issues raised in the suit have to be decided in toto and

there cannot be any partial hearing of only few issues. Thus, according to the learned Counsel for the respondent, the preliminary issues, which the

petitioners want the trial court to decide at the first instance, cannot be decided at the first instance without deciding the other issues in toto.

6. In this connection, it is useful to refer to Order 14 Rule 2 CPC. reads as under:

2. Court to pronounce judgment on all issues.-- (1) Notwithstanding that a case may be disposed of on preliminary issue, the Court shall, subject

to the provisions of Sub-rule (2), pronounce judgment on all issues.

(2) Where issues both of law and of facts arise in the same suit, and the Court is of opinion that the case or any part thereof may be disposed of on

an issue of law only, it may try that issue first if that issue relates to--

(a) the jurisdiction of the Court, or

(b) a bar to the suit created by any law for the time being in force, and for that purpose may, if it thinks fit, postpone the settlement of the other

issues until after that issue has been determined, and may deal with the suit in accordance with the decision on that issue.

7. Under Order 14 Rule 2 CPC., only two categories of issue can be decided as preliminary issues, viz., (1) the jurisdiction of the Court, or (2) a

bar to the suit created by any law for the time being in force. Only in the event

of deciding those two issues, the Court may postpone settlement of other issues. In the case on hand, the petitioners want to decide the issues of non-joinder of parties, mis-joinder of parties, the issue of limitation and other issue, namely, the petitioners 1 and 2 ceased to be the partners of the firm during the relevant transactions. These issues can be decided only at the time of final disposal of the suit where all issues put together has to be decided. Nowhere the petitioners want the trial court to decide the question of jurisdiction or bar of suit. Thus, Order 14 Rule 2 CPC. cannot be invoked by the petitioners.

8. The learned Counsel for the petitioners has relied on the following decisions:

- (1) Jani Nautamlal Venishankar, Wadhwan Vs. Vivekanand Co-operative Housing Society Ltd. and Others, ;
- (2) H. Manjunatha Nayak Vs. Ullal Dayananda Hanumanth Nayak (by L. Rs.) and Another, ;
- (3) Central United Bank Ltd. and Another Vs. B.A. Venkatarama Naidu, ;
- (4) Savitri Devi v. District Judge, Gorakhpur and Ors. 1999 (II) M.L.J. 110.
- (5) A. Manivannan v. Sivaraj and Ors. 2001 3 L.W. 618.

The said decisions are not in any way helpful to the petitioner. In those decisions, Order 14 Rule 2 CPC. have not been discussed and the facts

and circumstances of those cases are entirely different from the facts and circumstances of the case on hand.

9. Thus, I am unable to reconcile myself with the argument advanced on the side of the petitioners stating that the issues enumerated in the

application have to be decided as preliminary issues. Further, Order 14 Rule 2 CPC. does not contemplate such issues to be decided as

preliminary issues. Further, the learned Trial Judge dismissed the said application also on the ground that it has been filed belatedly, which sounds

reasonable.

10. Hence, I do not find any reason to interfere with the order of the learned II Additional District Munsif, Tirunelveli dated 26.8.2004 in I.A. No.

228 of 2004 in O.S. No. 252 of 2004. Therefore, the Civil Revision Petition is dismissed. Consequently, C.M.P. No. 2168 of 2005 is closed.

However, there is no order as to costs.