
(1999) 04 MAD CK 0134
In the Madras High Court

Somu and Somu Vessels Merchant Anupparapalayam APPELLANT
Vs
C. Arumugham RESPONDENT

Date of Decision : 01-04-1999

Acts Referred:

Partnership Act, 1932 — Section 69

Citation : (1999) 2 MLJ 623

Hon'ble Judges : V. Bakthavatsalu, J

Bench : Division Bench

Judgement

V. Bakthavatsalu, J.—The plaintiff is the appellant. The plaintiff filed the suit for recovery of the amount.

2. The case of the plaintiff is as follows:

The defendant was having dealings with N. Somasundaram and K. Somasundaram who were doing business in partnership in the manufacture and sale of vessels under the name and style of Somu and Somu. The other partner K. Somasundaram retired from the partnership and a new firm was

formed under the name and style with another partner S. Navaneetham. As per the document of the dissolution of the former firm, the amount

owing by the defendant alongwith other items was assigned in favour of the new firm. Hence, the suit is instituted by the present plaintiff. The

defendant was purchasing vessels and was having dealings with the new defunct firm from 11.4.1973 till 31.3.1980 and as per accounts

maintained by the plaintiff, a sum of Rs. 5391.11 is due by the defendant. The defendant has not paid the amount inspite of repeated demand. The

plaintiff is relinquishing a sum of Rs. 391 11 and limiting the claim to Rs. 5,000. The above amount is arrived at after appropriating later credits to

earlier debits. As per the accounts, three items are alone in time. The suit for items dated 1.3.1976, 20.3.1976 and 6.4.1976 should have been filed

within three years. As the defendant is an agriculturist, filing of suits between 1.1.1975 and 15.7.1978 was stayed by various enactments and the

period of three years and 6 months has to be excluded in computing the period of limitation. If it is done so, the suit is in time. The plaintiff bona

fide thought that the defendant is an agriculturist and hence, the period of time during which filing of suit against agriculturist was stayed has to be

excluded in computing the period of limitation. The plaintiff reliably learnt that the defendant is an agriculturist owning lands at Pollachi. Further, the

defendant has acknowledged his liability to pay the suit claim by post cards. The suit is in time under various provisions of Debt Relief Act and

Limitation Act.

3. The case of the defendant is as follows:

It is not stated in the plaint that the plaintiff's firm has been duly registered. The suit is hit by Section 69 of the Indian Partnership Act. The suit is

barred by limitation. The transaction were one of sale and purchase. Therefore, the Debt Relief Act will not extend the period of limitation. The

defendant is not an Agriculturist. The copy of the accounts shows that the assets of the defendant firm had been taken over by the residual partner

N. Somasundaram. The recitals show that the amount should be paid only to N. Somasundaram. The suit amount even if true cannot belong to

new firm. The date of assignment of due amount is omitted. Such assignment even if true is void and invalid. It is false to state that the defendant

had dealings with defunct firm from 11.4.1973 to 31.3.1980 and that sum of Rs. 5,391.11 is due. This defendant is not liable to pay the amount to

the plaintiff. It is denied that the firm was dissolved and the same was reconstituted. It is not been alleged that the present partners name have been

given and shown in the A certificate of the register. It is denied that the other partner K. Somasundaram retired from the partnership and new firm

was formed. It is denied that the plaintiff bonafide thought that the defendant is an agriculturist and hence, the period of time during which filing of

the suit was stayed has to be excluded. This defendant is not an Agriculturist. It is incorrect to state that the defendant has acknowledged liability to

pay the suit claim by post cards. As the suit is based on accounts, the provisions

of Debt Relief Act are not applicable.

4. On the above pleadings, the trial court has framed five issues. On a consideration of oral and documentary evidence, the trial court has granted

decree with costs. The defendant preferred appeal in A.S. No. 3 of 1984. The learned Subordinate Judge, Tirupur by judgment dated 5.7.1984

allowed the appeal and consequently, the suit was dismissed. Against the said judgment and decree, the present second appeal is filed by the plaintiff.

5. The following substantial questions of law were formulated while admitting this second appeal:

1. Whether the lower appellate court has gone wrong in holding that the suit is not maintainable by reason of the provisions contained in Sub-

sections (1) and (2) of Section 69 of the Indian Partnership Act?

2. Whether by virtue of the provisions contained in Section 69(3)(a) of the Indian Partnership Act, is not the suit maintainable for the suit claim?

3. Whether the lower appellate court is right in holding the suit as barred by time relying on the decision in Sri Hari Babu Naidu Vs. S. Alamelu

Ammal, .

6. The suit is filed by the firm namely Somu and Somu by its partner Navaneentham. It is the case of the plaintiff that originally the partnership firm

consisted of K. Somasundaram and N. Somasundaram were carrying on business in the sale and manufacture of vessels and that subsequently, K.

Somasundaram retired from the partnership. It is seen that originally the firm was registered. Ex.A-1 is the firm registration certificate dated

4.11.1970. Ex.A-2 is the partnership deed entered into between K. Somasundaram and N. Somasundaram. After, K. Somasundaram retired

from the partnership in the year 1977, N. Somasundaram and his son Navaneetham entered into partnership under Ex.A-4. But, on the date of the

suit, the above firm was not registered. The suit is filed in the year 1980. The plaintiff's firm was registered on 3.7.1982. The old name Somu and

Somu continued even after another partner retired from the partnership. It is, thus, seen that on the date of the suit, the plaintiff's firm was not

registered. Relying upon the above fact, it is contended by the defendant that the suit is not maintainable u/s 69(2) of Indian Partnership Act.

7. It is no doubt true that u/s 69(1) of the Act, no suit to enforce right arising

from a contact shall be instituted in any court by or on behalf of any person suing as a partner, unless the firm is registered and person suing has been shown in the Registrar of firm as a partner in the firm. Sub-Clause (2) states that no suit to enforce right shall be instituted by the firm against third party unless the firm is registered. The appellate court relying upon the above provision has held that the suit is not maintainable. On the other hand, the trial court relying upon Section 69(3)(a) has held that the amount payable by the defendant is due to the dissolved firm and that therefore, the suit by an unregistered firm is maintainable. The trial court has elaborately discussed the above aspect of the case and has come to the conclusion that the suit is maintainable. Learned Counsel for the appellant contended that in view of Section 69, Sub-clause 3(a) the suit by an unregistered firm is maintainable. It is contended by the respondent that the fact that the firm was registered subsequent to the date of the suit will not cure the defect and in support of the same, he also relies upon a decisions reported in T. Savariraj Pillai Vs. M/s. R.S.S. vastrad and Company, . In Kavita Trehan and Others Vs. Balsara Hygiene Products Limited, it has been held that suit filed by the partners of the firm which is not registered on the date of filing of the suit would be hit by the provisions of Section 69(2) of the Act and as such, it is not maintainable.

8. But, in this case, it is alleged and proved by the plaintiff that the old firm consisting of K. Somasundaram and N. Somasundaram was dissolved and K. Somasundaram retired from the partnership. Ex.A-3 is the deed of dissolution of partnership firm dated 22.7.1977. Under the above document, the partners divided the assets and liabilities. It is the case of the plaintiff that as per the above document, the amount due by the defendant was assigned to N. Somasundaram and that subsequently, N. Somasundaram and his son constituted a new partnership and that as the amount was due to the erstwhile firm Section 69(2) of the Act is not a bar for filing the suit by an unregistered firm. The appellate court has not discussed the above aspect of the case. The appellate court has held that as per Ex.A-3, N. Somasundaram is entitled to collect the suit amount.

The trial court has elaborately discussed the above aspect of the case and has come to the correct conclusion in holding that the defendant is liable to pay the amount to the dissolved firm. In the decision reported in T. Savariraj

Pillai Vs. M/s. R.S.S. vastrad and Company, , it is held that if a firm is not registered excepting in a suit as contemplated u/s 69(3) of the Act, the court will have no jurisdiction to entertain the suit. As already stated, the Bar u/s 69(1)(2) of the Act will not apply to enforcement of any right due to the dissolved firm or power to realise the property of dissolved firm. It is, thus, seen that by virtue of Section 69(3)(a) of the Act, an unregistered firm can sue for recovery of the amount due to the dissolved firm. Therefore, I hold that the finding of the appellate court that the suit is not maintainable u/s 69(2) of the Act cannot be sustained. I

hold that the suit is maintainable u/s 69(3)(a) of the Indian Partnership Act.

9. It is contended by the respondent that Ex.A-3 is not valid and that it would not amount to assignment of debt. I am unable to accept the above

contention, since Ex.A-3 is the agreement entered into between the partners of the registered firm.

10. Learned Counsel for the appellant contended that the trial court has held that the suit is not barred by limitation and that the appellate court

without assigning valid reasons has reversed the said finding. On the other hand, learned Counsel for the respondent contended that the suit

transaction is related to purchase and sale goods and as such, the Debt Relief Act will not apply. In the plaint, it is alleged that as the defendant is

an Agriculturist filing of suits were stayed and that the plaintiff bonafide thought that the defendant is an Agriculturist. To substantiate the same, the

plaintiff also relies upon the letters written by the defendant. Exs.A-5 to Ex.A-10 are the letters written by the defendant to the plaintiff. In the letter

Ex.A-7, it is stated that the defendant purchased bulls and in another letter, he has also stated that he borrowed loan for agricultural purposes. In

A-6 the defendant has stated that he is havesting paddy crops. Relying upon the above documents it is contended by the plaintiff that the plaintiff

was under bonafide belief that the defendant was an agriculturist. The appellate court has held that even though, the plaintiff was under bonafide

belief that the defendant was an agriculturist, there was no bar for the plaintiff to file the suit, in view of the decision reported in Hazarimal Panaji

Vs. Tilokchand Deepaji, . The above finding of the appellate court are assailed by the appellant. It is alleged in the grounds of appeal that the

decision reported in Haribabu v. Alamelu Ammal was over ruled in Kuttayan

Chettiar v. Surendranathachary (1982) 1 M.L.J. 443.

11. It is seen from the judgment of the appellate court that the appellate court relied upon a decision reported in Sri Hari Babu Naidu Vs. S.

Alamelu Ammal, . The appellate court has wrongly mentioned that Haribabu case is reported in Hazarimal Panaji Vs. Tilokchand Deepaji, . The

above decision is reported only in Sri Hari Babu Naidu Vs. S. Alamelu Ammal, . Relying upon the above decision, the appellate court has held that

even though the plaintiff was under bonafide belief that the Debt Relief Acts would apply to the defendant, the Debt Relief Acts are only temporary

enactments and that there was no bar for the plaintiff to file the suit. The judgment of the appellate court was delivered on 5.7.1984. In the

Haribabu case, the learned single Judge of this Court has held that Section 3 of Tamil Nadu Agriculturist Temporary Relief Act did not impose bar

on the jurisdiction of the court and that it only bar the institution of the suit for short while and that if the period was over, there was no obstacle to

the court getting on with the suit and that the Act nowhere expressly said that the suit should be dismissed for contravening Section 3. The above

decision was not approved in the subsequent Division Bench of this Court reported in Kuttayan. Chettiar v. Surendranathachary (1982) 1 M.L.J.

443, The Division Bench has held that a suit instituted against Agriculturist contrary to the provisions contained in Section 3 of the Act 15 of 1976

is not maintainable and that the same is liable to be dismissed. The Division Bench has also made distinction between the suits pending on the date

of commencement of the special enactment and the suit instituted after commencement of the Act. It is, thus, clear from the above decision that suit

instituted after commencement of the Tamil Nadu Agriculturist Debt Relief Act, 1976 is liable to be dismissed. If the suit is filed by the plaintiff after

commencement of the above special Act, then the suit would have been dismissed. In the above circumstances, I am unable to accept the reasons

assigned by the appellate court relying upon a decision which was not approved by the Division Bench.

12. It is no doubt true that the suit transaction represent the sale and purchase of goods and that the Debt Relief Act will not apply to such

transaction. It is alleged in the plaint that the plaintiff bonafide thought that the defendant is an Agriculturist. As already stated, the plaintiff was

made to believe from the letter written by the defendant that he was an Agriculturist. Therefore, there can be no difficulty in holding that the plaintiff

was under bonafide belief that the defendant was an agriculturist and that the suit cannot be instituted after the commencement of the Agriculturist

Debt Relief Act. The trial court has also elaborately considered the above aspect of the case and has come to the correct conclusion in holding that

the suit is not barred by limitation. It cannot be disputed that moratorium was in force from 16.1.76 to 15.7.1978. The contention of the creditor

that he was under bonafide belief that the debtor was an Agriculturist cannot be lightly brushed aside, in view of the admitted facts in this case.

Therefore, I hold that the reasons given by the appellate court that the suit is barred by limitation cannot be sustained.

13. The appellate court, has further held that in Ex.A-26, the plaintiff has claimed Rs. 8,641.11 and that in Ex.A-22 only a sum of Rs. 5,391.11 is

mentioned and that the plaintiff is unable to explain the above discrepancy. The appellate court failed to look into the plaint averments. The plaintiff

has given up Rs. 391.11 and has claimed Rs 5,000 only. Therefore, the above discrepancy alone cannot be a ground to non-suit the plaintiff

14. For the reasons stated above, I hold that the suit is maintainable u/s 69(3) (a) of the Indian Partnership Act. The substantial questions of law

Nos. 1 and 2 are answered in favour of the plaintiff. On substantial question of law No. 3, I hold that the suit is not barred by limitation.

15. In the result, the second appeal is allowed with costs. The judgment and decree of the appellate court are set aside. The judgment and decree

of the trial court are restored and consequently, the suit is decreed as prayed for with costs.