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The Executive officer Vs. 1.Srinivasan .. .

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SooperKanoon Citation : sooperkanoon.com/2323

Court : Chennai

Decided On : Nov-18-2014

Judge : P.Devadass

Appellant : The Executive officer

Respondent : 1.Srinivasan .. .

Judgement :

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT DATED:

18. 11.2014 CORAM THE HONOURABLE MR.JUSTICE P.DEVADASS SECOND APPEAL (MD) Nos.111 of 2011 and SECOND APPEAL (MD) Nos.173 of 2011 and M.P.(MD) No.1 of 2011 in S.A.(MD) No.173 of 2011 The Executive Officer A/M.Krishna Samy Koil Ambasamudram Tirunelveli District ... Appellant/3rd Defendant in S.A.(MD) No.111 of 2011 ... 2nd Respondent / 3rd Defendant in S.A.(MD) No.173 of 2011 1.Government of Tamil Nadu rep.by District Collector Vannarpetti, Tirunelveli 2.The Commissioner H.R.& C.E.Department Uthaman Gandhi Salai Chennai-34 ... Appellants/Defendants 1 & 2 in S.A.(MD) No.173 of 2011 -vs- 1.Srinivasan ... 1st Respondent/3rd Defendant in S.A.(MD) No.111 of 2011 ... 1st Respondent/3rd Defendant in S.A.(MD) No.173 of 2011 2.Government of Tamil Nadu rep.by District Collector Vannarpettai, Tirunelveli 3.The Commissioner H.R.& C.E.Department Uthaman Gandhi Salai Chennai-34 ... Respondents 2 & 3 / Defendants 1 & 2 in S.A.(MD) No.111 of 2011 PRAYER (S.A.(MD) No.111 of 2011): Second Appeal is filed under Section 100 of the Code

of Civil Procedure, against the Judgment and Decree, dated 28.09.2010, passed in A.S.No.34 of 2006, on the file of the learned Sub Judge, Ambasamudram, reversing the Judgment and Decree, dated 30.11.2005, passed in O.S.No.172 of 2004, on the file of the learned Additional District Munsif, Ambasamudram. PRAYER (S.A.(MD) No.173 of 2011): Second Appeal is filed under Section 100 of the Code of Civil Procedure, against the Judgment and Decree, dated 28.09.2010, passed in A.S.No.34 of 2006, on the file of the learned Sub Judge, Ambasamudram, reversing the Judgment and Decree, dated 30.11.2005, passed in O.S.No.172 of 2004, on the file of the learned Additional District Munsif, Ambasamudram. S.A.(MD) No.111 of 2011: !For Appellant : Mr.Mr.S.Meenakshi Sundaram ^For Respondents : Mr.D.Nallathambi for R1 Mr.R.Karthikeyan, A.G.P., for R2 to R3 S.A.(MD) No.173 of 2011: For Appellant : Mr.R.Karthikeyan, A.G.P., For Respondents : No appearance for R1 Mr.Mr.S.Meenakshi Sundaram for R2 :COMMON

JUDGMENT

These are two independent appeals, namely, S.A.(MD) No.111 of 2011 by third defendant and the other one, namely, S.A.(MD) No.173 of 2011 by defendants 1 and 2, have been directed as against the very same Judgment of the 1st Appellate Court, namely, Sub Court, Ambasamudram, passed in A.S.No.34 of 2006.

2. The plaintiff in O.S.No.172 of 2004 was a poojari, in the 3rd defendant temple, during the material time, namely, 08.04.1998 till 30.11.1997. In the suit, the plaintiff claimed arrears of dearness allowance for the said period, totaling Rs.39,700/-. The suit has been filed by him on 27.04.2001.

3. Though the claim is made beyond three years, plaintiff pleaded in the plaint that it is in time, because, the right of the servant to recover the amount due to him from Government is recurring, continuous and subsisting in nature, and he can recover upto his superannuation and there is no limitation for it.

4. The defendants filed written statements. Their principal defence is that the plaintiff's claim is not recurring, continuous and subsisting, thus, the suit is barred by time.

5. The Trial Court framed necessary issues and tried the suit. One of the additional issues is with regard to plea of limitation. Evidence has been adduced before the Trial Court. The Trial Court dismissed the suit on the ground that the claim made by the plaintiff is barred by limitation and after having received the agreed amount from the 3rd defendant, he cannot make further claim.

6. Thereafter, the plaintiff directed appeal in A.S.No.34 of 2006, before the 1st Appellate Judge/Sub Judge, Ambasamudram. The 1st Appellate Judge allowed the appeal on the premises that since the plaintiff received the lesser rate of amount under protest, it will not amount to acceptance and the claim is not barred by time.

7. Now, as stated at the outset, the Government as well as the temple authorities have directed this appeal.

8. At the time of admission of the appeal in S.A.(MD) No.111 of 2011, the then learned Brother Judge formulated the following substantial questions of law: ?.1. Whether the 1st Appellate Court is correct in coming to the conclusion that the suit is not barred by limitation?.

2. Whether the 1st Appellate Court had erred in not framing a specific issue regarding res-judicata; when this Hon'ble Court on the basis of the earlier 1st Appellate Court Judgment had directed to frame such as issue?.

3. Whether the 1st Appellate Court had erred in coming to a conclusion that the first respondent is entitled to the benefit of doctrine of quantum merit?.?.

9. The aforesaid substantial questions of law are also applicable to the other connected appeal, namely, S.A.(MD) No.173 of 2011.

10. According to the learned counsel for the appellants, the plaintiff is a priest in a temple, but not a Government staff. He has been appointed by the temple authorities and not by the Government. He was paid out of the income from the temple and not paid out of the consolidated fund of the Government. He was appointed under Rules framed by the temple authorities and not appointed under Service Rules framed in pursuance of Article 309 of the Constitution of India and

even under any adhoc Rules framed by the Government. Thus, for him, Article 7, Part-II, of the Limitation Act, 1963 will apply. As per that, the period prescribed for making claim is three years from the date of accrual of the wages.

11. The learned counsel for the appellant also viewed the matter from different angle. He would contend that any due payable to a servant cannot be said to be a continuous, and subsisting one and it will also fall under Article 7, Part-II, of the Limitation Act, 1963.

12. In this connection, the learned counsel for the appellant would also cite Director of School Education, D.P.I.Compound, College Road, Nungambakkam, Madras-6 vs. R.Prema Bai & another, (CDJ 2007 MHC1262.

13. In defending the impugned Judgment of the 1st Appellate Court, the learned counsel for the plaintiff would submit that the plaintiff was in service of the temple and his salary was approved by a Government Officer, namely, Commissioner, H.R. &. C.E. Department. He claims arrears of dearness allowance. It is also part of the salary. Upto his superannuation, he can claim it and till such time, it is a continuous and subsisting right. In such circumstances, Article 7 of the Limitation Act, 1963 is inapplicable to the plaintiff, thus, the decision cited is also not applicable to his case.

14. We have given our deep consideration to the rival submissions, perused the case records and the decision cited by the learned counsel for the appellant.

15. There are three substantial questions of law, namely on plea of limitation, plea of res judicata and doctrine of quantum merit. Among them, limitation plea takes up the lead. If the plaintiff crosses the hurdle of limitation, then we will go to the other aspects, namely, res judicata and quantum merit.

16. The plaintiff claimed arrears of dearness allowance due to him for the period from 08.04.1990 till 30.11.1997 and the suit was filed by him on 27.04.2001. Ex facie, it is after three years, after their accrual. But the plaintiff would say that it is within time, because he is a servant, as such, his claim to it against the Government is a continuous right. However, the appellants repel it referring to

Article 7, Part-II, of the Limitation Act, 1963.

17. Article 7 of the Limitation Act is very empathetic that for recovering wages, the period of limitation is three years from the date of accrual.

18. From Ex.A1, copy of Judgment in O.S.No.137 of 1988, passed by the learned Sub Judge, Tenkasi, it is seen that the petitioner was appointed as a priest to do services to God in the 3rd defendant temple. He is a temple staff. He was not appointed under any Rules framed by the Government.

19. He was paid based on the income generated from the temple. He was not paid out of the consolidated fund of the Government. He is not holder of a civil post under the Government. He cannot be removed or reduced in rank with the consent of the Government. He is a servant like any other servant in the private sector. For the other contingent staff employed by the Government, the concerned District Collector, based on the price index, prescribes the rate of wages from time to time. For the temple staff, the Commissioner, H.R. & C.E. Department, notifies the rate of wages to be paid out of the temple fund from temple fund. Any amount due to him from temple authorities is like a claim due to any person from the Government. Article 7 of Limitation Act, 1963 has universal application to all type of wage claim. There is no distinction as to the claim based on the type of Institution or entity, whether private, Government or public sector. Wage claims to be made against such authorities will also fall under Article 7, Limitation Act, 1963. Such was also the view of this Court in CDJ 2007 MHC1262where a teacher made a claim to Government for arrears of salary after three years of it's accrual.

20. Thus, we are of the categorical view that the period of limitation is only three years. Therefore, the view of the Trial Court in this regard is correct, however, the approach of the 1st Appellate Court in this regard is not correct. Thus, we answer the first substantial question of law as against the plaintiff. In the circumstances, it is needless for us to go into the other substantial questions of law.

21. In the result, both the second appeals succeed. Judgment and Decree of the 1st Appellate Court are set aside. Judgment and Decree of the Trial Court are restored. In the facts and circumstances, parties are left to bear their respective

costs in these second appeals. Consequently, connected miscellaneous petition is closed. 18.11.2014 Internet : Yes / No Index : Yes / No krk To:

1. The Principal District Judge, Tirunelveli. 2.The Sub Judge, Ambasamudram. 3.The Additional District Munsif, Ambasamudram. P.DEVADASS, J krk SECOND APPEAL (MD) Nos.111 & 173 of 2011 18.11.2014

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