

Parameswaran Vs. N. Ramachandran

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Court : Kerala

Decided On : Jul-09-1986

Reported in : AIR1987Ker37

Judge : Varghese Kalliath, J.

Acts : [Limitation Act, 1963](#) - Sections 14; [Code of Civil Procedure \(CPC\) , 1908](#) - Order 7, Rule 6

Appeal No. : C.R.P. No. 647 of 1982-E

Appellant : Parameswaran

Respondent : N. Ramachandran

Advocate for Def. : N. Viswanatha Iyer, Adv.

Advocate for Pet/Ap. : P.N.K. Achan, Adv.

Disposition : Revision allowed

Judgement :

ORDER

Varghese Kalliath, J.

1. This is a revision by the plaintiff. His suit on a promissory note stands dismissed solely on the ground of limitation. So naturally this revision concerns the

correctness of the finding on the question of limitation. I feel that this Court has power under Section 115, C.P.C. to examine the correctness of the decision.

2. These are the relevant facts. The promissory note on which the suit has been laid is dated 31-10-1974. The consideration for the promissory note is Rs. 2,500/-. The suit was filed as O.S. 768/75 on 29-9-1975, before the Munsiff Court, Ernakulam.

3. The defendant raised a question of territorial jurisdiction. He contended that the territorial jurisdiction for the suit is not Ernakulam, but Cochin. The Munsiff Court, Ernakulam, held on 2-12-1977 that it has no territorial jurisdiction to entertain the suit. The Munsiff made an endorsement on the plaint thus : --

'The plaint is ordered to be returned to the plaintiff for presentation before the Munsiffs Court, Cochin. The parties will appear before that Court on 16-1-78. Time for re-presentation -- one week from the date of return -- give notice to the parties.'

4. The plaint was returned on 9-12-1977. It was represented before the Munsiff Court, Cochin on 14-12-1977. There the suit was numbered as O.S. 765/77. The following issues were raised in the suit.

'1. Whether the suit is barred by limitation?

2. Whether the promissory note sued upon was got executed by misrepresentation, undue influence, fraud and coercion?

3. Whether the suit promissory note is supported by consideration.'

5. The trial Court found issues 2 and 3 in favour of the plaintiff. Issue No. 1 was found against the plaintiff. So the suit was dismissed.

The appellate Court revalued the findings of the Munsiff. It confirmed all the findings of the Munsiff including the finding on the question of limitation. It dismissed the appeal. Hence the plaintiff files this revision.

6. The learned counsel for the revision petitioner submits that the revision petitioner is entitled to exclusion of time under Section 14 of the Limitation Act and

if the time spent by the plaintiff in prosecuting the case in the wrong Court is excluded, the suit is well within time.

7. The learned counsel for the respondent in defence submits that since the plaintiff did not file the suit or represented the suit on the very same day, the Ernakulam Munsiff Court found that it has no jurisdiction, the exclusion of time provided under Section 14 of the Limitation Act will be of no help to the revision petitioner. He elaborates his argument. He points out that though the Ernakulam Munsiff Court found that it has no jurisdiction to entertain the suit on 2-12-1977 and the plaint was returned on 9-12-1977, it was not represented on 9-12-1977 itself, hence the counsel submits that the plaintiff cannot have resort to the provision contained in Section 14 of the Limitation Act. Further he submitted that there is no evidence in this case by way of an affidavit or otherwise that the plaintiff was prosecuting the suit in good faith, in a wrong Court, which, according to the counsel for the respondent, is a must for invoking the aid of Section 14 of the Limitation Act, He also submits that how the suit has been saved from limitation ought to have been stated in the plaint itself.

8. Section 14 of the Limitation Act reads thus : --

Exclusion of time of proceeding bona fide in Court without jurisdiction.-

(1) In computing the period of limitation for any suit the time during which the plaintiff has been prosecuting with due diligence another civil proceeding, whether in a Court of first instance or of appeal or revision, against the defendant shall be excluded, where the proceeding relates to the same matter in issue and is prosecuted in good faith in a Court which, from defect of jurisdiction or other cause of a like nature, is unable to entertain it.

(2) In computing the period of limitation for any application, the time during which the applicant has been prosecuting with due diligence another civil proceeding, whether in a Court of first instance or of appeal or revision, against the same party for the same relief shall be excluded, where such proceeding is prosecuted in good faith in a Court which, from defect of jurisdiction or other cause of a like nature, is unable to entertain it.

(3) Notwithstanding anything contained in Rule 2 of Order XXIII of the Code of Civil Procedure, 1908 (5 of 1908), the provisions of Sub-section (1) shall apply in relation to a fresh suit instituted on permission granted by the Court under Rule 1 of that Order, where such permission is granted on the ground that the first suit must fail by reason of a defect in the jurisdiction of the Court or other cause of a like nature.'

9. My function is to 'throw off the wrapping and expose' the provision clearly. Now the counsel for the respondent perhaps by nesting a feeling that I may construe a provision in the statute of limitation so liberally, that I may jump the bounds of my field of power -- to discover, interpret and declare the law -- in a polite and forceful tone reminds me the great words of those famous figures in the history of English Law, Coke, Hale, Bacon and Blackstone, that the office of the judge is to declare and interpret law but not to make it. Mr. Justice Cardozo recount the situation in these words :

'Insignificant is the power of innovation of any judge when compared with the bulk and pressure of the rule that hedge him on every side.'

10. The counsel tells me that the adjudicatory power of judge is hedged within the confines of the limitations imposed by the statutes and that he cannot overstep the bounds of the provisions of statute of limitation, however harsh it may sound, using his innovative zeal. I feel that certainly there may be occasions or crucial exigencies where brave unconventional and unorthodox action on the part of a judge becomes benign and beneficial for society. There may be circumstances where dormancy or decadence can be overturned only by a judicial decisionmaker, who being convinced that the dominant prevailing values of the community are wholly stale or unreasonable, is willing to take risks and is determined to chart a new course into the future. True, the major task of change of law or law reform should be the exclusive preserve of men or bodies entrusted with the task of legislating but it is not hearsay to concede to the judiciary, to exercise sparingly in extraordinary situations, the right to lead the moral sentiment of society and to initiate, in a judicial decision, a new conception of justice in accord with 'the highest knowledge and truest insight perceptible to the human

mind.'

11. Now I cannot resist the temptation to reflect over that newer theory inaugurated by Bentham and carried to a radical conclusion by John Chipman Gray which asserted that judges produce law just as much legislators do. Gray enthusiastically says that judges even make it (law) more than legislators since statutes are interpreted by Courts and such interpretations determine the practical and true content of the enactments more meaningfully than its original text. Two Hundred and Seventy years ago, Bishop Hoadly said 'who ever hath absolute authority to interpret any written or spoken law, it is he who is truly the law giver to all intents and purposes and not the person who first wrote or spoke them.' Is it still not true

12. I am of opinion, that, today the most widely accepted view of judicial process is the 'creative theory of law', although strong differences of opinion may exist with respect to the volume and scope of judicial law making. I feel that I should say plainly that I am bound to remember always that judging is basically and fundamentally not an act of unfettered judicial will but a faithful and conscientious striving to rest a decision on formal and non-formal source material that are regarded as legitimate instruments and devices of adjudicatory activity. I also believe in that short pithy statement 'notwithstanding all the apparatus of authority the judge has nearly always some degree of choice.'

13. In AIR 1971 SC 2313 (India Electric Works v. James Mantosh), the Supreme Court observed that the section requires to be construed liberally.

'It is well settled that although all questions of limitation must be decided by the provisions of the Act and the Courts cannot travel beyond them the words 'or other cause of a like nature must be construed liberally'.

14. The wholesome purpose and policy discernible in Section 14 of the Limitation Act are the benevolent concern and care of the legislature to protect an innocent person and his cause, from not being stumbled upon the rock of limitation when he was honestly doing his best to see his case tried on the merits, but failed, because the Court where the suit was pending was unable to give him such a trial,

15. In AIR 1929 PC 103 (Ram Dutt v. E. D. Sasson & Co.), the Judicial Committee of the Privy Council said, before formulating the provisions contained in Section 14 of the Limitation Act, it should be assumed that the Legislature was convinced that there was a serious risk of injustice if no provision is made for a plaintiff who honestly and innocently prosecuting his case with diligence in a forum which was incompetent to give him relief.

16. I feel that an element of a bona fide mistake is inherent in the invocation of this section. The section is in fact intended to provide a benign relief against the bar of limitation in cases where the party has chosen a wrong forum on account of a bona fide mistake.

17. Section 14 of the Limitation Act postulates the following conditions for its operation : --

(i) the plaintiff should have been prosecuting another civil proceeding which he relies upon, with due diligence.

(ii) Two proceedings, the former and the latter, should be founded on the same cause of action;

and

(iii) the former proceeding must have been prosecuted in good faith in a Court which from defect of jurisdiction or other cause of like nature is unable to entertain it.

The next question is if these conditions exist, what is the exact nature and extent of the shield of protection the plaintiff is entitled to.

Is the plaintiff entitled to an extension of the period of limitation prescribed by the Act, to the extent of the period during which the suit was prosecuted with due diligence and good faith in a Court which from defect of jurisdiction is unable to entertain the suit

17A. The learned counsel for the respondent submits that in computing the period of limitation, Section 14 of the Limitation Act does not empower the Court to add

that period spent in a wrong Court to the period prescribed as the period of limitation. The real intention of Section 14 being to extend the period of limitation prescribed by the statute, what has to be done according to me is that in computing the period of limitation, add that period during which the suit has been prosecuted with due diligence and in good faith in a Court, which either on account of lack of jurisdiction or other cause of a like nature, was unable to entertain it, to the normal period prescribed by the statute. In doing this computation of the period of limitation the re-presented suit is certainly not a continuation of the original suit. The period of limitation for the represented suit has to be determined as if it is a new and fresh suit. The period of limitation for this suit will be the period prescribed for such a suit, but excluding in its computation the period during which the earlier suit was prosecuted in the wrong Court honestly and diligently.

18. Applying this principle in this case, the period which was spent in prosecuting the case before the Munsiff Court, Ernakulam has to be excluded from the period prescribed as the period of limitation for filing the suit. According to me, the period between 29-9-1975 to 9-12-1977 has to be excluded from the period prescribed as the period of limitation for the suit. If this period is excluded from the normal period prescribed as the period of limitation, when the suit was presented before the Cochin Court on 14-12-1977, the suit is within time. This I do, accepting the principle that representation of the suit in the second Court is not a continuation of the suit that was presented before the wrong Court.

19. The learned counsel for the respondent placed very strong reliance on the decision reported in 1964 Ker LT 145 : AIR 1964 Ker 285, Narayana v. Vayudeva. True, in that decision, the plaintiff did not obtain any protection under Section 14 of the Limitation Act. -The reason is plain and clear. The plaintiff filed the suit on the last day of limitation. Though the plaint was represented within the time allowed for representation, Vaidialingam, held that the wrong Court has no jurisdiction while rejecting the plaint for the representation to proper Court to enlarge the period of limitation. So the one month time to represent the suit will not be of any assistance and the only period that can be excluded is the period when the suit was languishing in the wrong Court. Even if that period is added to the period prescribed by the statute for filing the suit, since the plaint was presented on the

last day of limitation, the extension of time obtained by the application of Section 14 will be of no assistance, for, the suit was represented not on the day, on which it was returned. But in the instant case, the suit was filed in the wrong Court not on the last day of limitation. The promissory note was executed on 31-10-1974 and the suit was filed on 29-9-1975. This is the crucial difference which distinguishes the case relied on by the counsel for the respondent.

20. The learned counsel for the respondent, then referred me to the decision reported in 1979 Ker LT 493 (Abraham v. Sadanandan). Viswanatha Iyer, J. in this decision, followed what Vaidialingam, J. said in 1964 Ker LT 145 : (AIR 1964 Ker 285). Viswanatha Iyer, J. only said that the counting of exclusion of time under section 14 should stop with the return of the plaint for representation to the proper court. This decision is of no assistance to the counsel for the respondent to strengthen his argument.

21. I have no doubt that the time allowed to the plaintiff by the wrong court after declaring that it has no jurisdiction to try the suit, is not a period during which the suit can be said to be pending in the wrong court. The grant of a grace period to re-present the suit in the proper court to save the court-fee paid on the plaint, a prevalent practice in the lower courts, has really no statutory backing.

22. The only other question that survives for my consideration is the second contention raised by the respondent's counsel that there is no averment or evidence in this case that the plaintiff was prosecuting his case in good faith with diligence in a wrong court. I do not think that there is any merit in this contention. In a similar situation. Vein Pillai. J. (1964 Ker LT 449 : AIR 1964 Ker 314, R. Kunjukrishna v. R. Viswanathan) observed: 'the fact that there was absence of necessary averments in the plaint to invoke the provisions contained in section 14 in a case where the plaint was represented after it was returned by the wrong court, is immaterial'. Velu Pillai, J. gave his reason : the defendant who contested the earlier proceedings could not be held to be prejudiced by want of allegations as regards this honest prosecution of the prior proceedings. The circumstances under which the plaint was returned are well known to the defendant.

23. Madhavan Nair, J. in *Bhanu Vikrama Panicker v. Janaki Amma*, 1968 Ker LT 741 observed that though a specific ground of exemption under section 14, Limitation Act, has not been taken in the plaint, Rule 6 of Order VII C.P.C, is no bar in the circumstances of the case for the application of section 14 since from the endorsements on the plaint itself, the grounds attracting section 14 are present. Further it has to be noted that the grounds of exemption to be shown in the plaint must necessarily have been existing on its date or in other words must relate to events preceding the suit. The events subsequent to the original presentation of the plaint (though it happened in a wrong court) cannot normally be expected to be stated in the plaint. Such events can be mentioned in a plaint only by an amendment thereof, but in most of such cases, the facts are explicit in the endorsements on the plaint itself. I am of opinion that such endorsements can be relied on for the purpose of satisfying the requirement of a statement in the plaint inviting the exclusion of time under section 14 of the Limitation Act. It has been held so in *Sukhbir Singh v. Piare Lal*, AIR 1923 Lahore 591 and *Lalchand Nathmal v. Balaram Rameshwar*, AIR 1957 Madh Pra 95.

I feel that the finding of the courts below that the suit was barred by limitation is wrong.

In the result, the revision petition has to be allowed. I do so. The suit is decreed as prayed for with cost incurred in the trial court and in appeal. No order as to costs in this proceedings.

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