

Vaijayanthi Vs. Mary

Vaijayanthi Vs. Mary

SooperKanoon Citation : sooperkanoon.com/723490

Court : Kerala

Decided On : Jun-03-2004

Reported in : 2004(2)KLT934

Judge : Pius C. Kuriakose, J.

Acts : [Limitation Act, 1963](#) - Schedule - Article 116 and 116(B); [Code of Civil Procedure \(CPC\) , 1908](#) - Sections 96, 96(1) and 100 - Order 41, Rule 2; Civil Practice Rules - Rule 258(2)

Appeal No. : S.A. No. 85 of 1997

Appellant : Vaijayanthi

Respondent : Mary

Advocate for Def. : P.N.K. Achan, Sr. Adv. and; K. Mohanan Kannan, Adv.

Advocate for Pet/Ap. : K.G. Gouri Shankar Rai, Adv.

Disposition : Appeal allowed

Judgement :

Pius C. Kuriakose, J.

1. Plaintiffs 3, 4 and 6 are the legal representatives of deceased plaintiffs 2 and 5 in a suit for permanent prohibitory injunction which was dismissed by the trial court

are the appellants in this Second Appeal. An appeal was filed before the Sub Court, Hosdrug against the decree and judgment of the trial court on 21.11.1992 which was registered with that Court as A.S.No. 35 of 1992. The appeal was found to be in order by the Registry and hence the same was placed on the judicial side for admission. Alongwith the appeal, the appellants produced certified copy of the decree and certified copy of the judgment of the trial court. Printed copy of the judgment of trial court which was necessary in view of the number of words contained in the judgment as per Rule 258 of the Civil Rules of Practice was not produced alongwith the appeal memo. Instead, I.A.874 of 1992 was filed by the appellants for dispensing with production of the printed judgment. The appeal was admitted after hearing under Order XLI Rule 11 C.P.C. and notice was issued to the respondents. Records were called for and the appeal was, after several postings, that too after several years, taken up for final hearing. During hearing it was pointed out on behalf of the respondents that the appeal is barred by limitation since the appeal had been filed beyond the period of 30 days if the period of limitation was computed on the basis of the printed copy of the judgment which was produced on 22.1.1993.

2. When this Second Appeal came up for admission, this Court ordered urgent notice before admission. Service of notice to respondents was completed on 5.8.2003 and lower courts records were called for and the records are now available.

3. Heard Shri K.G.Gowri Shankar Rai, learned counsel for the appellants and Senior Advocate Shri. P.N.K. Achan for contesting respondents 1 and 2.

4. Shri. Gowri Shankar Rai submitted that the first appeal before the lower appellate court had been found to be in order by one learned Judge who admitted the same and it was not open to another learned Judge at the time of final hearing after years to reject the appeal on the ground of limitation. The interpretation placed by the lower appellate court on Rule 258 (1) of the Civil Rules of Practice to hold that the copy application for obtainment of the printed copy of the judgment should have been filed on time, according to learned counsel, was a pedantic one. Inviting my attention to Section 96 of the Code of Civil Procedure, learned counsel

submitted that appeals under the Code lie against decrees and the significance of judgments is only that they will necessarily have to be looked into by the court of appeal to find out the reasons which weighed with the lower court for passing the impugned decree. In this context the learned counsel also referred me to Section 97 and particularly to Sections 100 and 102 as to fortify his submission that appeals under the Code (except when appeals are provided against order) lie essentially against decrees and only incidentally against judgments. The interpretation placed by the lower appellate court on Section 12 of the Limitation Act, according to learned counsel, is wrong.

5. On hearing the initial submission of Shri. Gowri Shankar Rai, I was convinced that at least the following substantial questions of law do arise for determination in this appeals.;

(1) Is the lower appellate court right in rejecting an appeal on the ground of limitation when the same is filed within the period of limitation under Article 116(b) of the Limitation Act going by the certified copy of the decree, especially in the present case where the appeal was found to be in order and was admitted to file by the court, on the sole reason that the printed copy of the judgment which was ultimately produced in the case was obtained on the basis of an application made beyond the period of limitation?

(2) Whether on a legal and harmonious consideration of the provisions contained in Section 96 and Order XLI Rule 1 of the Code of Civil Procedure and other provisions of the Code such as Sections 97, 100 and 102 and also Section 12 and Article 116 of the Limitation Act together with Rule 258 of the Civil Rules of Practice, the lower appellate is correct in its view that the appeal was barred by limitation on account of the delay in applying for and obtaining printed copy of the judgment?

6. Counsel were permitted to address arguments on both the above questions of law. Shri Gowri Shankar Rai reiterated all his initial submissions. The learned counsel for contesting respondents would only invite my attention to a decision of this Court in *Raghunathan Nambiar v. Alora Janu*, 1995 (1) KLJ 754 wherein it has been ruled that initial acceptance of an appeal which is not accompanied by a

printed copy of the judgment to which Rule 258(2) applies is only a provisional acceptance subject to production of the printed copy of the judgment and dismissal of the appeal for non-production of the printed copy will not preclude the filing of a proper appeal accompanied by the printed copy of the judgment. Counsel submitted that the remedy of the appellants was not to come up in Second Appeal to this Court but to file a regular appeal on the basis of the printed copy obtained, accompanied by a separate application for condonation of delay if need be.

7. The decision cited at the Bar by the learned counsel for the respondents is easily distinguishable from the present case on facts. Raghunathan Nambiar's was a case where the appeal was dismissed by the lower appellate court on the reason of non-production of the printed copy of the judgment. The present one is a case where the first appeal was rejected computing the period of limitation on the basis of the endorsements on the printed copy.

8. I find considerable force in the submission addressed by Shri Gowri Shankar Rai. Regular appeals under the Code of Civil Procedure other than appeals from orders lie against decree which going by the definition given in the Code means the formal expression of an adjudication which, so far as regards the Court expressing it, conclusively determines the rights of the parties with regard to all or any of the, matters in controversy . Judgment is the statement given by the Judge setting out the grounds or reasons which weighed with him while passing the decree. Judgments are certainly necessary and important since without the judgment the court of appeal will not be able to appreciate the grounds of appeal. This is why even for preliminary hearing under Order XLI Rule 11 for admission of an appeal production of a manuscript or typed copy of the judgment in cases where under Rule 258(2) of the Civil Rules of Practice a printed copy is necessary is insisted upon. But to say that the question of limitation will have to be decided on the basis of the endorsements on the printed copy of the judgment and not on the basis of the decree-copy will be to ignore Section 96(1) and various other provisions of the Code including Section 100 which indicate in unambiguous terms that appeals lie against decrees and not against judgments. Of course, under Rule 258(2) of the Civil Rules of Practice it is obligatory that when the judgment

exceeds 700 words, copy of the judgment to be produced shall be a printed copy.

9. In the instant case the application for copy of printed judgment which had been filed alongwith the application for decree-copy was dismissed for default and the printed judgment subsequently produced was obtained on the basis of a subsequent copy application which was filed later and after the expiry of the limitation period. But the lower appellate court ought to have noticed that the appeal was already on file and it had been admitted already and it was thereafter only that the copy application for printed copy on the basis of which the printed copy was obtained was made, the approach of the lower appellate court was too technical. The law of limitation is certainly founded on a public policy and the maxim *vigilantibus at non dormientibus jura subveniunt* may certainly be relevant when somebody seeks to by pass the provisions of the Limitation Act. But the instant case was certainly different. The appellants were certainly vigilant. They filed the appeal on time on the basis of the certified copy of the decree and certified copy of the judgment. Laches, if at all were in the matter of obtainment of the printed copy of judgment on time. Such laches should not have stood in the way of the lower appellate court deciding a four-year old appeal on its merits. Both the questions formulated are to be answered in favour of the appellants.

10. The judgment and decree of the lower appellate court dismissing A.S.35 of 1992 on the ground of limitation are hereby set aside. A.S.35 of 1992 will stand restored to the files of that court. That court will decide the appeal on its merits after hearing both sides within a maximum period of six weeks from the date of parties appearing in that court. The parties will appear before that court on 30.6.2004.

The appeal is allowed as above. In the circumstances the parties will suffer the costs. Transmit the lower court records forthwith.