

Semmoonchi Gounder Vs. Naina Gounder (Decd) and ors.

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Court : Chennai

Decided On : Dec-11-1987

Reported in : AIR1988Mad345; (1988)IMLJ320

Judge : Ratnam, J.

Acts : [Registration Act, 1908](#) - Sections 17; ;[Limitation Act, 1963](#) - Sections 14 and 14(1)

Appeal No. : S.A. No. 1719 of 1980

Appellant : Semmoonchi Gounder

Respondent : Naina Gounder (Decd) and ors.

Advocate for Def. : M. Md. Asraf Ali, Adv.

Advocate for Pet/Ap. : T. Somasundaram, Adv.

Judgement :

1. The defendant in O. S. 980 of 1974 District Munsif's Court, Salem is the appellant in this second appeal which has been entertained on the following substantial question of law : -

Whether the suit is barred by limitation?

The facts giving rise to this second appeal may be briefly set out as under - The suit property is an extent of 1 acre and 16 cents in R. S. 119/6 in Amani Selavadai village in Salem Dt. This property is stated to have belonged to deceased Naina Gounder (first plaintiff in the, suit) as his ancestral property and the first respondent herein (the second plaintiff in the suit) is the wife of deceased Naina Gounder. (here in after referred to as Naina Gounder for short) Respondents 2 to 7 in this second appeal are the legal representatives of Naina Gounder. Naina Gounder along with his two brothers and maternal uncle Vetrैया Gounder executed a nominal sale deed on 5-8-1935 in favour of one Chinnappa Gounder for the purpose of securing loan and that sale was subject to a right of re conveyance. One Chinnappa Gounder insisting upon the repayment of the amount due to him, Naina Gounder and, his brothers arranged for a re-conveyance in favour of one Subramania Chettiar from Chinnappa Gounder on 14-3-1946. Subramaia Chettiar executed on 29-4-1948 an agreement in favour of Naina Gounder to recovery the suit property, if the sale amount of Rs. 1500 was repaid within a period of 1.0 years. Pursuant to the agreement, Naina Gounder was allowed to continue in possession of the. suit property. Naina Gounder and his brothers jointly executed a lease deed in favour of Subramania Chettiar in lieu of interest due to him and since Subramania Chettiar insisted up on the repayment of money, Naina Gounder arranged for a re conveyance in favour of one P. Krishnan of Selavadi. Subramania, Chettiar executed a sale deed in favour of Krishnan on 5-4-1956 according to the directions of Naina Gounder and that sale in favour of Krishnan was claimed to be subject to an agreement of sale and Krishnan also is stated to have undertaken to convey the property, if the amount of Rs. 3500 was repaid to him. Naina Gounder and his brothers, negotiated with Krishnan and on receiving Rs. 1000 orally relinquished their right in respect of their 2/3 share and arranged for a re conveyance of 1.16 acres in S. No. 119/6 and an one-third share in the well in favour of the appellant after getting a loan of Rs. 1300 from him. The further case of the said⁷ Naina Gounder and the first respondent herein was that the appellant specifically agreed that he would conveyance in favour of Naina Gounder and the first respondent if an amount of Rs. 1300 was repaid within a period of ten years and an agreement Dt. 12-6-1959 was also executed by the appellant. Naina Gounder and the first respondent were f further allowed to

continue in possession pursuant to this agreement Dt. 12-6-1959, Naina Gounder and the first respondent claimed that they were residing in the house put up in the suit property and that it fell to the share of Naina Gounder, who undertook to discharge the debt due to the appellant. It was also stated that Naina Gounder and the first respondent were ready and willing to perform their part of the agreement and that when they requested the appellant to receive the sale price and execute a sale deed on or before 15-8-1968, he instituted a false suit in O. S. 856 of 1968 District Munsif Court, Sankari at Salem for a permanent injunction Restraining the said Naina Gounder and the first respondent from interfering with his possession. That suit was decreed and an appeal there from was preferred by Naina Gounder and the first respondent in S 88 of 1972 and the issue whether the agreement dated 12-6-1969 is true and binding, was left open by the appellate court to be decided in a separate suit. Thereafter, Naina Gounder and the first respondent herein, after securing a return of the documents filed, on 24-7-1974 instituted O S 980 of 1974 District Munsif Court, Sankari at Salem, praying for the specific performance of the agreement Dt. 12-6-1959 and for cost.

2. In his written statement the appellant contended that the sale in his favour was not subject to a right of re-conveyance and the claim of Naina Gounder that he and his brothers arranged for a re conveyance from Chinnappa Gounder to Stlbramania Chettiar on 14-3-1946 was false. Stating that he purchased the property for a sum of Rs. 1300, the appellant denied the agreement to execute a sale deed if the amount of Rs. 1300 is repaid within ten years. The appellant while refuting the agreement dt. 12-6-1959, also characterized it as a rank forgery and further stated that Naina Gounder and the first respondent handed over possession of the suit property and that from the date of purchase, the appellant continued to remain in possession and enjoyment of the suit property. The claim of Naina Gounder and the first respondent that they were residing in the suit property and Naina Gounder, undertook to discharge the debt due to the appellant was denied. The appellant further pleaded that he was not liable to execute the, sale deed, as there was no agreement.

3. In the additional written statement, the appellant raised the plea that the suit is barred by limitation.

4. In the reply statement filed by Naina Gounder and the first respondent, they pleaded that when the appellant was asked to receive the sale price and execute a conveyance or before 15-8-1968, he instituted the suit in O.S.856. of 1968 and issue No. 2 therein related to the truth of the agreement dt. 12-6-1959 and only after the finding of the trial court was set aside by , the appellate court, the proceedings for securing - the appropriate relief was commenced and therefore, Naina Gou under and the first respondent were entitled to the benefit of R. 14(I) of the Limitation Act as they had been bona fide prosecuting the proceeding with diligence against the appellant from December 1968 and if that time is exclude the suit will be in time.

5. Before the trial Court, on behalf of Naina Gounder and the first respondent herein Ex. A I to A 19 were filed and P.Ws. I to 5 were examined, while, on behalf of the appellant ' Exs. B I to B4 were marked and the appellant gave evidence as D.W. 1. On a consideration of the oral as well as the documentary evidence, the learned District Munsif found that Naina Gounder and the first respondent had proved the execution of the agreement dt. 12-6-1959, that it is a true and valid document and binding on the appellant. Adverting to the proceedings initiated by the appellant in O.S. 856 of 1968 and the adjudication therein, the learned District Munsif found that Naina Gounder and the first respondent herein were prevented from filing a from 15-6-1968 till the date of judgment in A.S. 818 of 1972, i.e. 24-8-1973, an and therefore; they can take advantage, Q. IA of the Limitation Act and thus the suit had been instituted in time. On those conclusions, the trial Court granted a decree in favour of Naina Gounder and the first respondent herein. Aggrieved by this, the appellant herein preferred an appeal in A.S. 187 of 1978, Sub-Court, Salem. The learned subordinate Judge found that the agreement dt. 12-6-1959 was executed by the appellant and was also true and that S. 14 of the Limitation Act can be taken advantage of by Naina Gounder and the first respondent to exclude the time during which they prosecuted O.S. 856 of 1968 and A.S. 88 of 1972 and thus, the suit instituted was in time. On those conclusions, the lower appellate Court dismissed the appeal. It is the correctness of this that is challenged in this second appeal on the' question of law referred to at the outset.

6. Learned counsel for the appellant' first contended that the respondents had not established the execution of the agreement under Ex. A4, dt. 12-6-1959, and relied in this connection on some discrepancies regarding the place of execution as well as the no writing of the agreement on stamp paper. On the other hand, learned counsel for the respondents submitted that the scribe and one of the attestors to the agreement Ex. A4 had been examined and their evidence had been accepted by the courts below and in view of that, it is no longer open to the appellant to contend that the execution of Ex. A4 had not been established. Referring to the minor discrepancies as well as the absence of stamp papers, counsel submitted that the discrepancies are very trivial and inconsequential and such an agreement need not be written on stamp papers.

7. P.Ws.2and3arethescribeandoneof the attestors to Ex. AA agreement, respectively.. They have given evidence that They had seen the appellant and Naina Gounder signing Ex. A4. The other attestor was dead, according to P.W. 3 and therefore was not examined. Naina Gounder, examined as P.W. I had also affirmed that the appellant executed Ex. A4 on 12-6-1959. Apart from this, the signature of the appellant found in Ex. A4 was not found in be in any manner dissimilar to his admitted signature. The circumstance that Ex. A4 was not written on stamp paper is not decisive regarding its ge7nuilieness. That however would not in any mariner detract from the execution of that agreement, as spoken to by P.Ws.p.3 and 4. Likewise, the non-registration of the agreement, though written at the Sub. Registrar's office, would not render it any the less a genuine document, for it is not obligatory to register an agreement for sale. The minor discrepancies relating to the place of execution of Ex. A4 are also of no serious consequence, as P.W.2, one of the attestors, is related to both the parties-and P.Ws. 2 and 3 have given cogent evidence regarding the execution of Ex. A4. Their evidence had been accepted by the courts below. Nothing has been placed before this Court to show that the acceptance of there evidence regarding the execution of Ex. A4 by the court below is in any manner erroneous or otherwise unacceptable. Under those circumstances, the Courts below were right in concluding that Ex. A4 agreement was executed by the appellant in favour of Naina Gounder on 1216-19S.

7A. Learned counsel next contended that the courts below were in error in holding that the suit instituted on 24-7-1974, was not barred by limitation. According to the learned counsel, the institution of the suit in- O. S. 856 of 1968 and the appeal there from in A.S. 88 of 1972, would not in any manne; operate to stop running of time for the enforcement of the rights under the agreement, Ex. A4 and that there is no scope whatever for the respondents claiming the benefit of S. 14(1) of the Limitation Act. In this connection, learned counsel pointed out that none of the requirements of S. 14(1) of the imitation Act is satisfied by the respondents herein. Attention in this connection was also drawn by the learned counsel for the appellant to certain decisions, which will be referred to later in the course of this judgment. On the other hand, learned counsel for the represents submitted that in the course of the suit O.S. 856 of 1968, a finding had been rendered that the agreement under Ex. A4 (which was Ex. B4 in that suit) was not true and genuine and till that finding was set aside in A.S. 88 of 19172, on 24-8-1973, no steps could have been taken by the respondents to enforce the rights arising out of that agreement, and therefore, at least that period between that date of disposal of the suit viz, 30-3-1971 and the disposal of the appeal in .A.S. 88 of 1972 viz. 24-8-1973 should be excluded applying the provisions of S. 140 Y the-Limitation Act.

8. Before proceeding to consider the question of limitation, it would be necessary to briefly refer to the prior proceedings initiated by the appellant herein. On 19-81968, the appellant instituted the suit O.S. 856 of 1968, District Munsif Court, Sankari at Salem, praying for a decree for permanent injunction against Naina Gounder and the first respondent herein with reference to the present to the present suit property. Ex. B2 is the plaintiff that suit and there in, the appellant had claimed title on the basis of Ex. B dt. 265-1959 and complained or an attempted trespass by Naina Gounder and the first respondent. In the written statement, filed by Naina Gounder and the first respondent herein,' marked as Ex. B3, they have characterized the prior transactions with reference to the suit property as loan transaction and put forward the agreement Ex. A4 dt. 12-6-1959 to sustain their continuance in possession of the suit property. Ex. A5 dt. 30-3-1971 is the copy of judgment in O.S. 856 of 1968 and it is seen there from that it was held that the sale under Ex. B1 dt. 26-5-1959, (Ex. A1 in that suit) was true and valid and the appellant was in possession of the suit property. On issue No. 2, relating to the

truth of Ex. A4, dt. 12-6-1959 (which was Ex. B4 in, that suit) in para 12 of the judgment Ex. AS, the learned District Munsif found that Naina Gounder and the first respondent failed to show that the agreement was entered into by the appellant. It was also found by the court that the prior transactions were real and genuine transactions and not intended to be nominal ones for the purpose of discharging debts. A decree for injunction was granted on the aforesaid findings. However, on appeal in A.S. 88 of 1972 before the District Court, Salem as could be seen from Ex. A6 dt. 24-8-1973, the finding recorded by the trial court on issue No. 2, regarding the genuineness of Ex. A4 dt. 12-6-1959 (Ex B4 in that suit) was vacated and that controversy was left open. That is how that controversy has come to be agitated now in the course of the suit, out of which this second appeal has arisen.

9. Earlier, it has been seen how the courts below have now found that Ex. A4 dt. 12-6-1959 is a genuine document executed by the appellant. There under, Naina Gounder was entitled to call upon the appellant to convey the suit property, on the expiry of ten years from 12-6-1959 on payment of a sum of Rs. 1300. In other words, Naina Gounder had a right to specifically enforce the agreement under Ex. A4 on and from 12-6-1969, subject, of course, to the period of limitation prescribed therefore. Under Art. 54 of the [Limitation Act, 1963](#) (hereinafter referred to as the Act for short), the period prescribed is three years and, in this case, that period has to be reckoned from the date fixed for the performance. viz, 12-6-1969. In the ordinary course, the suit should have been instituted by Naina Gounder and the first respondent herein on the basis of Ex. A4 within three years from 12-6-1969 i.e. on or before 12-6-1972. However, the suit had actually been instituted only on 24-7-1974. It is significant that in the plaint, Naina Gounder and the first- respondent have not referred to any ground of exemption from the law of limitation, as contemplated by O. VII, R. 6, C.P.C. Only in the reply statement, filed by Naina Gounder and the first, respondent, a reference has been made to S. 14(1) of the Act. The question is whether Naina Gounder and the first respondent can avail themselves of the benefit of S. 14(1) of the Act. Under S. 14(1) of the Act, 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. Even on the assumption that Naina Gounder and the first respondent had been prosecuting as defendants O.S. 856 of 1968 with due diligence, and also the appeal there from in A.S. 88 of 19'12, before they can claim the benefit of exclusion of time under S. 14(1) of the Act, it must be established that that proceeding related to the same matter in issue and was prosecuted -in * good faith in a court, which was unable to entertain the proceeding unaccounted defecting jurisdiction or other cause of a like nature. It will thus be seen that before the benefit of S. 14(1) can be clarified, the following conditions must be fulfilled. (1) The plaintiff must have prosecuted another civil proceeding with due diligence, whether in a court of first instance or of appeal or revision against the defendant. (2) The proceeding so prosecuted should relate to the same matter. (3) Such proceeding must, have been prosecuted in good faith in a court, which from defect of jurisdiction or other cause of like nature, was unable to entertain it. Whether these requirements have been fulfilled by Naina Gounder and the first respondent in this second appeal, may now be considered.

10. No doubt, Naina Gounder and the first respondent had prosecuted O.S. 856 of 1968, as defendants and not as plaintiffs. But it would suffice if a party had been litigating for asserting his rights in the appropriate court, whether as plaintiff or even as defendant, as in this case. It can therefore be taken that the plaintiffs, in O.S. 980 of 1974. District Munsif Court, Sankari at Salem, were in fact prosecuting another civil proceeding in O.S. 856 of 1968 when they litigated for their right with reference to the suit property in the suit. However, that would not by itself enable Naina Gounder and the first respondent to claim the benefit of exclusion of time without fulfilling the other conditions laid down in S. 14(1) of the Act. It is true that the property in respect of which rights were litigated in 'O.S. 856 of 1968 and in O.S. 980 of 1974, out of which the present second appeal has arisen, is the same, But it cannot be said that the prior proceeding in O.S. 856 of 1968 related to the same matter in issue as O.S. 980 of 1974, District Munsif court, Sankari at Salem. The matter in issue in O.S. 856 of 1968 was i.e. of possession, while, the matter in issue the present suit is one of availability of the relief of specific performance under the agreement. It cannot therefore be said that

.the proceeding in O.S. 856 of 1968 and O.S. 980 of 1974, related to the same matter in issue. Not only this, the further requirement of S. 14(1) is that, O.S. 856 of 1968 must have failed owing to defect in jurisdiction or other cause of a like nature. In this case, it cannot be said that O.S. 856 of 1968 - was not entertained by the Court owing to a defect of jurisdiction for other cause like nature. On the other hand, it is seen that the proceedings in O.S. 856 of 1968, terminated on merits, and in such an event, then, applicability of S. 14(1) of the Act, will stand excluded. It is thus seen that Naina Gounder and the first respondent have not fulfilled the requirements of S. 14(1) of the Act in order to claim the benefit of exclusion of time and therefore, the benefit of that provision cannot be pressed into service to support the institution of the suit on 24-7-1974, as having been filed within time.

11. It would suffice to refer to the decisions relied on by the learned counsel for the appellant. In *Plaintively Pillai v. Santhanam Iyer*, S.A. 791 of 1979 TLNJ 463, the scope of 'S. 14(1) of the Act had been exhaustively dealt with and it has been pointed out that in order to claim the benefit of S. 14(1) of the Act, another civil proceeding must have been prosecuted in good faith and that there should be identity of matter in issue and further that the proceedings, instituted earlier must have come to a close on the ground of defect of jurisdiction or other cause of a like nature. On a consideration of the facts and the circumstances of this case, it has already been found that Naina Gounder and the first respondent have not fulfilled the requirements of S. 14(1) and applying the principle in the decision referred to above, the benefit of S. 14(1) could not be claimed by the plaintiffs in O.S. 980 of 1974.

12. The decision in *Narayanasami Reddiar, v. Jayarama Reddiar*, (1971) 2 Mad LJ 369 lays down that the indispensable ingredient for the application of S. 14(1) of the Limitation Act 1908 is that the court in which the other proceeding was pending, must be unable to entertain it from defect of jurisdiction or other cause of a like nature and that if this condition is not satisfied, even if the other conditions are satisfied, S. 14(1) will not apply. Though this decision was rendered with reference to S. 14(1) of the Limitation Act 1908, it applies also to S. 14(1) of 1963 Act. In the absence, therefore, of the fulfillment of the condition relating to the

inability of the Court to entertain the proceeding from defect of jurisdiction or other cause of Eke nature, there is no question of the application of S. 140 at all. The trial Court has not bestowed any attention to the fulfillment of the requirements of S. 14(1) as aforesaid, but has merely proceeded on the footing that as Naina Gounder and first respondent were prevented from filing a suit from 15-8-1968 till the disposal of A.S. 88 of 1972, that period is to be excluded from computing the period of limitation. That period cannot by the application of S. 14(1), of the Act, be excluded, as the conditions therefore had not been satisfied. The lower appellate Court, by a very curious process of reasoning applied S. 14(1) of the Act, by referring to explanation (c) to S. 14(3) of the Act. The lower appellate Court was inclined to hold that the decision rendered in O.S. 856 of 1968 can be construed as misjoinder or causes of action and it should be deemed to be a cause of a like nature with defect of jurisdiction. It is difficult to appreciate this line of reasoning adopted by the lower appellate court to give the benefit of S. 14(1) of the Act to Naina Gounder and the first respondent. Thus, taking into account the requirements to be fulfilled before the exclusion of time under S. 14(1) of the Act, could be claimed, it is seen that Naina Gounder and the first respondent have not satisfied the vital and more important requirements for claiming benefit of S. 14(1) of the Act, though it may be that they were bona fide prosecuting some proceeding before a civil court with diligence. That would mean, the suit instituted by Naina Gounder and the first respondent was not in time as it was barred when it was instituted.

13. It now remains to consider the argument of the learned counsel for the respondent that the time taken between the first adjudication in O. S. 956 of 1968 on 30-3-1971 and the final adjudication in A.S. 88 of 1972 on 24-8-1973, should be excluded in computing the period for the institution of the suit. It has earlier been noticed as to how on 12-6-1969, Naina gounder and the first respondent became entitled to rights under the agreement of sale Ex A4. In other words, the cause of action for the enforcement of rights under Ex. A4 arose on 12-6-1969. Under S. 9 of the Limitation Act, when once the time has begun to run, no subsequent disability or inability to institute a suitor make an application, stops it. Though at the time when the cause of action for the enforcement of the rights under Ex. A 4 arose on 12-6-1969 the suit in O.S. 856 of 1968 had been filed on 19-8-1968, the

institution of that suit would not in any manner affect the running of time for purposes of enforcing the rights under -Ex. A4. Likewise, the decision rendered in O.S.856 of 1968 and in A.S.88 of not in any manner affect the running of time for securing the relief of specific performance on the basis of Ex. A4, as those proceedings cannot have the effect of stopping the running of time, which had already commenced to run on and from 12-6-1969. Naina Gounder and the first respondent, if they had desired to enforce their rights. under Ex. A4, ought to have instituted the suit within the period of limitation prescribed for such a suit under Art. 54 of the Act, and should have either moved for a joint trial of that suit along with O.S. 856 of 1968 or should have applied for stay of further proceedings. under S. 10, C.P.C. on the ground that one of .the issues was common in both the suits. It will be useful in this connection to refer to the, unreported decision of a Division Bench: of this Court in P. N. Rangasami Naidu v. C. V. Venkatarama Dharmasthapanam, Coimbatore, L.P.A. I of 1968, judgment dt. 9-4-1969 It has been-pointed out by the bench that unless the earlier decree prevented the pursuit of remedy, the limitation in respect of, which had already started, the running of time was not suspended or excluded. That principle would be applicable on the facts and the. circumstances of this case and it is therefore to be held that there was absolutely no impediment for Naina Gounder and the first respondent to institute the suit for specific performance on the basis of Ex. A.,4, even immediately after the cause of action arose, as the first adjudication in O.S. 856 of 1968 was only on 30-3-1971, long after the cause of action for enforcing rights under the agreement under Ex. A4 arose on 12-6-1969. There is therefore no substance in the contention of the learned counsel for the respondents.

14. Lastly, learned counsel for, the appellant submitted that Naina Gounder and the first respondent had suppressed the prior adjudication with reference to the several transitions of sales and had come to court maintaining that those transactions are all nort4nal ones and had even persisted in the course of the present suit in such a stand and had followed it up by the examination of a witness viz, P.W. 5, and therefore, the discretionary relief of specific performance ought not to be granted. Even though Naina Gounder and the first respondent were parties to O.S. 856 of 1968 and they raised the plea that the several transactions were all nominal ones and such a plea had been negative, they did not fully refer

to the finding so rendered in the course of the present suit, but had made it appear as if only the finding regarding Ex. A4 had been set aside by the lower appellate Court and on that footing had prayed for the relief 'of. ' specific performance, In other words, according to the learned counsel for the appellant, the respondents had suppressed the findings in prior proceedings and had thus not come to Court with clean hands and are therefore disentitled to claim the discretionary relief of specific performance. Even though there is considerable force in this contention, it is not necessary to go into this, as the suit had earlier been held to be barred by limitation. For the foregoing reasons, the second appeal is allowed, the judgments and the decrees of the courts below are set aside and the suit O.S. 980 of 1974 is dismissed with costs throughout.

15. Appeal allowed.

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