

Ramachandra Iyer Vs. Vadivelu

Ramachandra Iyer Vs. Vadivelu

SooperKanoon Citation : sooperkanoon.com/793275

Court : Chennai

Decided On : Oct-16-1987

Reported in : AIR1989Mad75; (1987)IIMLJ256

Judge : S.A. Kader, J.

Acts : [Limitation Act, 1963](#) - Sections 18

Appeal No. : Appeal No. 922 of 1980

Appellant : Ramachandra Iyer

Respondent : Vadivelu

Advocate for Pet/Ap. : R.S. Venkatachari, Adv.

Disposition : Appeal partly allowed

Judgement :

S.A. Kader, J.

1. The appeal is against the judgment and decree of the court of the Subordinate Judge of Tiruvannamalai in O.S. 86 of 1979. The first defendant is the appellant.

2. This is a suit on two promissory notes. The case of the plaintiff is that the first defendant, who is the father of the second defendant, borrowed from the plaintiff Rs. 7800 on 30-10-1972, and executed the suit first promissory note agreeing to

repay the said sum with interest at 12 per cent per annum. He paid on several occasions in all Rs. 2614, and the balance is due. The first defendant again borrowed Rs. 2000 from the plaintiff on 19-9-1974, and executed the suit second promissory note promising to repay the same with interest at 12 per cent per annum. He has paid Rs. 440 in all towards this promissory note and the balance is due. In view of the Debt Relief Acts and Moratorium laws, the suit is not barred. As the defendants 1 and 2 constituted a joint Hindu family, the second defendant is also liable to pay the debt.

3. The first defendant contended that he borrowed Rs. 6700 only from the plaintiffs father in 1967 for starting a new business and the promissory note was executed in favour of his son in view of the earlier debt. He also claimed to have repaid Rs. 2998 towards the said promissory note. He admitted the borrowing of Rs. 2000 under the suit second promissory note and claimed to have paid Rs. 640 therefor. He also claimed the benefits of various Debt Relief Acts. The suit is also barred by time.

4. The second defendant filed a written statement claiming that the debt was not for family purposes. The first defendant has started a new business in his individual capacity and the second defendant is therefore not liable.

5. On the above pleadings, the following issues were framed for trial--

(1) Whether the suit 'A' promissory note is not supported by consideration?

(2) Whether the partial discharge pleaded is true?

(3) Whether the second defendant is not liable and therefore unnecessary party to the suit?

(4) Whether the defendant is not liable for interest for Rs. 2959?

(5) Whether the suit claim is barred by limitation?

(6) To what relief?

6. The learned Subordinate Judge held on issue 1 that the suit first promissory note was fully supported by consideration. On issue 2 he held that the first defendant has paid Rs. 2718. In respect of Ex.A.2, the learned Subordinate Judge has found that the first defendant has paid Rs. 480. On issue 3 the second defendant was not liable. The Court below also found that the first defendant was liable for interest. Issue 5 was answered in favour of the plaintiff and held that the suit was not barred. In the result the suit was decreed against the first defendant only less Rs. 144 and less interest that had accrued from 22-7-1975 to 15-1-1976 with costs. The suit against the second defendant was dismissed with costs. Aggrieved thereby the first defendant has come in appeal. The plaintiff has not filed any cross-appeal or cross-objections.

7. The only point that is canvassed before me by Mr. R.S. Venkatachari, learned counsel for the appellant, is on the question of limitation.

8. Point: Ex. A.1 promissory note is dated 30-10-1972 and the suit ought to have been filed on or before 30-10-1975, but it has been filed only on 12-2-1979. The plaintiff claims the benefit of the moratorium legislations and exclude the period as the first defendant is an indebted person. An 'indebted person' under the Tamil Nadu Act 48 of 1975 means any person from whom any debt is due provided that he shall not be assessed to income tax or sales tax or property tax of the aggregate annual rental value of not less than Rs. 2400. It is admitted that the first defendant is not an assessee of income-tax or sales tax. Exs.A.3 to A-6 are property tax receipts in the name of the first defendant which show that his house has been assessed on an annual rental value of Rs. 1640 only. He is therefore, an indebted person within the meaning of these moratorium enactments and this is fairly conceded by the learned counsel for the appellant.

9. Now to the period of exclusion. Under the Tamil Nadu Indebted Persons Relief Act 48 of 1975, the institution of a suit against an indebted person is barred from 22-7-1975 to 16-1-1976. Then comes the Tamil Nadu Indebted Persons (Temporary Relief) Act 16 of 1976 which bars the institution of a suit for a period of one year from 15-1-1976. This period of one year has been enlarged to one year and six months under the Tamil Nadu Debt Relief Laws Amendment Act of 1977.

This again has been enlarged to two years by the Tamil Nadu Debt Relief Laws Second Amendment Act of 1977 and this again has been enlarged to 2--1/2 years under the Tamil Nadu Debt Relief Laws Act 2 of 1978. The result is, there has been moratorium against the institution of the suit from 22-7-1975 to 14-7-1978 for a total period of two years 11 months and 23 days. If this period is excluded suit on Ex.A.1 promissory note must have been filed on or before 23-10-1978. But, the suit has been filed only on 12-2-1979 and is barred.

10. The learned Subordinate Judge has, however, relied upon Ex.B. 3 notice dt. 3-10-1978 given by the first defendant acknowledging the liability under Ex. A. 1 and has held that this acknowledgment extended the period of limitation by three years from 3-10-1978 and the suit filed on 12-2-1979 is in time. But, this view is erroneous in view of the new Limitation Act of 1963. Under Section 18 of the Act, where before the expiration of the prescribed period for a suit, an acknowledgment of liability has been made in writing, a fresh period of limitation shall be computed from the time when the acknowledgment was so made. Under Section 2(j) of the [Limitation Act, 1963](#), which has been newly introduced, the terms 'period of limitation' and 'prescribed period' have, been defined thus--

' 'Period of limitation' means the period of limitation prescribed for any suit, appeal or application by the Schedule; and 'prescribed period' means the period of limitation computed in accordance with the provisions of this Act.'

This is a new provision introduced by the Act of 1963. The old Act contained no such definition of the expression 'period prescribed'. It was held under the old Act that even in cases where the plaintiff was entitled to the exclusion of a time under the provisions of some other Act, the period would be a 'period prescribed' within the meaning of Section 19 of that Act, and saved limitation, (vide -- Subbarya v. Eswaramoorthi, : AIR1963 Mad202 and Firm Kamata Prasad v. Gulzari Lal, : AIR1955 All41). These decisions can no longer be considered good law under the new Act As pointed out above, the expression 'prescribed period' is now defined to mean the 'period of limitation' prescribed by the schedule and computed according to the sections in the Act. By the Limitation Act of 1963, a period which is required to be excluded under the provisions of some other Act, in computing the period of

limitation cannot be treated as a 'prescribed period' and an acknowledgment made during that period will not be sufficient for the purposes of Section 18 of the Limitation Act of 1963. I therefore hold that the claim on Ex.A. 1 is barred by time.

11. Ex.A. 2 promissory note is dt. 19-9-1974 and the suit ought to have been filed on or before 19-7-1977. If the period of two years, 11 months and 23 days covered by the Tamil Nadu Act 48 of 1975 and the subsequent moratorium enactments in respect of indebted persons as pointed out above, is excluded the suit could be filed on or before 12-7-1980. As the suit has been filed on 12-2-1979, it is in time in respect of Ex.A. 2 promissory note.

12. In the result, the appeal is allowed in part, the judgment and decree of the Court below are modified and there will be a decree in respect of Ex.A. 2 promissory note for a sum of Rs. 2336-35 claimed in the suit in respect of the said promissory note less Rs. 40, i.e. Rs. 2295-35 less interest from 22-7-1975 to 15-1-1976 with subsequent interest at 6 per cent per annum from the date of plaint till payment and proportionate costs throughout. The suit is dismissed in respect of Ex.A. 1 promissory note but without costs.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com