Muthiah Vs. Michael and anr.

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Court : Chennai

Decided On : Apr-25-1973

Reported in : AIR1974Mad237

Judge : Kailasam and ;N.S. Ramaswami, JJ.

Acts : Limitation Act, 1908 - Sections 18; Code of Civil Procedure (CPC), 1908 - Order 21, Rule 90

Appeal No. : Letter Patent Appeal No. 43 of 1967

Appellant : Muthiah

Respondent : Michael and anr.

Judgement :
1. In this Letters Patent Appeal, the judgment of Alagiriswami, J., dismissing S.A. No. 85 of 1965, is questioned.

2. The first defendant in the suit is the appellant before us. The property in dispute is an agricultural land measuring about 70 cents in extent. The second defendant in the suit is the father of the plaintiff who filed the suit for declaration of his title and for possession of the property.

3. The plaintiff had left India for Ceylon while he was young. The land in question was in the physical possession of his father, the second defendant in the suit. While the plaintiff was in Ceylon, the second defendant sold the property to the

first defendant (appellant before us) under the sale deed Ex. B-1 dated 24-5-1943. In this sale deed, the second defendant described himself as Michael, son of Royappa. As a matter of fact, the second defendant's name is Thaveethu though his father's name Royappa. Michael is the name of the plaintiff. As the property was standing in the name of the plaintiff who was away in Ceylon, the second defendant thought fit to describe himself as Michael and execute the sale deed Ex.B-1 in favour of the first defendant. From the date of sale, the first defendant has been in possession of this property. The plaintiff returned to India by the end of 1959 and in 1960 he filed the suit, out of which this appeal arises, for declaration of his title to the property and for possession. He alleged that the sale as per Ex.B-1 had been brought about as a result of fraud between the two defendants, that the same is void as against him and that he was entitled to recover possession of the property. By the time the suit was instituted, the property was in the possession of the first defendant for about 17 years. The plaintiff pleaded Section 18 of the Indian Limitation Act (Act IX of 1908) to get over the plea of limitation. That plea was not accepted by the trial Court and the suit was dismissed on the ground of limitation. However, the first appellate court took a direction view and held that Section 18 is applicable to the facts of the case and allowed the appeal and decreed the suit. The first defendant, who is the appellant before us, filed the second appeal which was heard by Alagiriswami, J., and the learned Judge, relying upon Rahimbhoy Habibbhoy v. Charles Agnew Turner, (1893) ILR 17 Bom 341 (PC) and Thakur Mahton v. Jhaman Mahton, AIR 1924 Pat 496 held that Section 18 would be applicable to this case. This view of the learned Judge is challenged in this Letters Patent Appeal.

4. Admittedly, the property had been originally purchased in the year 1923, as per the sale deed Ex. A-1, for a sum of Rs. 100/-. The plaintiff then was aged about 13 years. His mother was the first wife of the second defendant and from the evidence on record it is seen that she died about a year prior to the above sale transaction. It appears from the circumstances that the second defendant should have taken the sale in favour of his then minor son, the plaintiff, who had lost his mother a few months prior to the transaction. Later, the second defendant had taken a second wife and the plaintiff left India and had been working in Ceylon. It appears that the second defendant had been treating the property as his own and

when necessity arose to sell the property, he himself executed the sale deed Ex. B-1 in favour of the first defendant, because the plaintiff happened to be in Ceylon.

5. The finding of the courts below is that the second defendant never had an alias name as Michael and that his name has always been Thaveethu, that the first defendant vendee had also known this fact and that both the defendants were guilty of fraud in describing the second defendant as Michael. The finding is that he sale transaction under Ex. B-1 was a fraudulent one. But, the question is whether this fraud, to which the first defendant is also said to have been a party, would save limitation under Section 18 of the old Limitation Act. Section 18 reads-

"Effect of fraud: Where any person having a right to institute a suit or make an application has, by means of fraud, been kept from the knowledge of such right or of the title on which it is founded, or whether any document necessary to establish such right has been fraudulently concealed from him, the time limited for instituting a suit or making an application--(a) against the person guilty of the fraud or accessory thereto, or (b) against any person claming through him otherwise than in good faith and for a valuable consideration,--shall be computed from the time when the fraud first became known to the person injuriously affected thereby, or, in the case of the concealed document, when he first had the means of producing it or compelling its production."

The first appellant Court has held that as the plaintiff came to know of the fraudulent sale only after he returned to India in November 1959, the period of limitation started only from the date of that knowledge. It also said that Art, 95 of the Old Limitation Act would be applicable to this case. That is clearly wrong, for Art. 95 relates to suits to set aside decrees obtained by fraud or for other reliefs on the ground of fraud. The present suit is one for declaration of title and for possession. That article has nothing to do with a suit for possession. It is Art. 144 of the old Act that is applicable. Whether that be, the question is whether the date of knowledge of the plaintiff of the fraud in the execution of the sale under Ex. B 1 is the relevant date regarding the period from which the limitation begins to run. The plaintiff has vaguely stated that he had been getting letters from his father (2nd defendant) even after the sale under Ex. B 1 that the latter was looking after

the land. This piece of evidence of the plaintiff has been accepted to be proved, even though he has not produced any letter said to have been written by the father. We will take it that the second defendant had been writing such letters, because that is the finding of the courts below. But, there is no finding that the first defendant was a party to the second defendant writing such letters to the plaintiff. This fact has been noticed by Alagiriswami J., and this is what the learned Judge observes-

"There is little doubt that the plaintiff was kept from knowledge of this transaction by the fraud of the second defendant. The evidence of the plaintiff that he was receiving letters from the second defendant that his land was safe and had been looked after, was rightly accepted by the appellate Judge. What is argued for the appellant however is that the first defendant cannot be said to be a party to the fraud of keeping the plaintiff from the knowledge of the transaction."

The question is whether the fact that the first defendant was a party to the fraud regarding the sale transaction is sufficient to save limitation under Section 18 of the old Limitation Act. It is clear from the finding of the courts below that the first defendant was not a party to the subsequent fraud alleged to have been committed by the second defendant father in writing letters to the plaintiff, stating that he has been looking after the landed property. We are of the opinion that the fraud relating to the sale transaction itself would not help the plaintiff in getting over the plea of limitation in this case. As already seen, under Section 18 of the old Limitation Act, the plaintiff should have been kept out of knowledge of his right to sue by means of fraud. In the present case, the suit is one for possession. the plaintiff got that right one the first defendant got that right once the first defendant got into possession of the property. Undoubtedly, the possession of the first defendant was that of a trespasser. Immediately on his getting into possession of the property, the plaintiff got a right to file a suit. The question is whether the first defendant was a party to any fraud by which the plaintiff was kept out by which the plaintiff was kept out of knowledge regarding that right, viz., the right to file a suit for possession. We are quite clear that the alleged fraud relating to the sale transaction itself has nothing to do with the present question viz., that the plaintiff had been kept out of knowledge office right to file a suit for possession because of

fraud. If there is evidence to show that the first defendant was also a party to the subsequent fraud alleged against the second defendant, by the latter writing letters to the plaintiff saying that the property had been looked after properly, then it would be a case of the first defendant having prevented the plaintiff from filing the suit for possession by means of fraud. But, that is not the case here. (1893) ILR 17 Bom 341(PC), is a case where the property itself had been concealed from the knowledge of the Official Assignee and it was held that because such concealment was due to fraud, the period of limitation began to run only from the date on which the Official Assignee came to know of the existence of the property. With respect to the learned Judge who disposed of the second appeal, we are unable to see how this decision would help the plaintiff in this case. The first defendant's possession was certainly open and hostile. In pursuance of the sale deed, he had the patta transferred in his name and he had been paying the kist for the land. There is no question of the first defendant's possession having been concealed from the knowledge of the plaintiff by any act done by the first defendant himself. Surely, the first defendant does not owe any duty to the plaintiff to inform him that he was in possession of the property as a trespasser. It is needless to stress that the mere fact that the first defendant was a party to the sale transaction which is held to be a fraudulent one, does not in any way help the plaintiff regarding this question.

6. The decision in AIR 1924 Pat 496, also does not help the plaintiff. That was a case under Order XXI, Rule 90, Civil Procedure Code, but the application had been filed out of time. The facts found were that due to the fraud committed by the decree-holder and the auction-purchaser, proper processes had not been taken in execution and that the judgment-debtor had been kept out of knowledge regarding the court sale. It had been contended on behalf of the auction-purchaser that at least after he took possession of the property in pursuance of the court sale, the judgment-debtor ought to have come to know about his right and he cannot be heard to plead Section 18 of the Limitation Act in filing his application long afterwards. This contention was rejected, the court observing that once the commission of fraud is established, it could be held that the fraud continued till the person who had been defrauded had found out the fraud. This decision certainly would not help the plaintiff, because as pointed out earlier, no fraud at all had been

established regarding the act of possession on the part of the plaintiff. Therefore, there is no question of the fraud continuing. In these circumstances, we hold that the view taken by the trial Court that Section 18 of the Limitation Act of 1908, is not applicable to the facts of the case and that the suit is barred by limitation, is correct.

7. Accordingly this Letters Patent Appeal is allowed. The decrees in the second appeal and in the first appeal are set aside. The decree and judgment of the trial Court are restored. But, there will be no order as to costs in this appeal.

8. Appeal allowed.