Rathina thevan Vs. Packirisami thevan

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Court : Chennai

Decided On : Mar-14-1928

Reported in : AIR1928Mad1088

Appellant : Rathina thevan

Respondent : Packirisami thevan

Judgement :

Devadoss, J.

1. The plaintiffs suit is on a promissory note executed by the defendant on 16th November 1921, at Kaulalampur, Federated Malay States, for 70 dollars- The defence is limitation. The District Munsif has decreed the suit and defendant prefers this civil revision petition. The petition came on before the learned Chief Justice who directed it to be posted before a Bench of two Judges as the question involved is of some importance.

2. The plaintiff and defendant are natives of Mannargudi taluk, Tanjore District. They went to the Federated Malay States to earn their livelihood; and while they were there, the defendant borrowed 70 dollars of the plaintiff and executed the promissory note sued on. The plaintiff instituted Civil Suit No. 166 of 1923 on the promissory note in Kaulalampur Magistrate's Court in the Native State of Selangor and obtained judgment on 15th March 1925. He filed O.S. 319 of 1924-in the District Munsif's Court at Mannargudi on the foreign judgment obtained by him,

and the suit was dismissed as it was found that the Magistrate of Kaulalampur had no jurisdiction to entertain O.S. 166 of 1923 against the defendant. The plaintiff has now brought this suit on the promissory note alleging that he bona fide prosecuted O.S. 319 of 1924 in the District Munsif's Court against the defendant and that he is entitled to deduct; the time taken up in the disposal of the suit, under Section 14, Limitation Act. The District Munsif found that the defendant returned to British India a few days before 8th March 1923 and the plaintiff bona fide prosecuted the suit in the District Munsif's Court and is entitled to the benefit of Sections 13 and 14, Limitation Act.

3. It is clear that Section 14 cannot apply to this case as the cause of action in O.S. 319 of 1924 was different from the Cause of action in this suit. Here the plaintiff bases his suit on the promissory note executed on 16th November 1921. In the original suit he based his claim upon the foreign judgment obtained in the Magistrate's Court at Kaulalampur. Mr. Salla-Guruswami Chettiar, who appears for the respondent, contends that inasmuch as the suit in the Kaulalampur Court was based on the promissory note, and as the promissory note is the basis of action in this suit, the cause of action must be considered to be one and the same. This argument overlooks the fact that the promissory note was merged in the decree passed by the Kaulalampur Court; and the basis of action in O.S. 319 of 1924 was not the promissory note but the decree obtained on the promissory note. It cannot be said that the decree is the same as the promissory note. The defence to the action on the promissory note is not the same as the defence to the action on the foreign judgment. We have no hesitation in holding that the cause of action in this suit is different from the cause of action in O.S. 319 of 1924 and therefore Section 14, Limitation Act, cannot be invoked by the plaintiff to save limitation.

4. The next question is: Is the plaintiff entitled to the benefit of Section 13, Limitation Act; it is in the following terms:

In computing the period of limitation prescribed for any suit the time during which the defendant has been absent from British India and from the territories beyond British India under the administration of the Government shall be excluded.

5. The District Munsif has not discussed this point. It is urged for the petitioner by Mr. Sesha Ayyangar that the section applies only to cases where defendant was in British India when the period of limitation began to run against the plaintiff and does not apply to a case where the cause of action arises out of British India. The section is in Part 3 of the Act which is headed 'Computation of Period of Limitation.' In computing the period of limitation for any suit, the time during which the defendant has been absent from British India shall be excluded. It obviously means computing the period of limitation for a suit which is maintainable in India, and therefore the transaction must have taken place in India. Two interpretations with regard to the expression 'absent from British India' are possible. One is that the person should have been present in British India and should have left it, for the word ' absent' implies presence at some time. The other interpretation is that absence means, not being present in British India and does not necessarily imply that the person should have been once present in British India. The view of the Calcutta High Court is, though the point has not been expressly decided, that the defendant need not have been present in British India at the time when the cause of action arose; and a suit would be maintainable however long the period of time be when the defendant returns to British India. It is unnecessary in the view we take of this case to decide the question, whether Section 13, Limitation Act, applies only to cases where defendant was in India, at the time when the transaction took place and left it afterwards, or whether it applies to all cases of persons not in British India. In this case the transaction took place outside British India, though the contracting parties are natives of British India. The time did not begin to run against the defendant in British India. To hold that the plaintiff is entitled to bring the suit on a foreign bill by reason of the presence of the defendant in British India would lead to any foreign bill or foreign cause of action however old it might be, and however long it may have been barred, being sued on in British India within she period of limitation prescribed by the Limitation Act.

6. Supposing a bill which is barred by the law of limitation in England or in Prance is sent to India when the promiser happens to visit it, could a suit be brought on it because the defendant is in British India, and the time could only run from the time he came into India. The defendant coming to India does not give rise to any cause of action. Section 20, Civil P.C., provides among other things that a suit could be

instituted in a Court within whose local limits the defendant resides. The residence of a person within the jurisdiction of a Court is not the cause of action for a suit. But a residence gives jurisdiction to the Court because he lives within its territorial jurisdiction. The plaintiff did not get a cause of action against the defendant because he returned to India in 1923. It would be stretching the provisions of Section 13 to an unwarranted limit if we hold that in whichever part of the world the cause of action might have arisen, and however old the cause of action might be, a suit is maintainable on it here, provided it is brought within the period of limitation prescribed by the Act for such suit, the time being calculated from the date of the arrival of the defendant in British India.

7. In Atul Kristo Bose v. Lyons & Co. [1887] 14 Cal. 457 it was held that

the words "absent from British India' in Section 13, Limitation Act, should be construed broadly and not limited in their application only ,to such persons as have been present there or would ordinarily be present, or may be expected to return.

8. The plaintiff brought a suit in the Small Causes Court at Calcutta against Jermiah Lyon & Co., a firm carrying on business at 4 Lombard Court, Gracechurch Street, London, to recover Rs. 539-10-0 as money had and received by the defendants to the plaintiff's use and a further amount by way of damages and interest. The Chief Judge of the Small Causes Court made a reference to the High Court, whether Section 13, Limitation Act, applied to the case. Wilson & O'Kinealy, JJ., held that Section 13 applied to the case and saved the plain tiff's suit from the bar of limitation. It is admitted that the cause of action arose wholly or in part at Calcutta. The Judge of Small Causes Court was of. opinion that absence implied some previous presence; and having regard to the general purport of the Act, some presence after the time the limitation began to run was necessary. With regard to that opinion the learned Judges observe:

and if we were to attempt to restrict the meaning of 'absent' in such ways as are contended for, there is probably no limit to the number of suggestions that might be made and, as far as we can see, no reason for accepting one suggestion in preference to another * *

9. They referred to 21 Jas. 1, C, 16, Section 7, and 4 and 5 Anne. C. 3, Section 19, as regards the expression 'return from beyond the seas' and observed:

It was never held that that word imported a previous presence and departure. For this it is enough to refer to the decision of the Privy Council in Ruckmaboye v. Lulloobhoye Motichand [1851] 5 M.I.A. 234.

10. The partners of Jeremiah Lyon & Co. were never resident in India. They visited once or twice Calcutta for the purpose of trade, but they were permanent residents of London. The learned Judges held that the plaintiff was entitled to the benefit of Section 13 and that the plaintiff's suit was not barred. And the argument that that construction would enable a person to sue one in England after any length of time did not appeal to them, for they observe:

The words of the section are express and the case is within them.

11. In Ruckmaboye v. Lulloobhoye Motichand [1851] 5 M.I.A. 234 it was held that the saving words of the Statute of Limitation, 21 Jas. 1, Ch. 16, Section 7, 'beyond the seas' were not to be construed literally, those words being in legal import and effect synonymous with the words 'without the teritories,' and that the replication disclosed a valid answer to the defendant's plea, and as the words of the replication 'without the territories,' were equivalent to the words 'beyond the seas,' the plaintiff was within the express provision of Section 7, and that the plea, setting up the statute, was no bar. In that case the defendant was outside the territories in the possession of the East India Company. The cause of action arose in Bombay. The Privy Council held that the defendant being outside British India, the plaintiff was entitled to the benefit of Section 7 of the statute of 21 Jas. 1, Ch. 16. There are some observations in the case which may be said to support the contention of the respondent, that even though the cause of action has arisen in a foreign country, yet a suit is maintainable here when the defendant returns to India, and even though by the law of limitation prevailing in the country in which the cause of action arose it was barred. But that point was not decided by the Privy Council and the observations on that point are only obiter. In Poorno Chunder Ghose v. Sassoon [1898] 25 Cal. 496 a Full Bench of the Calcutta High Court consisting of the Chief Justice and four other Judges, held that

Section 13, Lim. Act which includes the time during which the defendant has been absent from British India, in computing the period of limitation for any suit, applies even where, to the knowledge of the plaintiffs, the defendants, partners in a firm, are during the period of their absence carrying on business in British India through an authorized, agent.

12. In that case the plaintiffs sued E.D. Sassoon and Co., for a certain amount, being the balance of price of myrabollams sold by them to the defendants. The Chief Judge of the Small Cause Court made a reference to the High Court on several points one of which being whether a suit was barred by reason of the defendant having a manager to the knowledge of the plaintiffs in British India? It was not denied that at least two of the partners of the defendants' firm always resided in Europe and one of the partners, J.E. Sassoon, resided in Bombay and went home once in three years. Sir Charles Paul, Advocate-General, strongly urged that if the section were to be interpreted literally, the period of limitation might ha extended to 144 years, if the defendant was only present in India, quarter of a month in each year and the intention of the legislature could not have been to extend the' period to such length. This argument did not find favour with the Court. Maclean, C.J., who delivered the judgment of the Court, observed:

I do not see my way to getting ever the clear and precise language of the section, feeling as I do, that the words of the section are too strong against the view contended for by the defendants.

13. The point whether the defendants should have been present in India when the cause of action arose, or not, was not decided in that case specifically. Both in Atul Kristo Bose v. Lyons & Co. [1887] 14 Cal. 457 and in Poorna Chunier Ghose v. Sassoon [1898] 25 Cal. 496, some of the defendants ware admittedly never resident in British India. As observed above it is unnecessary to decide in this case, whether the term absence in British India necessarily implies presence in British India at the time when the transaction took place. But in order to get the benefit of Section 13 She cause of action or the transaction which gives rise to the cause of action must have taken place on British India, or Section 13 applies to a suit in British India and it lays down:

In computing the period of limitation prescribed for any suit, the time during which the defendant has been absent from British India and from the territories beyond British India under the administration of the Government shall be excluded.

14. As the period of limitation did not begin to run in British India the plaintiff cannot claim the benefit of Section 13, which can only apply to a cause of action which arises in British India. In this view, the plaintiff's suit must fail and we allow the civil revision petition, but in the circumstances without costs.