

Viswanathan Vs. Ramakrishna Chettiar

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Court : Chennai

Decided On : Jul-30-2001

Reported in : (2001)3MLJ322

Judge : P. Sathasivam, J.

Acts : [Specific Relief Act, 1963](#) - Sections 21(5) and 22(2)

Appeal No. : A.S. No. 2 of 1989 and C.M.P. No. 10995 of 2001

Appellant : Viswanathan

Respondent : Ramakrishna Chettiar

Advocate for Def. : S. Venkateswaran Adv. for Hema Sampath, Adv.

Advocate for Pet/Ap. : N.S. Varadachari, Adv.

Disposition : Appeal dismissed

Judgement :

ORDER

P. Sathasivam, J.

1. The defendant in O.S.No.39 of 1983 on the file of the First Additional Subordinate Judge, Pondicherry is the appellant.

2. The respondent-plaintiff filed the said suit for specific performance directing the defendant to execute and register Partnership deed with the plaintiff as per the agreement dated 19.11.1978 and agreement letter dated 31.1.1980 in respect of the bus firm styled and named as A.V.S. Bus Service at Pondicherry. The learned Subordinate Judge while rejecting the relief for specific performance, directed the defendant to pay a sum of Rs. 60,000.00 with proportionate interest thereon within a period of six months. Aggrieved by the same, the defendant has preferred the present appeal.

3. The case of the plaintiff as set out in the plaint is briefly stated hereunder:

He and the defendant have executed an agreement on 19.11.1978, whereby the defendant agreed to take the plaintiff as a shareholder of his contract carriage large omni bus firm. On that day, the plaintiff has tendered a sum of Rs.17,500.00 as part of the contribution of his half share in the firm. The defendant and the plaintiff have agreed to execute the regular partnership deed in respect of partnership firm after the receipt of registration certificate and other documents from the Pondicherry State Transport Authority.

4. The defendant has received a sum of Rs. 22,500.00 from the plaintiff on various occasions in person, subsequent to the above said agreement. On 31.1.1980, the defendant came to Cuddalore and stated that instead of contribution, Rs.75,000.00 each as agreed on 19.11.1978, it is sufficient for them to contribute each Rs.50,000.00. After having taken into account the total sums which the defendant has received from the plaintiff by agreement dated 19.11.1978 and by parting with the receipts, he received a sum of Rs.19,500.00 on 31.1.1980 at Cuddalore and executed an agreement letter; By the said agreement letter, the defendant has agreed that the bus bearing number PYP 5253 of their firm is being operated on the tourer bus permit. The said bus was came to the hands of the defendant and operated as tour bus till January, 1980. In January, 1981 the bus was operated on regular bus permit in the route Pondicherry to Karaikal. Subsequently, the said bus has been replaced by another bus PYZ 6336. The bus PYP 5253 is now being operated as spare bus of the firm.

5. As per the agreement dated 19.11.1978 and agreement letter dated 31.1.1980, the defendant ought, to have executed regular partnership deed of the bus firm with the plaintiff in January, 1981. When the plaintiff has demanded the defendant in person and by letters to have the regular partnership deed of the firm, he simply evaded the matter. Even for the lawyer's notice dated 19.9.1982, there is no response, hence the present suit.

6. The defendant filed a written statement wherein it is stated that he was granted a contract carriage permit on 3.4.1979, for running a tourist bus by the State Transport Authority, Pondicherry. The said permit itself was granted under the special reservation for Schedule Castes. The defendant was running the business till 17.9.1979. The defendant surrendered the contract carriage permit, hence the agreement dated 19.11.1978 entered into between the plaintiff and the defendant has become infructuous. The said agreement is only in respect of contract carriage business. There cannot be an agreement to enter into a partnership in respect of the permit granted to the individual. It will amount to an illegal partnership. The letter dated 31.01.1980, is only an acknowledgment of the money received from the plaintiff as loan for the purpose of the defendant's transport business. The contract carriage permit is not in existence at all. Further, the permit granted to the defendant was in his individual capacity that too on the special reservation basis. The present suit for specific performance of an agreement is misconceived. The remedy of the plaintiff if at all is only to recover the money advanced by him. Such an agreement cannot be specifically enforced.

7. With the above pleadings, the parties went for trial. The plaintiff got himself examined as P.W.1 and one Gangadharan as P.W. 2 and also marked Exs. A. 1 to A. 5 in support of his claim. On the other hand, the defendant has been examined as D.W.I and marked Exs.B. 1 to B. 6 in support of his defence.. The learned Subordinate Judge after framing necessary issues and after considering the oral and documentary evidence, passed a decree only for payment of Rs. 60,000.00 along with proportionate interest within a period of six months and rejected.

8. During the course of hearing, the respondent herein filed CMP. No. 10995 of 2001, seeking permission of this Court to amend the plaint in O.S.No.39 of 1983 on the file of the First Additional Subordinate Judge, Pondicherry for insertion of clause (ii) in the para VI of the plaint. The proposed amendment is as follows:

Clause (ii): or in the alternative, direct the defendant to return the sum of Rs. 60,000. 00 to the plaintiff with interest at 12% per annum from the date of -plaint till realisation.

The respondent in this application, the appellant in the above appeal has not-filed counter affidavit disputing the claim of the petitioner therein.

9. Heard the learned counsel appealing for the as well as for the respondent.

10. Mr. N.S. Varadhachari, learned counsel appearing for the appellant has mainly contended that in the absence of specific claim in the plaint for refund of the amount received by the defendant from the plaintiff, in view of Sub-section (5) of Section 21 and Sub-section (2) of Section 22 of [Specific Relief Act, 1963](#) (in short 'the Act'), the direction by the Court below for payment of Rs. 60,000. 00 in favour of the plaintiff cannot be sustained.

11. Sub-Section (2) of Section 21 of the Act says that, no 'compensation shall be awarded under this section unless the plaintiff has claimed such compensation in his plaint. However, even in the absence of specific claim in the plaint at any stage of the proceedings, the Court can allow the plaintiff to amend the plaint for including a claim for refund of money paid. The relevant provision is as follows:

Section 22. Power to grant relief for possession, partition, refund of earnest money etc., (1) Notwithstanding anything to the contrary contained in the Code of Civil Procedure, 1908, any person suing for the specific performance of a contract for the transfer of immovable property may, in an appropriate case, ask for

(a) possession, or partition and separate possession, of the property, in addition to such performance; or

(b) any other relief to which he may be entitled, including the refund of any earnest money or deposit paid or (made by) him, in case his claim for specific performance is refused.

(2) No relief under clause (a) or clause (b) of sub-section (1) shall be granted by the court unless it has been specifically claimed:

PROVIDED that where the plaintiff has not claimed any such relief in the plaint, the court shall, at any stage of the proceeding, allow him to amend the plaint on such terms as may be just for including a claim for such relief.

(3) The power of the Court to grant relief under clause (b) of Sub-section (1) shall be without prejudice to its powers to award compensation under Section 21 .

12. I have already referred to the plaint averments and the relief claimed by the plaintiff. Except the decree for specific performance directing the defendant to execute the registered partnership deed with the plaintiff as per the agreement dated 19.11.1978 and an agreement letter dated 31.1.1980 in respect of A.V.S. Bus Service at Pondicherry, the plaintiff has not prayed for any other relief including the refund of amount received by the defendant. In such a circumstance, in the absence of specific claim in the plaint, as per Sub-section (2) of Section 22 of the Act, refund of the amount already paid cannot be granted. However, proviso to Sub-section (2) of Section 22 of the Act enables the aggrieved person to file appropriate petition for amendment of the plaint at any stage of the proceedings. Only on the above said provision, the respondent in the appeal has filed CMP.NO. 10995 of 2001 for amendment of the plaint in O.S.No.39 of 1983 on the file of the First Additional Subordinate Judge, Pondicherry for return of the sum of Rs. 60,000.00 to him (respondent herein) with interest at 12% per annum from the date of plaint till realisation.

13. Since the Court below has rejected the relief of decree for specific performance and in view of Exs.A.1 and A.2, the defendant having received a sum of Rs. 60, 000. 00, he is bound to return the same. Though the Court below has granted the relief of refund of the amount of Rs. 60, 000. 00 paid, even without specific claim by the plaintiff, in view of proviso to Sub-section (2) of Section 22 of

the Act, this Court has ample power to permit the respondent herein to amend the plaint. It is worthwhile to refer the decision of the Supreme court in the case of Baby Lal v. Hazari Lal Kishori Lal , wherein while considering Section 21, 22 of the Specific Relief Act, their Lordships have held that, proviso to Sub-section (2) of Section 22, where the plaintiff has not specifically claimed the appropriate relief apart from the decree for specific performance in his plaint in the initial stages of the suit, it would be open to him to seek for amendment of the plaint at any stage of the proceedings. The purpose of this newly enacted provision is to avoid multiplicity of suit is and that the plaintiff may get appropriate relief without being hampered by procedural complications. As referred to above, this Court has power to amend the plaint; CMP. No. 10995 of 2001 is ordered as prayed for. By ordering this application, the defect pointed out by the learned counsel for the appellant is cured and in such a circumstance, the decree of the trial Court directing the defendant for payment of Rs.60,000. 00 cannot be faulted with.

14. In the light of what is stated above, I do not find any merit in the appeal; consequently the same is dismissed with costs.

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