Babu Vs. Sumitha

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Court : Chennai

Decided On : Dec-19-2011

Judge : K.Venkataraman, J.

Acts : Code of Civil Procedure (CPC) - Orders 9, 32 Rules 13, 3 - Section 47; Limitation Act, 1963 - Section 6; Motor Vehicles Act - Section 110-A

Appeal No. : C.R.P. (PD) No.4101 of 2010 & M.P.No.1 of 2010

Appellant : Babu

Respondent : Sumitha

Advocate for Def. : Mr.N.Manoharan, Adv.

Advocate for Pet/Ap. : Mr.V.Nicholas, Adv.

Judgement :

The present Civil revision is directed against the fair and decreetal order of the learned Principal Subordinate Judge, Coimbatore, dated 06.07.2010 made in I.A.No.513 of 2009 in O.S.No.46 of 2005.

2. The plaintiff in the said suit is the petitioner herein and the 7th defendant thereon is the respondent herein. The petitioner herein has laid the said suit against the respondent and seven others for specific performance of an agreement of sale.

3. It is the case of the petitioner that the suit properties originally belong to one Rukmaniammal by virtue of sale deed dated 16.05.1980, executed in her favour. She entered into a sale agreement dated 23.01.2003 in favour of the petitioner. After execution of the sale deed, the said Rukmaniammal died and her legal representatives are the defendants. The respondent was the 7th defendant in the said suit. She is the grand daughter of the said Rukmaniammal born through her deceased daughter Sheela Devi and one Bhaskaran, the 8th defendant in the suit. Therefore, the suit has been laid against the legal representatives of the said Rukmaniammal who entered into an agreement of sale with the petitioner.

4. In the said suit, an exparte decree was passed on 14.10.2005. An application was filed to set aside the exparte decree in the month of August 2009. The reason that has been set out in the affidavit in support of the application is that she has filed a suit for declaration in O.S.No.2290 of 2008, before the learned I Additional District Munsif, Coimbatore, that the sale deed executed in pursuance of the decree passed in the suit laid by the respondent/plaintiff is null and void. In the said suit, she was represented by her next friend Mallika, w/o.Unnikrishnan. In the meantime she attained majority on 06.07.2009 and on attaining majority, her disqualification was removed and hence she is filing the said application to set aside the exparte decree passed against her on 14.10.2005. The said application came to be allowed and the present Civil revision is filed.

5. I have heard the learned counsel appearing for the petitioner and the learned counsel appearing for the respondent.

6. The question that arises for consideration is whether the learned Trial Judge was justified in allowing the application preferred by the respondent under Order 9 Rule 13 CPC. Admittedly, the respondent was the 7th defendant in the suit filed by the petitioner herein for specific performance of an agreement of sale and she was represented by her father. An application in I.A.No.50 of 2005 was filed under Order 32 Rule 3 CPC to appoint the respondent's father as guardian, who happened to be the 8th defendant in the suit. The said application was allowed on 17.02.2005 and the father of the respondent has appeared through an advocate. After the exparte decree was passed on 14.10.2005, the respondent has filed

E.P.No.236 of 2006 and in the said proceedings, notice was served on all the respondents including the respondent herein. Even in the Execution Petition, the respondent was represented through a counsel. However, even in the execution petition, the respondent and others were set exparte on 14.10.2008. Thereafter, the respondent has filed four applications through her next friend and guardian Mallika. Those applications made in E.A.Nos.646 to 649 of 2008 was for various reliefs including an application under Section 47 of CPC and all those applications were dismissed.

7. Thereafter, two other applications were taken out in E.A.No.456 and 457 of 2009 at the instance of the respondent and those applications for stay and recall the warrant of delivery of possession were dismissed. To set aside the sale in favour of the petitioner, a suit has been filed by the respondent in O.S.No.2290 of 2008 and the same is pending.

8. On the above backdrop of the matter, one has to see whether there is any justification in entertaining the application preferred by the respondent. The learned counsel appearing for the respondent, by relying on Section 6 of the Limitation Act, 1963 contended that where a person is entitled to institute a suit or make an application, he may institute the same, after the disability has ceased. In the case on hand, the respondent has attained majority on 06.07.2009 and immediately in the month of August 2009, she has preferred an application to set aside the exparte decree. Hence, the application, according to the learned counsel appearing for the respondent has been rightly allowed by the learned Trial Judge.

9. On the other hand, the learned counsel appearing for the petitioner contended that Section 6 of the Limitation Act, 1963 shall not apply in the matter on hand. Section 6 speaks of only about the institution of the suit or making an application for execution of the decree and hence the said provision cannot be employed by the respondent. He has also relied on the decision reported in 1910 ILR (35) M 678, Chidambaram Chetty vs. Karuppan Chetty. By relying on the said decision of the Division Bench of this Court, the learned counsel appearing for the petitioner contended that under Section 6 of the Act, the plea of minority was available only in the case of the suits and applications for execution alone.

10. The learned counsel appearing for the respondents relied on the following decisions:

(i)AIR 1971 Madhya Pradesh 140, Hayatkhan and others v. Mangilal and others.

(ii)AIR 1974 Punjab and Haryana 39, Pritnal Singh and others v. New Suraj Transport Co. (P) Ltd. Amritsar and others.

(iii)AIR 1989 Supreme Court 2240, Pandurang Ramchandra Mandlik and another v. Smt.Shantabai Ramchandra Ghatge and others.

(iv)AIR 1962 Supreme Court 214, Mst Gulab Bai and others v. Manphool Bai.

(v)AIR 2000 Bombay 97, Sheela Rodrigues and another v. Lourencinha Ana D'Cruz Rodrigues Fernandes.

11. As far as the decision reported in AIR 1971 Madhya Pradesh 140, Hayatkhan and others v. Mangilal and others and AIR 1974 Punjab and Haryana 39, Pritnal Singh and others v. New Suraj Transport Co. (P) Ltd. Amritsar and others are concerned, it has been held in those decisions that the word “suit” as contemplated in the provisions of the Limitation Act has a wider meaning and includes the claim application made under Section 110-A of the Motor Vehicles Act.

12. As far as the decisions reported in AIR 1989 Supreme Court 2240, Pandurang Ramchandra Mandlik and another v. Smt.Shantabai Ramchandra Ghatge and others, AIR 1962 Supreme Court 214, Mst Gulab Bai and others v. Manphool Bai and AIR 2000 Bombay 97, Sheela Rodrigues and another v. Lourencinha Ana D'Cruz Rodrigues Fernandes are concerned, it has no application to the case on hand, since the word 'suit' occurred in Section 11 of CPC alone came in for consideration in those decisions.

13. While interpreting the word “suit” under the said provision, the Hon'ble Apex Court in the decision reported in AIR 1989 Supreme Court 2240, Pandurang Ramchandra Mandlik and another v. Smt.Shantabai Ramchandra Ghatge and others has held as follows: “In its comprehensive sense the word 'suit' is

understood to apply to any proceeding in a court of justice by which an individual pursues that remedy which the law affords. The modes of proceedings may be various but that if a right is litigated between parties in a court of justice the proceeding by which the decision of the Court is sought may be a suit."

14. In the decision reported in AIR 1962 Supreme Court 214, Mst Gulab Bai and others v. Manphool Bai the word "suit" is interpreted as follows:

"The word "suit" has not been defined in the Code; but there can be little doubt that in the context the plain and grammatical meaning at the word would include the whole of the suit and not a part of the suit, so that giving the word "suit" its ordinary meaning it would be difficult to accept the argument that a part of the suit or an issue in a suit is intended to be covered by the said word in the material clause."

15. In the decision relied on by the learned counsel appearing for the respondent reported in AIR 2000 Bombay 97, Sheela Rodrigues and another v. Lourencinha Ana D'Cruz Rodrigues Fernandes much emphasis was placed on paragraph 10 of the said judgment which is usefully extracted here under: "10. The Apex Court in the matter of Pandurang Ramchandra Mandlik v. Shantibai Ramchandra Ghatge 1989 Suppl. (2) SCC 627 : (AIR 1989 SC 2240) while considering the scope of the principle on re judicata under Section 11 of the Civil Procedure Code has observed thus: "It is true that Section 11 is not made applicable by the explanation and interpretation to certain proceedings giving more extensive meaning to the word "suit". In its comprehensive sense the word "suit" is understood to apply to any proceeding in a Court of justice by which an individual pursues that remedy which the law affords." Considering the above observation by the Apex Court in relation to the expression "suit" used in Section 11 of the Civil Procedure Code, it is abundantly clear that the term "suit" would generally mean any proceedings in a Court of law by which an individual pursues the remedy which the law affords to him or her as the case may be."

16. From the decisions cited above, I am of the considered view that the word "suit" occurred in Section 11 and a claim made under Section 110-A of the Motor Vehicles Act by the minor after attaining majority alone, came in for consideration in the said decisions. But, in the case on hand, an application was filed by the

respondent to set aside the exparte decree. Section 2(l) of the Limitation Act, 1963 clearly defines that a “suit” does not include an appeal or an application as per the said provision. Section 6 of the Limitation Act, 1963 further reads that where a person is entitled to institute a suit or make an application for the execution of a decree, he may institute a suit or make an application after attaining majority. Clause 1 of Section 6 of the said Act is usefully extracted here under: “6. Legal disability.- (1) Where a person entitled to institute a suit or make an application for the execution of a decree is, at the time from which the prescribed period is to be reckoned, a minor or insane, or an idiot, he may institute the suit or make the application within the same period after the disability has ceased, as would otherwise have been allowed from the time specified therefor in the third column of the Schedule.”

17. In the case on hand, as stated already, an application under Order 9 Rule 13 CPC would not come within the purview of Section 6 of Act. As stated already, the judgments referred to above considered only the word “suit” occurred in Section 11 of CPC and the claim application made under Section 110 of the Motor Vehicles Act. Hence, those judgments may not come to the rescue of the respondent.

18. As rightly contended by the learned counsel appearing for the petitioner, an application that has been filed by the respondent to set aside the exparte decree, claiming the benefit under Section 6 of the Limitation Act is absolutely incorrect. On facts, it has to be seen that the respondent was represented by her father / natural guardian and an application was taken out in I.A.No.50 of 2005 under Order 32 Rule 3 CPC to appoint her father as guardian and the said application was allowed on 17.02.2005. Thereafter, execution petition was filed and the respondent herein was served with a notice and she was again represented by her father. Thereafter, the respondent filed four applications in E.A.Nos.646 to 649 of 2008 for various reliefs and all those applications were dismissed on 23.04.2009 and 10.07.2009. Thereafter, the respondent filed two other applications in E.A.Nos.456 and 457 of 2009 for stay and recall warrant of delivery of possession and they were also dismissed. The respondent has also instituted a suit in O.S.No.2290 of 2008 to set aside the sale deed executed in favour of the

petitioner through her next friend / guardian Mallika. After taking all efforts, she has filed an application to set aside the exparte decree made in the year 2005, contending that she is protected under Section 6 of the Limitation Act.

19. All the above aspects would amply establish that the intention of the respondent is to stall the entire proceedings and prevent the petitioner from enjoying the fruits of the decree. However, the learned counsel appearing for the respondent contended that though a guardian was appointed for the respondent to defend the suit initiated by the petitioner herein, the guardian did not represent her in the Court and hence a chance has to be given to the respondent to contest the proceedings. In this connection, he relied on the decision reported in 1934 (67) MLJ 38, Donthi Venkataratnam, minor, by next friend and mother Gopamma and others v. Nagappa and another. In the said decision, this Court has held that if there are minor plaintiffs and defendants who are represented by next friend and the next friend is absent, that alone is sufficient to set aside the exparte decree passed against the minor or for setting aside an order of dismissal.

20. In yet another decision relied on by the learned counsel appearing for the respondent reported in 1951 (2) MLJ 418, Gadikota Siva Narayana Reddi v. Badepalli Nagasubbamma and another, the very same proposition was laid by this Court.

21. However, I am of the considered view that the above referred judgments will not come to the rescue of the respondent, since the facts set out earlier will disclose that the respondent was prosecuting the matter again and again as referred to earlier to stall the fruits of the decree obtained by the petitioner. Having taken several proceedings against the petitioner, it may be too much for the respondent to contend that she was a minor and hence she could not prosecute the matter. I am of the considered view that the respondent may not be justified in seeking to set aside the decree obtained by the petitioner on 14.10.2005. There were eight defendants in the suit and the respondent herein is the seventh defendant. If the decree that has been obtained by the petitioner for specific performance of the sale deed, after filing the Execution Petition is sought to be set aside only at the instance of the respondent / 7th defendant, it will cause

irreparable hardship to the petitioner. Had the respondent alone was the party to the suit as defendant and if she claims that she was the sole defendant / minor defendant, one can understand that she is prevented from prosecuting the matter.

22. Considering the over all circumstances referred to above, I am of the considered view that the order under revision is liable to be set aside and accordingly set aside and the Civil Revision Petition stands allowed. Consequently, connected miscellaneous petition is closed. However, no order as to costs.