SUPREME COURT OF INDIA

C. Natrajan

Vs.

Ashim Bai

C.A.No.4803 of 2007

(S.B. Sinha and Harjit Singh Bedi JJ.)

11.10.2007

JUDGMENT

S.B. SINHA, J.

1. Leave granted.

Appellant herein filed a suit against the respondents claiming, inter alia, for the following reliefs :

(a) For declaration of plaintiffs title to the suit property;

(b) For consequential injunction, restraining the defendants, their men, agents, servants, etc. from in any manner interfering with the plaintiffs peaceful possession and enjoyment of the suit property.

(c) Alternatively, if for any reason this Honourable court comes to a conclusion that the plaintiff is out of possession, for recovery of vacant possession of the suit property;

(d) Directing the defendant to pay the cost of this suit.

2. The said suit was filed in the year 2001. Cause of action of the said suit was said to have arisen in 1994 when the defendants allegedly trespassed over the suit property. Respondent on or about 8.8.2001 filed an application under Order VII Rule 11(d) of the Code of Civil Procedure praying for rejection of the plaint on the premise that the suit was barred by limitation, inter alia, stating :

2. I beg to submit that the Respondent/Plaintiff in the plaint paragraph 4 with respect to the question of limitation has averred that he had the knowledge of the mistake with regard to the boundaries in the sale deed only on 2.11.1998 for the purpose of satisfying the court to admit the plaint.

3. I beg to submit that the averments are made knowing to be false. The following admitted facts would clearly establish the same.

(a) The plaintiff admits in paragraph 3 (3 and 3) that he had the defective title on 24.11.1974. He further contended that mistake was repeated again on 14.9.1979. Such mistakes even alter 2 decades

has not been rectified by any instrument. The plaintiff lost his right long before to rectify the alleged mistake. Now, he was misused and abused this Honble Court and filed the suit after the period of limitation.

(b) The Respondent/Plaintiff filed the suit describing the suit property in accordance to his sale deed dated 14.9.1979 before the District Munsif of Tambaram in OS No.501 of 1994 on 28.3.1994. The said suit was filed for the relief of permanent injunction based on the sale deed and possession of the sale property alleging that he was in possession of the sale property. We have filed an application in IA No.805 of 1994 on 8.4.1994 to vacate the interim injunction granted in IA No.604 of 1994 filed by the Respondent/Plaintiff. We have clearly pointed out that the main issue was the identification of the property. Hence the issue was decided in the interim application by the learned district Munsif, Tambaram on 27.6.1994. The learned District Munsif, Tambaram gave a clear findings that the Respondent/Plaintiff has to identify the property.

(c) The Respondent plaintiff had clear knowledge of the mistake with regard to the boundaries not only on 8.4.1994 but also on 27.6.1994.

(d) Therefore, the suit reliefs are barred by limitation.

3. In the counter affidavit filed on behalf of the petitioner, it was stated :

This respondent further submits the points for rejection of the plaint are untenable.

This respondent never admits that he had defective title in any of the paragraphs much less in para 3 of the plaint. It is stated that the description with regard to boundaries is only a mistake.

This respondent submits that Order VII Rule 11(d) is not applicable to the facts of this case. This suit is filed for declaration and for permanent injunction, alternatively for recovery of possession. The suit is filed within 12 years. Moreover the suit for declaration and injunction is also been filed within 3 years from the date of judgment passed in O.S. No.501/1997 and O.S. No.502/1997 on the file of District Munsif Judicial Magistrate Alandur. Hence, this suit is not barred by any law.

4. The learned Principal Subordinate Judge, Chengalpet, by reason of its judgment and order dated 31.3.2006 rejected the said application of the respondent, opining :

The suit property as shown in the schedule to OS No.502 of 2001 is found to be same as described in the sale deed dated 149/1979 in favour of the plaintiff and its patent documents of title. Now the plaintiff has described and suit property in the schedule to the present plaint as per present lie on the ground on the averments that the boundaries of the property purchased by him under the sale deed dated 14.9.1979 were wrongly mentioned for a larger extent, as the mistake crept patent title deed dated 13.3.1964 and that the mistake come to his knowledge only on 2.11.1998. As held by the Supreme Court in Propet and Kotecha property VS.S.RI State Association reported in 15(4) CTC 489 averments in the plaint alone would be looked into while considering an application for rejection of plaint U.O. 7 Rule 11 CPC and that the plea raised in the written statement are irrelevant at such stage. In the present case the plea of the plaintiff that he came to know about the mistake regarding the boundary description in the sale dated 14.9.1979 only on whether he had knowledge earlier is question of fact to be considered during the trial in the suit. As such the plaint on .. is a mixed question of fact and law to be considered during the trial by casting the issue

suitably. Hence the present petition for rejecting the plaint is balance to be dismissed. The point is answered accordingly.

5. Respondent preferred a civil revision petition thereagainst. By reason of the impugned order, a Division Bench of the High Court reversed the said judgment of the Trial Court opining that the period of limitation, as per Article 58 of the Limitation Act, expired in 1997 itself, stating : A perusal of the typed set of papers would show that the present suit has been filed by the respondent/plaintiff for the relief of declaration of title of the suit property and consequently injunction and in the alternative for recovery of possession. Article 58 of the Limitation Act provides for three years as the limitation period to initiate proceedings from the date of cause of action, whereas Article 65 of the Act prescribes for twelve years for a suit filed for possession of immovable property or any interest therein based on title. The earlier suit filed by the petitioners in OS No.502 of 1997 for permanent injunction has been decreed as against the respondent herein and it is only the revision petitioners are in continuous possession. The respondent filed the present suit mainly for declaring his title to the suit property. Thus, only Article 58 of the Limitation Act only applicable and not Article 65 of the Act. Admittedly, the suit is filed beyond the period of 3 years as contended by the learned counsel for the petitioners and, therefore, the plaint itself is liable to be rejected.

6. Order VII Rule 11(d) of the Code of Civil Procedure reads as under :

11.Rejection of plaint.The plaint shall be rejected in the following cases :

(a) to (c) ...

(d) where the suit appears from the statement in the plaint to be barred by any law;

(e) to (f) ...

7. An application for rejection of the plaint can be filed if the allegations made in the plaint even if given face value and taken to be correct in their entirety appear to be barred by any law. The question as to whether a suit is barred by limitation or not would, therefore, depend upon the facts and circumstances of each case. For the said purpose, only the averments made in the plaint are relevant. At this stage, the court would not be entitled to consider the case of the defence. {See [Popat and Kotecha Property v. State Bank of India Staff Association [(2005) 7 SCC 510]}.

8. Applicability of one or the other provision of the Limitation Act per se cannot be decisive for the purpose of determining the question as to whether the suit is barred under one or the other article contained in the Schedule appended to the Limitation Act.

9. The question which was raised before the learned Trial Judge was different from the question raised before the High Court. Before the learned Trial Judge, as noticed hereinbefore, the provisions of the Limitation Act were brought in with reference to the identification of the property. It was not contended that the suit was barred by limitation in terms of Article 58 of the Limitation Act, 1963. The High Court, therefore, in our opinion, ex facie committed an error in arriving on the aforementioned finding. The scope of applicability of the Limitation Act vis-`-vis Order VII Rule 11 of the Code of Civil Procedure has been considered in some recent decisions of this Court to which we may advert to.

10. In Popat and Kotecha Property v. State Bank of India Staff Association [(2005) 7 SCC 510], this Court, inter alia, opined: Rule 11 of Order VII lays down an independent remedy made available to the defendant to challenge the maintainability of the suit itself, irrespective of his right to contest the same on merits. The law ostensibly does not contemplate at any stage when the objections can be raised, and also does not say in express terms about the filing of a written statement. Instead, the word shall is used clearly implying thereby that it casts a duty on the court to perform its obligations in rejecting the plaint when the same is hit by any of the infirmities provided in the four clauses of Rule 11, even without intervention of the defendant. In any event, rejection of the plaint under Rule 11 does not preclude the plaintiffs from presenting a fresh plaint in terms of Rule 13.

It was further opined :

When the averments in the plaint are considered in the background of the principles set out in Sopan Sukhdeo case the inevitable conclusion is that the Division Bench was not right in holding that Order VII Rule 11 CPC was applicable to the facts of the case. Diverse claims were made and the Division Bench was wrong in proceeding with the assumption that only the non-execution of lease deed was the basic issue. Even if it is accepted that the other claims were relatable to it they have independent existence. Whether the collection of amounts by the respondent was for a period beyond 51 years needs evidence to be adduced. It is not a case where the suit from statement in the plaint can be said to be barred by law. The statement in the plaint without addition or subtraction must show that it is barred by any law to attract application of Order VII Rule 11. This is not so in the present case.

11. However, we may notice that another Division Bench of this Court, in Balasaria Construction (P) Ltd. v. Hanuman Seva Trust & Ors. [(2006) 5 SCC 658], stated the law thus :

After hearing counsel for the parties, going through the plaint, application under Order VII Rule 11(d) CPC and the judgments of the trial court and the High Court, we are of the opinion that the present suit could not be dismissed as barred by limitation without proper pleadings, framing of an issue of limitation and taking of evidence. Question of limitation is a mixed question of law and fact. Ex facie in the present case on the reading of the plaint it cannot be held that the suit is barred by time. The findings recorded by the High Court touching upon the merits of the dispute are set aside but the conclusion arrived at by the High Court is affirmed. We agree with the view taken by the trial court that a plaint cannot be rejected under Order VII Rule 11(d) of the Code of Civil Procedure.

12. In the said decision, it may be placed on record, on the question as to whether Order VII Rule 11(d) can be applied when a suit was filed on the premise that a suit is barred by limitation, this Court noticed : This case was argued at length on 30-8-2005. Counsel appearing for the appellant had relied upon a judgment of this Court in N.V. Srinivasa Murthy v. Mariyamma for the proposition that a plaint could be rejected if the suit is ex facie barred by limitation. As against this, counsel for the respondents relied upon a later judgment of this Court in Popat and Kotecha Property v. State Bank of India Staff Assn. in respect of the proposition that Order VII Rule 11(d) was not applicable in a case where a question has to be decided on the basis of fact that the suit was barred by limitation. The point as to whether the words barred by law occurring in Order VII Rule 11(d) CPC would include the suit being barred by limitation was not specifically dealt with in either of these two judgments, cited above. But this point has been specifically dealt with by the different

High Courts in Mohan Lal Sukhadia University v. Priya Soloman, Khaja Quthubullah v. Govt. of A.P., Vedapalli Suryanarayana v. Poosarla Venkata Sanker Suryanarayana, Arjan Singh v. Union of India wherein it has been held that the plaint under Order VII Rule 11(d) cannot be rejected on the ground that it is barred by limitation. According to these judgments the suit has to be barred by a provision of law to come within the meaning of Order VII Rule 11 CPC. A contrary view has been taken in Jugolinija Rajia Jugoslavija v. Fab Leathers Ltd. , National Insurance Co. Ltd. v. Navrom Constantza , J. Patel & Co. v. National Federation of Industrial Coop. Ltd. and State Bank of India Staff Assn. v. Popat & Kotecha Property. The last judgment was the subject-matter of challenge in Popat and Kotecha Property v. State Bank of India Staff Assn. This Court set aside the judgment and held in para 25 as under: (SCC p. 517)

25 . When the averments in the plaint are considered in the background of the principles set out in Sopan Sukhdeo case the inevitable conclusion is that the Division Bench was not right in holding that Order VII Rule 11 CPC was applicable to the facts of the case. Diverse claims were made and the Division Bench was wrong in proceeding with the assumption that only the non-execution of lease deed was the basic issue. Even if it is accepted that the other claims were relatable to it they have independent existence. Whether the collection of amounts by the respondent was for a period beyond 51 years needs evidence to be adduced. It is not a case where the suit from statement in the plaint can be said to be barred by law. The statement in the plaint without addition or subtraction must show that it is barred by any law to attract application of Order VII Rule 11. This is not so in the present case.

13. If the plaintiff is to be granted a relief of recovery of possession, the suit could be filed within a period of 12 years. It is one thing to say that whether such a relief can be granted or not after the evidences are led by the parties but it is another thing to say that the plaint is to be rejected on the ground that the same is barred by any law. In the suit has been filed for possession, as a consequence of declaration of the plaintiffs title, Article 58 will have no application.

14. Learned counsel appearing on behalf of the respondent, however, placed strong reliance upon a decision of this Court in S.M. Karim v. Mst. Bibi Sakina [(1964) 6 SCR 780] to contend that alternative plea cannot be considered for arriving at a conclusion that he has been dispossessed.

15. The law of limitation relating to the suit for possession has undergone a drastic change. In terms of Articles 142 and 144 of the Limitation Act, 1908, it was obligatory on the part of the plaintiff to aver and plead that he not only has title over the property but also has been in possession of the same for a period of more than 12 years. However, if the plaintiff has filed the suit claiming title over the suit property in terms of Articles 64 and 65 of the Limitation Act, 1963, burden would be on the defendant to prove that he has acquired title by adverse possession.

16. In Md. Mohammad Ali (dead) by LRs. v. Jagdish Kalita and Ors. [(2004) 1 SCC 271], it was held :

By reason of the Limitation Act, 1963 the legal position as was obtaining under the old Act underwent a change. In a suit governed by Article 65 of the 1963 Limitation Act, the plaintiff will succeed if he proves his title and it would no longer be necessary for him to prove, unlike in a suit governed by Articles 142 and 144 of the Limitation Act, 1908, that he was in possession within 12 years preceding the filing of the suit. On the contrary, it would be for the defendant so to prove if he wants to defeat the plaintiffs claim to establish his title by adverse possession. {See also P.T.

Munichikkanna Reddy & Ors. v. Revamma & Ors. [(2007) 6 SCC 29]; Binapani Paul v. Pratima Ghosh & Ors. [(2007) 6 SCC 100]; Kamakshi Builders v. Ambedkar Educational Society & Ors. [AIR 2007 SC 2191] and Bakhtiyar Hussai (dead) throuth LRs v. Hafiz Khan & Ors. [CA Nos.497-498/01 decided on 24.09.2007]}.

17. In S.M. Karim (supra), this Court was considering a question of Benami as also adverse possession. In the aforementioned context, it was opined :

Adverse possession must be adequate in continuity, in publicity and extent and a plea is required at the least to show when possession becomes adverse so that the starting point of limitation against the party affected can be found. There is no evidence here when possession became adverse, if it at all did, and a mere suggestion in the relief clause that there was an uninterrupted possession for "several 12 years" or that the plaintiff had acquired "an absolute title" was not enough to raise such a plea. Long possession is not necessarily adverse possession and the prayer clause is not a substitute for a plea. The cited cases need hardly be considered, because each case must be determined upon the allegations in the plaint in that case. It is sufficient to point out that in Bishun Dayal v. Kesho Prasad and another (A.I.R. 1940 P.C. 202), the Judicial Committee did not accept an alternative case based on possession after purchase without a proper plea.

{See also Prem Lala Nahata & Anr. v. Chandi Prasad Sikaria [(2007) 2 SCC 551]}.

Such a question does not arise for our consideration herein.

18. We have noticed hereinbefore that the defendant, inter alia, on the plea of identification of the suit land vis-`-vis the deeds of sale, under which the plaintiff has claimed his title, claimed possession. The defendant did not accept that the plaintiff was in possession. An issue in this behalf is, therefore, required to be framed and the said question is, therefore, required to be gone into. Limitation would not commence unless there has been a clear and unequivocal threat to the right claimed by the plaintiff. In a situation of this nature, in our opinion, the application under Order VII Rule 11(d) was not maintainable. The contentions raised by the learned counsel for the respondent may have to be gone into at a proper stage. Lest it may prejudice the contention of one party or the other at the trial, we resist from making any observations at this stage.

19. For the reasons mentioned above, the impugned judgment cannot be sustained. The same is, therefore, set aside. The appeal is allowed with costs. Counsels fee assessed at Rs.25,000/- (twenty five thousand).