Satti Paradesi Samadhi & Pilliar Temple vs M. Sakuntala(D) Tr.Lrs.& Ors on 3 July, 2014

Equivalent citations: 2014 AIR SCW 5532, 2015 (5) SCC 674, AIR 2015 SC (CIVIL) 260, (2014) 3 PUN LR 775, (2014) 125 REVDEC 517, (2014) 4 ICC 435, (2014) 2 CLR 301 (SC), (2014) 106 ALL LR 261, (2014) 4 ALL WC 4239, (2015) 5 CAL HN 17, (2014) 4 CIVILCOURTC 56, (2014) 2 LANDLR 201, (2015) 1 MAD LW 507, (2014) 4 PAT LJR 24, (2014) 5 ALLMR 903 (SC), (2014) 3 RECCIVR 938, (2014) 8 SCALE 469, (2014) 3 JLJR 449, (2014) 141 ALLINDCAS 253 (SC), (2015) 2 CLR 411 (SC)

Bench: V. Gopala Gowda, Dipak Misra

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 5954 2014
(Arising out of S.L.P. (Civil) No. 33200 of 2014)

Satti Paradesi Samadhi & Phillíar Temple … Appellant

Versus

M. Sankuntala (D) Tr. Lrs. & Ors. …Respondents

J U D G M E N T

Dipak Misra Leave granted.

In this appeal by special leave the plaintiff-appellant has called in question the legal sustainability of the judgment and order passed by the Division Bench of the High Court of Judicature at Madras in OSA No. 229 of 2006 whereby it has affirmed the judgment dated 24.07.2003 passed by the learned single Judge in S.C. No. 673 of 1997 whereunder he, after framing of issues on the basis of prayer being made by the defendant, has dealt with the issue No. 1 as a preliminary issue and dismissed the suit.

The factual expose' which arise for disposal of the present appeal are that the plaintiff instituted a suit for declaration seeking that the three settlement deeds dated 27.3.1978 executed by the former trustee in favour of his two daughters and a granddaughter as null and void, and for the relief of recovery of possession of the land to the trust.

The defendant filed the written statement resisting the claim of the plaintiff on many a ground and one of the grounds was that the suit was barred by limitation and, therefore, did not deserve any adjudication.

The learned single Judge framed the following issues for consideration: -

> "(1) Whether the suit for declaration that the three settlement deeds, all dated 27.3.1978 and registered as Document Nos. 248, 249 and 443 of 1978 with the Sub Registrar's Office, Royapuram, is barred by limitation of time?
>
> (2) Whether the suit properties had ever been in the possession of Sri B.S. Ramalingam in his individual capacity?
>
> (3) Whether there existed a hereditary trust in the name of Satti Paradesi Samadhi and Pillayar Temple Trust?
>
> (4) Whether the plaintiff owns the schedule properties?
>
> (5) Whether the defendants are the owners of the Schedule Properties and in possession and occupation from the date of settlement in the year 1978?
>
> (6) Whether the plaintiff is entitled to mesne profits?
>
> (7) To what relief the parties are entitled?" The plaint presented by the plaintiff showed that the suit for declaration of the settlement deeds by the defendant in favour of daughters and granddaughter which were executed was done 19 years earlier, the defendant made a submission before the learned single Judge that the suit was barred by limitation. Accepting the submission of the defendant, the learned single Judge thought it appropriate to take up the issue No. 1 as a preliminary issue.

Before the learned single Judge it was contended by the defendant that in view of the limitation provided under Articles 56 to 59 of the Limitation Act, the suit was enormously barred by limitation and, therefore, deserved to be dismissed. There was also a reference to Article 26 of the Limitation Act and the learned single Judge referring to the same opined that even under the said Article the suit for recovery of possession was also barred by time. The learned single Judge also referred to Section 27 of the Limitation Act, 1963 and ruled that the defendants or their legal representatives had acquired right, title and interest by adverse possession and, therefore, the suit was not tenable being barred by limitation.

On an appeal being preferred against the aforesaid judgment the Division Bench took note of Articles 92 and 96 and came to hold as follows: -

> "22. Taking the property as a trust property, under Article 92, the suit for recovery of possession of immovable property conveyed or bequeathed in the Trust out to have

> been filed within twelve years from the time when transfer becomes known to the plaintiff. Under Article 92, the plaintiff should have filed the suit within twelve years from 1978 when the settlement became known to the plaintiff.
>
> 23. In the plaint, at paragraph No. 4, the appellant/plaintiff has clearly alleged that immediately after the death of settler, on 24.12.1978, the settlement were questioned by the appellant and the mother of the appellant and the defendants – Vijaya Saradambal, who was the earlier trustee, promised to settle the disputes recovering the scheduled properties to the plaintiff trust; but only the defendants influenced her and did not deliver the schedule properties to the plaintiff. By a reading of plaint averments, it is clear that the plaintiff had known about the settlement deeds even in 1978. Having known about the settlement deeds, way back in 1978, the plaintiff ought to have filed the suit to set aside the settlement deeds within twelve years from the date of his knowledge.

When plaintiff had chosen to file the suit only in the year 1977, the learned single Judge rightly held that the suit is barred by limitation.

24. The only grievance of the appellant is that after framing the issues, the learned single Judge had taken up the question of limitation as a preliminary issue and question of limitation is a mixed question of law and facts and the appellant ought to have been given an opportunity to establish that the suit property is a trust property and also the circumstances under which the plaintiff could not bring the suit within the stipulated time and also to show as to how the suit is well within the time." Being of this view, the Division Bench dismissed the appeal.

We have heard Mr. R. Basant learned senior counsel appearing for the appellant and Mr. Himanshu Munshi, learned counsel for the respondent.

Mr. Basant, learned senior counsel appearing for the appellant, has drawn our attention to Section 10 of the Limitation Act. It reads as follows: -

> "10. Suits against trustees and their representatives – Notwithstanding anything contained in the foregoing provisions of this Act, no suit against a person in whom property has become vested in trust for any specific purpose, or against his legal representatives or assigns (not being assigns for valuable consideration), for the purpose of following in his or their hands such property, or the proceeds thereof, or for an account of such property or proceeds, shall be barred by any length of time.
>
> Explanation – For the purpose of this Section any property comprised in a Hindu, Muslim or Buddhist religious or charitable endowment shall be deemed to be property vested in trust for a specific purpose and the manager of the property shall be deemed to be the trustee thereof." He has also drawn our attention to Articles 92 and 96 occurring in part VIII of the Schedule of the Limitation Act. He has emphasized on both the Articles, namely, Articles 92 and 96. The said Articles read as

under: -

|92 |To recover possession |Twelve |When the transfer becomes| | |of immovable property |years |known to the plaintiff | | |conveyed or bequeathed| | | | |in trust and | | | | |after-wards | | | | |transferred by the | | | | |trustee for a valuable| | | | |consideration | | | |96 |By the manager of a |Twelve |The date of death, | | |Hindu, Muslim or |years |resignation or removal of| | |Buddhist religious or | |the transfer or the date | | |charitable endow-ment | |of appointment of the | | |to recover possession | |plaintiff as manager of | | |of movable or | |the endowment, whichever | | |immoveable property | |is later | | |comprised in the | | | | |endowment which has | | | | |been transferred by a | | | | |previous manager for a| | | | |valuable consideration| | | Learned senior counsel has emphatically put forth that the learned single Judge as well as the Division Bench has committed grave error by taking recourse to the principle of acquisition of knowledge by the plaintiff and other aspects. It is absolutely limpid that if there is a transfer by previous manager for a valuable consideration then only the limitation of twelve years or any other article would come into the play. As far as Article 59 is concerned, it is urged by him that the said Article is not applicable to the present case. Article 59 reads as follows: -

	Description of suit	Period of limitation	Time from which period begins to run
59	To cancel or set aside an instrument or decree or for the rescission of a contract	Three years	When the facts entitling the plaintiff to have the instrument or decree cancelled or set aside or the contract rescinded first become known to him

The learned counsel for the respondent would contend that the plaintiff is not a trust as understood within the parameters of Section 10 of the Limitation Act and, therefore, the learned single Judge has rightly opined that Article 59 would be applicable. The learned counsel further submits that assuming Article 59 is not attracted and any other Article contained in Chapter VIII would be applicable and suit would be barred by limitation inasmuch as it was filed after nineteen years.

The core question that emerges for consideration is whether an issue of limitation could at all have been taken up as a preliminary issue.

In Ramrameshwari Devi and others v. Nirmala Devi and others[1], while dealing with Order 14, Rule 2, observed that sub-rule (2) of Order 14 refers to the discretion given to the court where the court may try an issue relating to the jurisdiction of the court

or the bar to the suit created by any law for the time being in force as a preliminary issue.

The controversy pertaining to the provisions contained in Order 14 Rule 2 had come up for consideration before this Court in Major S.S. Khanna v. Brig. F.J. Dillon[2] wherein it has been ruled thus: -

"Under O 14, r 2 where issues both of law and of fact arise in the same suit, and the Court is of opinion that the case or any part thereof may be disposed of on the issue of law only, it shall try those issues first, and for that purpose may, if it thinks fit, postpone the settlement of the issues of fact until after the issues of law have been determined. The jurisdiction to try issues of law apart from the issues of fact may be exercised only where in the opinion of the Court the whole suit may be disposed of on the issues of law alone, but the Code confers no jurisdiction upon the Court to try a suit on mixed issues of law and fact as preliminary issues. Normally all issues in a suit should be tried by the Court: not to do so, especially when the decision on issues even of law depends upon the decision of issues of fact, would result in a lop-sided trial of the suit." Be it stated, the aforesaid pronouncement was made before the amendment of the Code of Civil Procedure in 1976.

In Ramesh D. Desai and others v. Bipin Vadilal Mehta and others[3], while dealing with the issue of limitation, the Court opined that a plea of limitation cannot be decided as an abstract principle of law divorced from facts as in every case the starting point of limitation has to be ascertained which is entirely a question of fact. The Court further proceeded to state that a plea of limitation is a mixed question of fact and law. On a plain consideration of the language employed in sub-rule (2) of Order 14 it can be stated with certitude that when an issue requires an inquiry into facts it cannot be tried as a preliminary issue. In the said judgment the Court opined as follows: -

"13. Sub-rule (2) of Order 14 Rule 2 CPC lays down that where issues both of law and of fact arise in the same suit, and the court is of the opinion that the case or any part thereof may be disposed of on an issue of law only, it may try that issue first if that issue relates to (a) the jurisdiction of the court, or (b) a bar to the suit created by any law for the time being in force. The provisions of this Rule came up for consideration before this Court in Major S.S. Khanna v. Brig. F.J. Dillon and it was held as under: (SCR p. 421) "Under Order 14 Rule 2, Code of Civil Procedure where issues both of law and of fact arise in the same suit, and the court is of opinion that the case or any part thereof may be disposed of on the issues of law only, it shall try those issues first, and for that purpose may, if it thinks fit, postpone the settlement of the issues of fact until after the issues of law have been determined. The jurisdiction to try issues of law apart from the issues of fact may be exercised only where in the opinion of the court the whole suit may be disposed of on the issues of law alone, but the Code confers no jurisdiction upon the court to try a suit on mixed issues of law and fact as

preliminary issues. Normally all the issues in a suit should be tried by the court; not to do so, especially when the decision on issues even of law depend upon the decision of issues of fact, would result in a lopsided trial of the suit." Though there has been a slight amendment in the language of Order 14 Rule 2 CPC by the amending Act, 1976 but the principle enunciated in the abovequoted decision still holds good and there can be no departure from the principle that the Code confers no jurisdiction upon the court to try a suit on mixed issues of law and fact as a preliminary issue and where the decision on issue of law depends upon decision of fact, it cannot be tried as a preliminary issue." In the case at hand, we find that unless there is determination of the fact which would not protect the plaintiff under Section 10 of the Limitation Act the suit cannot be dismissed on the ground of limitation. It is not a case which will come within the ambit and sweep of Order 14, Rule 2 which would enable the court to frame a preliminary issue to adjudicate thereof. The learned single Judge, as it appears, has remained totally oblivious of the said facet and adjudicated the issue as if it falls under Order 14, Rule 2. We repeat that on the scheme of Section 10 of the Limitation Act we find certain facts are to be established to throw the lis from the sphere of the said provision so that it would come within the concept of limitation. The Division Bench has fallen into some error without appreciating the facts in proper perspective. That apart, the Division Bench, by taking recourse of Articles 92 to 96 without appreciating the factum that it uses the words "transferred by the trustee for a valuable consideration" in that event the limitation would be twelve years but in the instant case the asseveration of the plaintiff is that the trustee had created three settlement deeds in favour of his two daughters and a granddaughter. The issue of consideration has not yet emerged. This settlement made by the father was whether for consideration or not has to be gone into and similarly whether the property belongs to the trust as trust is understood within the meaning of Sectin10 of the Limitation Act has also to be gone into. Ergo, there can be no shadow of doubt that the issue No. 1 that was framed by the learned single Judge was an issue that pertained to fact and law and hence, could not have been adjudicated as a preliminary issue. Therefore, the impugned order is wholly unsustainable.

We have not expressed any opinion with regard to the issue of limitation except saying that the present issue could not have been taken up as a preliminary issue. As the suit is pending since 1997 we would request the learned single Judge of the High Court of Madras to dispose of the suit as expeditiously as possible.

Resultantly, the appeal is allowed and the impugned judgments are set aside without any order as to costs.

.....J. [Dipak Misra] .....J. [V. Gopala Gowda] New Delhi;

July 03, 2014.

(2011) 8 SCC 249

[2] AIR 1964 SC 497 : (1964) 4 SCR 409

[3] (2006) 5 SCC 638