

Karuppaswamy And Others vs C. Ramamurthy on 14 July, 1993

Equivalent citations: AIR1993SC2324, II(1993)BC341(SC), JT1993(4)SC192, 1993(3)SCALE165, (1993)4SCC41, [1993]SUPP1SCR121, AIR 1993 SUPREME COURT 2324, 1993 (4) SCC 41, 1993 AIR SCW 2486, 1994 () BOM CJ 727, 1994 HRR 8, 1993 SCFBRC 328, (1993) 3 ANDH LT 456, 1993 BB CJ 251, (1993) 4 JT 192 (SC), 1993 (2) UJ (SC) 394, (1994) 2 CIVILCOURTC 526, (1993) 2 GUJ LH 188, (1993) 2 HINDULR 213, (1993) 2 LANDLR 377, (1993) 3 RRR 122, (1993) 22 ALL LR 466, (1993) 2 CURCC 616, (1993) 2 CURLJ(CCR) 286, (1993) 2 APLJ 62

Author: Madan Mohan Punchhi

Bench: Madan Mohan Punchhi, K. Ramaswamy

ORDER

Madan Mohan Punchhi, J.

1. This appeal is directed against the common judgment and order passed by a learned Single Judge of the Madras High Court on September 1, 1978 in Civil Revision Petition Nos. 1044 & 1045 of 1976.

2. The plaintiff-respondent put forth a claim that one Marriappa Gounder had executed a promissory note in his favour for consideration on 14.11.71 in the sum of Rs. 20,000. Apparently, on the last date of limitation, the plaintiff-respondent filed a suit against Marriappa Gounder in the court of the Subordinate Judge, Erode, for recovery of Rs. 23,378 as due upto date and for future interest till recovery, with costs. Marriappa Gounder was impleaded as the sole defendant, but he, however, had died about six weeks earlier on 5.10.74. The summons issued to the defendant were thus returned by the first hearing on 9.1.75 with the remarks that the defendant was dead but the date of his death was not disclosed in those remarks. The plaintiff-respondent took time from the court to take necessary steps to further the suit. On 7.2.75, an application being I.A. 265/75 was moved by the plaintiff-respondent under Order 22 Rule 4 of C.P.C. impleading the son, daughter and widow of the deceased as his heirs and legal representatives as defendant Nos. 2 to 4 who are the appellants herein. Counter statement was filed by them to IA 265/75 in which it was pleaded that the suit was non-est on account of the death of the Marriappa Gounder, having taken place on 5.10.74. The plaintiff-respondent then moved another application being IA 785/75 for change of the provision under which the earlier application IA 265/75 had been made from one under Order 22 Rule 4 to one under Sections 151 and 153 of C.P.C. The trial court dismissed both the applications on

October 23, 1975 taking the view that since IA 265/75 was filed for substitution of defendants No. 2 to 4 as defendants, the suit on the basis of the pronote had become barred by time against them and that there was no ground to invoke inherent power under Section 151 C.P.C. In the result, both the applications were dismissed. Both these orders were challenged in two revision petitions before the High Court by the plaintiff-respondent where he emerged successful, the court holding that the plaintiff, in the facts and circumstances, had acted in good faith and thus in view of the proviso to Sub-section (1) of Section 21 of the Limitation Act 1963 (hereinafter referred to as 'the Act'), it was just to direct that the date of the filing of the suit against the heirs and legal representatives of the deceased defendant shall date-back to the original presentation of the plaint, i.e. on 14.11.74. For the view taken, support was obtained from a decision of this Court in Ram Prasad Dagduram v. Vijay Kumar Motilal and Ors. In these appeals, the said view of the High Court is under challenge.

3. Learned Counsel for the parties cited before us case law bred in various High Courts of the country on the subject of procedural law under the Civil Procedure Code as to whether a suit filed against a dead person is non-est and whether that dead person impleaded could be substituted by his heirs and legal representatives or be added as parties to the suit. Having heard them and having pondered over the matter, we are of the opinion that those questions do not seriously arise, when we see the sweep of the relevant provision under the Act, governing the subject, unamended and amended. That provision under the Indian Limitation Act, 1908, was Section 22 which read as follows : -

22 (1) Effect of substituting or adding new plaintiff on defendant: Where, after the institution of a suit, a new plaintiff or defendant is substituted or added, the suit shall, as regards him, be deemed to have been instituted when he was so made a party.

(2) Nothing in Sub-section (1) shall apply to a case where a party is added or substituted owing to an assignment or devolution of any interest during the pendency of a suit or where a plaintiff is made a defendant or a defendant is made a plaintiff.

4. Now under the Limitation Act, 1963, it is Section 21 which reads as follows :

21. Effect of substituting or adding new plaintiff or defendant. -

(1) Where after the institution of a suit, a new plaintiff or defendant is substituted or added, the suit shall, as regards him, be deemed to have been instituted when he was so made a party:

Provided that where the court is satisfied that the omission to include a new plaintiff or defendant was due to a mistake made in good faith it may direct that the suit as regards such plaintiff or defendant shall be deemed to have been instituted on any earlier date.

(2) Nothing in Sub-section (1) shall apply to a case where a party is added or substituted owing to assignment or devolution of any interest during the pendency of

a suit or where a plaintiff is made a defendant or a defendant is made a plaintiff.

5. A comparative reading of the proviso to Sub-section (1) shows that its addition has made all the difference. It is also clear that the proviso has appeared to permit correction of errors which have been committed due to a mistake made in good faith but only when the court permits correction of such mistake. In that event its effect is not to begin from the date on which the application for the purpose was made, or from the date of permission but from the date of the suit, deeming it to have been correctly instituted on an earlier date than the date of making the application. The proviso to Sub-section (1) of Section 21 of the Act is obviously in line with the spirit and thought of some other provisions in Part III of the Act such as Section 14 providing exclusion of time of proceeding bona fide in court without jurisdiction, when computing the period of limitation for any suit, and Section 17(1) providing a different period of Limitation starting when discovering - a fraud or mistake instead of the commission of fraud or mistake. While invoking the beneficent proviso to Sub-section (1) of Section 21 of the Act an averment that a mistake was made in good faith by impleading a dead defendant in the suit should be made and the court must on proof be satisfied that the motion to include the right defendant by substitution or addition was just and proper, the mistake having occurred in good faith. The court's satisfaction alone breaths life in the suit.

6. It is noteworthy that the trial court did not attribute any neglect or contumacy to the conduct of the plaintiff-respondent. It was rather observed that the plaintiff could have known the date of the death of the first defendant only by the counter filed to IA 265/75. Normally, if he had known about the date of death of the defendant, he would have filed the suit in the first instance against his heirs and legal representatives. The trial court has also opined that the plaintiff was ignorant as to such death and that is why he filed IA 265/75 under Order 22 Rule 4 of C.P.C. The High Court too has recorded a finding that there was nothing to show that the plaintiff was aware of the death of the first defendant and yet knowing well about it, he would persist in filing the suit against a dead person. In conclusion, the learned Single Judge action it clearly showed that he had acted in good faith. Thus the High Court made out a case for invoking the proviso to Sub-section (1) of Section 21 of the Act in favour of the plaintiff-respondent. Sequally, the High Court found no difficulty in allowing IA 785/75 permitting change of the provision whereunder IA 265/75 was filed and in allowing IA 265/75 ordering the suit against the heirs and legal representatives of defendant No.1 to be dating back to 14.11.74, the date on which the plaint was originally presented.

7. The High Court relied on , observing that it virtually decided the point. It seems the High Court had discerned and born in mind the following observations of Bachawat, J. concurring with A.K. Sarkar, C.J. :

The Court has power to add a new plaintiff at any stage of the suit, and in the absence of a statutory provision like Section 22 the suit would be regarded as having been commenced by the new plaintiff at the time when it was first instituted. But the policy of Section 22 is to prevent this result, and the effect of the section is that the suit must be regarded as having been instituted by the new plaintiff when he is made a party, see *Ramsebuk v. Ramlall Koondoo* (1881) ILR 6 Cal. 815. The rigour of this law has been mitigated by the provision to Section 21(1) of the Indian Limitation Act, 1963,

which enables the court on being satisfied that the omission to include a new plaintiff or a new defendant was due to a mistake made in good faith, to direct that the suit as regards such plaintiff or defendant shall be deemed to have been instituted on any earlier date. Unfortunately, the proviso to Section 21(1) of the Indian Limitation Act, 1963 has no application to this case, and we have no power to direct that the suit should be deemed to have been instituted on a date earlier than November 4, 1958.

(Emphasis ours) At the time of the cause the old Indian Limitation Act, 1908, was in force.

8. A later judgment of this Court reported in *Munshi Ram v. Narshi Ram and Another*, being under the Limitation Act, 1963 is more on the point. Thus the appellant filed a suit for possession of a piece of land in exercise of his right of pre-emption against respondent 1 and 2 alleging that they had purchased the land from his father under a registered sale deed dated 16.5.77 in total disregard of his right of pre-emption. It was stated in the plaint that the cause of action arose on 16.5.77 and hence the suit filed on 29.1.78 was in time. Certified copy of sale deed was also filed along with the plaint. In the certified copy of sale deed there was mention of only respondents 1 and 2 as vendees. In the written reply filed on 17.5.78 one of the pleas was that all the vendees were not impleaded and hence the suit being for partial pre-emption was liable to be dismissed. On 14.6.78, the Court proceeded to frame issues. In that course when the original sale deed was read it transpired that one M was also a vendee along with respondents 1 and 2. On the next day itself the appellant filed an application to implead M and prayed for amendment of plaint stating 16.6.77 also as the date of cause of action on which day according to him the possession of land was delivered to the vendees. The amendment was sought to save the suit from bar of limitation prescribed by Article 97 of Limitation Act. The suit and application were dismissed as also the first appeal and the second appeal before High Court. This Court held that the omission to implead M as defendant was due to a mistake. The mistake was made in good faith and hence to proviso to Sub-section (1) of Section 21 of the Act would apply and the suit deemed to have been filed on 29.1.78 against M and thus it would be within time as required by Article 97. The decision of the High Court was thus reversed. It was also opined that M being a necessary party had to be impleaded under Order 1 Rule 10, C.P.C., to enable the court effectually and completely to adjudicate upon and settle all the questions involved in the suit.

9. Thus in our opinion the course set out in *Munshi's case* (supra) is attracted to the instant case since the High Court has found that the plaintiff-respondent had acted in good faith and had committed mistake in that frame of mind. *Munshi's case*, in our view, should clear the way in favour of the plaintiff-respondent, ending in dismissal of this appeal.

10. In passing we think that it would be desirable to deal with some of the judicial precedents at least, relied upon by the respective learned Counsel. Cases which arose under Section 22 of the old Indian Limitation Act, 1908, showing difference of opinion raging in the High Courts on the interpretation of the said provision interplaying with the relevant provisions of the CPC, need not be adverted to. Others arising after 1.1.1964, the day of the enforcement of the Limitation Act, 1963, are noteworthy. Cases reported in *Suraj Bhan and Ors. v. Balwan Singh*, *Lalit Kumar and Other v.*

Jairam Dass and Ors. and Kisan Coop. Sugar Factory Ltd. v. Rajendra Paper Mills , are on their own facts in which the mistake pointed out was not found to have occurred in good faith. In contrast, in Rasetty Rajyalakshamma and Ors. v. Rajamuru Kanniah , the mistake was found to have occurred in good faith and the impleadment of the legal representatives was allowed even after the expiry of the limitation for filing suit. The institution of the suit was rightly held therein to be not void ab initio.

11. Not fully appreciating the ratio of case in a learned Single Judge of the Orissa High Court in Cuttack Municipality v. Shyamsunder Behera , in our view, wrongly termed the suit to be a nullity, when the effect of its being nullified was removable through proviso to Section 21(1) of the Act, Khaja Begum v. Gulam Mohiuddin and Ors. is not a case under the proviso to Sub-section (1) of the Section 21 of the Act and thus requires no comment.

12. On the above analysis, we have no hesitation in coming to the conclusion that the decision of the High Court was correct for the reasoning it advanced as well as for the effort we have made in refurbishing that view in the processual rehearing. As a result, this appeal fails and is hereby dismissed but without any order as to costs.