

HON'BLE SRI JUSTICE M. VENKATA RAMANA

SECOND APPEAL No.684 of 2000

JUDGMENT:

The plaintiff is the appellant. He laid the suit against the respondent seeking to direct him to return 139 empty barrels or in alternative pay Rs.19,460/- towards their value, for interest at 18% per annum from the date of the suit till realization and for costs.

2. The case of the appellant at the trial was that he was appointed as his agent by the respondent by his letter dated 04.12.1981. It is the further case of the appellant at the trial that he was attending to distribution of palmolin oil on behalf of the respondent covering Tenali and Emani Taluqs, Guntur District and that it was terminated by the respondent on account of an inspection by the Tahsildar, Tenali, Food Inspector etc. on 19.04.1982 when a shortage of 735 kgs., of palmolin oil was found with 139 barrels containing oil out of 450. The appellant also claimed that the respondent appointed one Sri Ch.V.S.Chalapathi Rao as sub-agent in his place and that he had handed over the aforesaid 139 barrels of oil to Sri Chalapathi Rao.

3. The appellant also claimed that he being the owner of 139 barrels (drums), which he had purchased at Hyderabad, he is entitled for their return, which the respondent did not do inspite of directions of the District Manager of A.P.Civil Supplies Corporation, by the letter dated 05.07.1982. The appellant also claimed that he purchased each barrel at Rs.140/-. Claiming that in spite of his demands, these 139 barrels are not returned to him nor the respondent paid their value, the appellant

instituted the suit on the file of the Court of the then Principal District Munsif, Tenali.

4. The respondent resisted the claim of the appellant at the trial denying relationship between him and the appellant as principal and agent respectively. He specifically contended that while he was then Transport and Handling contractor for palmolin oil covering Guntur District by A.P.State Civil Supplies Corporation, Hyderabad, he had appointed agents throughout the District at various oil distribution points fixed by the afore stated Corporation for proper distribution of oil to various fair price shop dealers. He further contended that he appointed Sri Ch.V.Y.Chalapathi Rao at Tenali as his agent for the year 1981-82 and that Sri Chalapathi Rao would have engaged the services of the appellant at Tenali. He also contended that due to mischief committed by the appellant, the Tahsildar, Tenali, inspected the oil point at Tenali, found shortage of 735 kgs., of palmolin oil, which was not to his knowledge, since he was not aware of the stock position nor was he informed of it. Denying that the appellant owned 139 barrels nor they were delivered to him, he also questioned the manner of directions issued by the District Manager, A.P.Civil Supplies Corporation, by the letter dated 05.07.1982 as alleged by the appellant. Stating that there was no prior demand to filing the suit, and denying the value of each barrel at Rs.140/-, the respondent denied his liability either to return the barrels or to pay the value. He further contended that the suit stood barred by limitation.

5. On the pleadings, the trial Court settled the following issues for trial:

1. Whether the plaintiff is entitled for the suit claim?
2. Whether the suit is barred by limitation?
3. To what relief?

6. At the trial, the appellant examined himself as P.W.1 and relied on Ex.A1 to Ex.A3. The respondent examined himself as D.W.1 and relied on Ex.P1 in support of his contention.

7. Basing on the material and the evidence, learned trial Judge accepted the claim of the appellant and also held that the suit claim is within time. Thus holding, the suit was decreed as prayed.

8. The respondent preferred appeal against the decree and judgment of the trial Court to the Court of learned Principal Subordinate Judge, Tenali, who did not agree with the findings of the trial Court and reversed its decree and judgment, leading to dismissal of the suit.

9. In these circumstances, this second appeal is presented by the appellant.

10. Sri V.S.Prasad, learned counsel for Sri V.S.R.Anjaneyulu, learned counsel for the appellant and Sri G.Viswanadh, learned counsel for the respondent addressed arguments.

11. This second appeal was admitted and the substantial questions of law raised by the appellant are:

- “a. Whether the lower appellate Court is correct in reversing the well considered findings of the trial Court basing on the oral and documentary evidence adduced and produced on behalf of the plaintiff in exercise of the powers conferred under Section 107 of CPC?

- b. Whether the finding of the lower appellate Court that the suit is barred by limitation is correct?
- c. Whether the lower appellate Court is correct in holding that there is no privity of contract between the plaintiff and the defendant?
- d. Whether the lower appellate Court is correct in interpreting the Ex.A1 document as only an authorization letter but not appointment letter?
- e. Whether the lower appellate Court is correct in recording a finding that there is no evidence on record to show that Ex.A2 was served on the defendant and the defendant has got knowledge of the said document?"

12. Essentially, the claim of the appellant against the respondent for return of 139 barrels or in alternative their value at Rs.140/- each against the respondent requires determination in view of the relationship in between them as an agent and principal, alleged by the appellant.

13. The respondent was a transport contractor based at Guntur during the years 1981-82 and was supplier of palmolin oil in Guntur District on behalf of A.P.State Civil Supplies Corporation. He had set up about 17 to 18 distribution points at the locations identified by the afore stated Corporation. One such distribution point was at Tenali covering Tenali and Emani Taluqs. He was appointing agents to look after this activity of distribution of palmolin oil at all these points, to Fair Price Shop dealers.

14. Though the respondent denied in his written statement that the appellant was appointed as an agent by him at Tenali, at the trial, he clearly admitted the status of the appellant towards him and being an

agent at Tenali Distribution Point. To establish this fact, the appellant relied on Ex.A1 a letter dated 04.12.1981 of the respondent. This letter is in the letterhead of the respondent with title 'appointment letter'. Its contents clearly reflect that the appellant was appointed by the respondent as his agent at Tenali for distribution of palmolin oil from the storage point, maintain it properly with ROs, permits and to handover D.Ds to him. Thus, the appellant was appointed as the agent of the respondent with effect from 04.12.1981.

15. The respondent contended that it is an authorisation letter and this contention was accepted by learned appellate Judge contra to the findings of the learned trial Judge that it was an out and out appointment letter.

16. In view of the admission of the respondent as D.W.1 at the trial as well as contents of Ex.A1, there cannot be any other opinion than that the appellant was appointed as his agent with effect from 04.12.1981 at Tenali Distribution point for distribution of palmolin oil to the fair price shops.

17. It is not in dispute that the appellant was removed as his agent at Tenali by the respondent later in the year 1981-82. The reason is that there was inspection of the godown or the distribution point at Tenali by the Tahsildar, Food Inspector etc. They found shortage of 735 kgs., of palmolin oil and with 139 barrels containing this oil out of 450, available in that godown. Apparently, proceedings were drawn by the revenue officials in this respect and it culminated in directing the respondent paying Rs.14,129-28ps @ Rs.19.20 per kg for 735.900 kgs of palmolin oil to A.P.State Civil Supplies Corporation Limited. Ex.A2 a copy of which is

Ex.A3 being the memo of the office of District Manager, A.P.State Civil Supplies Corporation, Guntur, dated 05.07.1982 is proving this fact. It is also admitted by the parties. Subsequent to this inspection on 19.04.1982, going by the averments in the plaint, the services of the appellant were terminated by the respondent as his agent.

18. Neither in the plaint nor in his testimony as P.W.1, the appellant specifically stated the date on which such termination came into effect.

19. According to the appellant, as per the directions of the District Manager, A.P.State Civil Supplies Corporation, he handed over 139 barrels of oil to the respondent and obviously it was through Sri Chalapathi Rao, who was a clerk working for the respondent at Guntur then. Delivery of such property at this stock point or godown to Sri Chalapathi Rao by the appellant is not in dispute. It is further to be noted that the respondent was receiving only palmolin oil from A.P.State Civil Supplies Corporation Limited and they were be stored in the barrels at stock points or distribution points including at Tenali.

20. It is the contention of the appellant that he had supplied 139 empty barrels to the respondent after purchasing them from M/s.Swasthik Traders, Hyderabad. The respondent has denied this fact and claimed that he had purchased the barrels necessary for his stock point from M/s.Swasthik Traders, Hyderabad. His further contention is that it was for him to maintain the storage facility being the contractor at this distribution point, for further distribution to various fair price shops, upon receiving the stock.

21. When the appellant is specifically claiming that he is the owner of 139 empty barrels and that they were put to use by the respondent, the

burden is squarely on him to establish such fact. Primarily he should prove by cogent and acceptable material that he had purchased these barrels from a particular trader at Hyderabad. There is no receipt or any other documentary proof produced by the appellant to establish this fact. This is a major deficiency and flaw affecting the claim of the appellant flatly.

22. To get over this difficulty, apparently the appellant brought out a situation whereby the District Manager of A.P.Civil Supplies Corporation at Guntur issued Ex.A2 memo to the respondent. The contents of this memo as stated supra refer to the direction of the Managing Director, A.P.State Civil Supplies Corporation, Hyderabad, to pay for the deficiency of palmolin oil of 735.900 kgs., to make good the loss to the Corporation. This memo also contains a direction to the respondent to return 139 empty barrels to the appellant. This letter is the prime mover for the appellant and to make out a cause of action to lay the suit against the respondent.

23. The respondent denied that there was any role for the District Manager, A.P.State Civil Supplies Corporation, Guntur, to interfere in this matter and direct return of 139 barrels to the appellant. He also contended that he had never known Ex.A2 nor he was served a copy of it.

24. Against this backdrop, it has to be seen whether there was necessity for the District Manager, A.P.State Civil Supplies Corporation, Guntur, to direct the respondent to return the empty barrels as stated in Ex.A2.

25. It is on account of letter of the appellant dated 03.07.1982 in the nature of application, Ex.A2 was issued on 05.07.1982.

26. The concern of the A.P.State Civil Supplies Corporation is for the respondent since he being the transport contractor and who was then responsible for distribution of palmolin oil in Guntur District including from Tenali stock point, as per its directions. Otherwise, it did not have any role with this activity of the respondent including managing the stock point or godown or with the employees of the respondent including his agents. This is very clear from the statements of the appellant in cross-examination.

27. The appellant as P.W.1 stated that the Civil Supplies Department had no control over the barrels. He also stated that he did not obtain any memo from the District Manager, Civil Supplies, Guntur to the effect that he had delivered barrels to the respondent. Nor there is any proof that the respondent acknowledged receipt and use of 139 empty barrels, claimed by the appellant, for his purposes at Tenali accepting ownership in respect there of to vest with the appellant.

28. The appellant also admitted as P.W.1 that he had given deposit when he was appointed as an agent of the respondent and that the respondent had returned this deposit after terminating his agency. However, he stated that the respondent promised to return these barrels later, when he so asked. Thereafter, admittedly the appellant did not issue any legal notice demanding return of these barrels or to pay an equivalent value. He denied the suggestion that the respondent is the owner of these barrels.

29. Precise defence of the respondent at the trial was that the entire material at the stock point at Tenlai belonged to him. He vouched similarly in his testimony as D.W.1.

30. The appellant being an agent of the respondent at Tenali had no concern to A.P.State Civil Supplies Corporation. It is an admitted and proved fact. In such an event, there was no necessity for the Civil Supplies Corporation, Guntur to direct the respondent to return 139 empty barrels to the appellant, as seen from Ex.A2. Though Ex.A3, a photo copy of Ex.A2 produced as if it bears an endorsement for returning 100 barrels and to return remaining barrels later to him, at the instance of the respondent, it did not bear any signature. Thus, there is no proof that at any point of time, Ex.A2 was served to the respondent. Even if it was served, it did not bear any relevance, since the transaction alleged was in between the appellant and the respondent with which the Civil Supplies Corporation had no role or business to interfere. Obviously, Ex.A2 was secured by the appellant to make out a claim of this nature to clutch at a cause of action to lay the suit.

31. On account of paucity of acceptable and convincing material particularly to establish the ownership of 139 barrels claimed by the appellant against the respondent either by means of direct evidence or circumstances, his claim could not have been accepted by a decree in the suit.

32. Learned trial Judge considered Ex.A2 as an outcome of regularity in performance of business by Civil Supplies Corporation, a public entity and raised a presumption under Section 114 of Indian Evidence Act to

accept the same. Learned appellate Judge differed in this context on the ground that Section 114 of Evidence Act could not have been applied nor could become basis to accept the contention of the appellant.

33. Reasons are assigned supra as to invalid nature of Ex.A2 and not bind the respondent particularly when there is no proof that it was ever served on him. In these circumstances, learned trial Judge was not right in raising a presumption in favour of the appellant and to accept Ex.A2. The appellate Court is justified in reversing the findings so recorded by the trial Court thereon.

34. On behalf of the respondent, Ex.B1 a letter stated to have been addressed by the appellant to Sri Chalapathi Rao on 26.07.1985, in relation to this transaction demanding return of 139 empty barrels or to pay value in respect thereof is relied on. It is a document that came into existence after institution of the suit. None connected to this letter, viz. Sri Ch.V.Y.Chalapathi Rao, was examined at the trial nor it was confronted to the appellant when examined as P.W.1 at the trial. Mere production of this document, which is of such nature, cannot demonstrate the situation on the date of the suit. Therefore, Ex.B1 has to be rejected from consideration.

35. Nonetheless, from the material it is manifest that the appellant failed to establish the suit transaction against the respondent and *de'hors* Ex.A2, there is no other material for the appellant except his oral evidence. It being highly interested without supporting proof cannot be the basis to accept the suit claim. Thus, the inference to draw is that the appellant could not have made a claim against the respondent nor there was any reason for the learned trial Judge to grant

a decree in his favour and against the respondent. Rightly, the appellate Court reversed this decree and the judgment.

36. The next question to consider is effect of enforceability of the suit claim by the appellant against the respondent and if it is brought within time prescribed by the Limitation Act.

37. The nature of lis sought by the appellant relates to return of 139 barrels, viz. movables against the respondent. If it is considered being based on a contract between the agent and a principal, part - II of the Schedule of Limitation Act cannot apply. Learned trial Judge applied Article 54 of Limitation Act on the premise that there was an implied contract between the appellant and the respondent and held the suit being one for specific performance based on such implied contract. This finding as rightly observed by the learned appellate Court has no basis in the pleadings in the plaint. Nor the appellant had come up with a specific plea of contract, which he was trying to enforce by means of the suit or the case of the appellant involved recovery of compensation.

38. In these circumstances, if Article 113 of Limitation Act provided under Part - X of schedule, which governs the suits for which there is no period prescribed is applied, it is three years from the date when the right to sue accrues. Cause of action is specifically stated in the plaint to have had arisen on 05.07.1982, viz., the date of Ex.A2 and thereafter. Learned trial Judge took into consideration this date in his attempt to apply Article 54 of Limitation Act to bring the suit claim within time. Learned appellate Judge disagreed with it and held that the suit is barred by time.

39. The cause of action for the appellant, going by his case had arisen when the appellant claimed that he had returned 139 barrels to Sri Chalapathi Rao as directed by the District Manager of A.P.State Civil Supplies Corporation, Guntur, as deposed by him at the trial. The pleadings in the plaint in this respect need consideration. When the entire incident including removal of the appellant as the agent by the respondent occasioned on account of the inspection of the godown or stock point by the revenue authorities on 19.04.1982, leading to his removal as agent, it cannot be stated that the date of Ex.A2, i.e., 05.07.1982 became the basis for computation of limitation nor can such date be assumed, when the right to sue accrued to the appellant. The suit was laid on 03.07.1985 in the trial Court. Therefore, going by the parameters considered above, the suit claim stood hopelessly barred by time.

40. This suit treated as a simple money claim for refund of money, the same period of three years applies and the reasons assigned above, to arrive at the cause of action for the purpose of computation of period of limitation equally apply. If Article 69 of the Limitation Act is applied, for recovery of movable property under Part VI of schedule of Limitation Act, the period of limitation is also three years. It starts running from the time when the property is wrongfully taken. The case of the appellant that after he was removed as the agent by the respondent subsequent to 19.04.1982, he handed over 139 barrels to Sri Chalapathi Rao later. If it is considered that such retention by the respondent without caring his demand for return of these barrels or pay money equal to their value subsequently is considered, the time to run for the computation of limitation should be from then onwards and it was prior

to 05.07.1982. Therefore, viewed from any count, the appellant failed to satisfy that his claim was within time and that by the date of institution of the suit, it was enforceable.

41. Therefore, on this count also, the claim of the appellant should fail holding that the suit claim stood barred by time.

42. Therefore, for the reasons recorded above, the judgment of the appellate Court, which considered all the issues of fact and law in right perspective requires no interference in this second appeal. Neither the findings recorded by the appellate Court are perverse nor irregular. The reasons assigned by the learned trial Judge are without any basis and are perverse, which are recorded without appreciating the fact and law in proper perspective.

43. Therefore, finding no reason to interfere invoking Section 100 CPC, with the decree and judgment of the appellate Court, this second appeal has to be dismissed.

44. In the result, this second appeal is dismissed confirming the decree and the judgment of the appellate Court confirming the dismissal of the suit. The appellant shall pay costs in this second appeal to the respondent and also as awarded by the first appellate Court. Interim orders, if any, stand vacated. All pending petitions, stand closed.

M. VENKATA RAMANA, J

Dt:01.09.2021
Rns



HON'BLE SRI JUSTICE M. VENKATA RAMANA

SECOND APPEAL No.684 of 2000

Date:01.09.2021

Rns