THE HON'BLE SRI JUSTICE N.R.L.NAGESWARA RAO

A.S.NO.1187 OF 1997

JUDGMENT:-

The 2nd defendant in O.S.No.70 of 1987 on the file of the court of II Additional Senior Civil Judge, Kakinada is the appellant herein.

02. The plaintiff has filed the suit for recovery of Rs.1,54,540-20 paise. According to the case of the plaintiff, the first defendant has purchased Royya/Type motor fishing boat with registration No.77 under Hire Purchase Agreement on 04-01-1980 agreeing to pay monthly instalments for a period of seven years with certain default clauses. From 04-01-1980 to 14-03-1985 the first defendant made only 15 payments. While so, the plaintiff was informed that the boat had drowned at Vodalarevu on 08-08-1985. The first defendant did not cooperate with the second defendant's authorities to salvage the boat and the pursuit of the Surveyor of the second defendant is foiled. The boat was insured with the second defendant. The first defendant claims to have informed the second defendant and the amount was not paid to the plaintiff.

03. The first defendant admitted the purchase under hypothecation and according to him, the terms in the agreement are not binding as the subsidy is not provided and the value of the boat is also not correct. The boat was capsized on 08-08-1985 near Vodalarevu and it was immediately informed to the second defendant. In fact, the plaintiff has to pay damages to the first defendant and the second defendant has to settle the claim.

04. Originally, the second defendant was not added as a party and after second defendant is added as a party, the second defendant admitted the insurance of the boat but denied the hire purchase agreement. The Insurance Company has to make payment in case of any valid claim to the first defendant as the financier of the boat. Since first defendant could not establish the loss of the boat the second defendant is not liable. There is no privity of contract between the plaintiff and second defendant. Therefore, the second defendant is not liable to pay the amount. The claim is barred by time as the accident is alleged to have been taken place on 08-08-1985 and the second defendant was added as a party and served with summons on 25-04-1990 and, therefore, the suit is barred. There was no capsize as pleaded by the first defendant and it was intentionally sunk after removing the parts and it can be gathered from the investigation by the Surveyors. Therefore, the first defendant deliberately caused the loss and there is violation of the conditions of the policy and as such the second defendant is not liable to pay the same.

05. On the basis of the above pleadings, necessary issues have been framed for trial and on behalf of the plaintiff PW.1 was examined and marked Exs.A-1 to A-7. On behalf of the defendants DW.1 to 6 were examined and marked Exs.B-1 to B-28. After considering the evidence on record, the court below granted a decree against the appellant herein for a sum of Rs.1,10,000/- with subsequent interest @ 12%. Aggrieved by the said judgment, the present appeal is filed.

06. Now the points that arise for consideration are:-

1. Whether there is privity of contract between the

plaintiff and the second defendant?

2. Whether the plaintiff is entitled to be reimbursed for the loss caused to the boat?
3. Whether the suit is within the time?

POINTS:-

07. Sofar as the insurance of the vehicle is concerned, there is no dispute about the fact that the boat was insured with the appellant herein. It is also not in dispute that a Surveyor has been appointed by the appellant and he has given a report stating that he could not salvage the boat as the first defendant did not cooperate. The second defendant has not filed the policy in the case pertaining to this case. One policy Ex.A-2 was filed, which was issued in the name of the plaintiff, referring another period. But, however, sofar as the present period is concerned, though the policy is admitted, it was not filed. It is very difficult to know the contents or the terms of the policy without it being exhibited before the court. In fact, the Surveyor's report, which was filed as Ex.B-23, shows that the insurance is for the benefit of the plaintiff and all the correspondence was done with the plaintiff. In fact, a letter was also addressed by the plaintiff to the second defendant under Ex.B-21. Therefore, in view of the above circumstances, it cannot be said that the second defendant was not conscious of the fact that the owner of the boat is the plaintiff and insurance is for the benefit of the plaintiff alone. Ex.B-23 clearly establishes the same. That being so the appellant cannot contend that there is no privity of contract between the plaintiff and second defendant.

08. Sofar as the damages are concerned, evidently, the boat was said to have been sunk. Except gathering some information

from the parties, who are evidently not concerned with the boat are employed on that date, the Surveyor could not locate the boat. If the first defendant did not cooperate with the Surveyor, the plaintiff cannot be penalised. There should be some evidence to hold that the first defendant has intentionally sunk the boat. The material evidence of the other witnesses adduced on behalf of the defendants is not sufficient to come to such a conclusion and the court below has rightly rejected the claim of the appellant herein. Any amount of suspicion cannot take place of proof and the second defendant has failed to discharge the burden showing that the boat was intentionally sunk by the first defendant.

09. Sofar as the question of limitation is concerned, the suit was originally filed on 15-01-1987 and the second defendant was added as a party on 23-03-1990. Evidently, the cause of action against the appellant arises only after the claim is repudiated though the first defendant and also the plaintiff are in correspondence with the appellant. It was only by the letter dated 09-09-1988 under Ex.B-2 the liability under the claim has been repudiated and, therefore, the period of limitation has to be computed from that date. Consequently, the findings of the lower court on all the issues does not call for any interference and the court below has granted the amount as per the value of the policy, which is Rs.1,10,000/-. There are absolutely no merits in the appeal and the same is liable to be dismissed.

Accordingly, the Appeal Suit is dismissed. No costs.

N.R.L.NAGESWARA RAO,J

20-02-2013
TSNR