

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment Reserved on : 07.12.2017

Judgment pronounced on : .12.2017

CORAM

THE HONOURABLE MR.JUSTICE P. RAJAMANICKAM

S.A.No.2005 of 2000

1. The Asst. Director Handloom &
Textile, Trichy
 2. The President
Vengamedu Anna Weaver
Corporation Society Limited, Karur.
 3. Handlooms
Asst. Director,
Thiruvengadasamy Street, Erode-1
- ... Appellants/Defendants
- Vs
- Padmavathy ... Respondent/Plaintiff

Prayer : Second Appeal is filed under Section 100 of the Civil Procedure Code, against the Judgment and Decree of the II Additional District Judge, Erode passed in A.S.No.306 of 1999 dated 01.08.2000 reversing the Judgment and Decree passed in O.S.No.38 of 1999 dated 02.12.1999 on the file of the I Additional District Munsif Court, Erode.

For Appellants : Mr. V.Raghavachari

For Respondent : Ms.P.T.Ramadevi

J U D G M E N T

This second appeal has been filed by the defendants against the Judgment and Decree dated 01.08.2000 passed in A.S. No.306 of 1999 by the learned II Additional District Judge, Erode reversing the Judgment and Decree dated 02.12.1999 passed in O.S.No.38 of 1999 by the learned First Additional District Munsif, Erode.

2. The case of the plaintiff, who is the respondent herein, as set out in the plaint is as follows:

The suit property absolutely belongs to the plaintiff and she is in possession of the same. The husband of the plaintiff

namely B.S. Ponnusamy was an agent of the second defendant under the name and style of "M/s. B.S.P. Tex, at Easwaran Koil Street, Erode. Since the second defendant insisted security of immovable property, the plaintiff executed a registered security bond in favour of the second defendant to the tune of Rs.1 lakh only if payable by M/s.B.S.P. Tex, Erode. The plaintiff understands that M/s.B.S.P. Tex, Erode is in arrears to the principal, namely, the second defendant. To the utter shock of the plaintiff, she came to know that the first defendant had attached the suit property on 05.06.1995 under C.E.P. No. 69-95/96 and directed the third defendant to sell the suit property for realization of Rs.5,79,400/- said to be due from M/s.B.S.P. Tex, Erode. But, the plaintiff was not served any notice nor was she heard before her property being attached and ordered to be sold. The said order, therefore, is per-se illegal and violative of the principles of natural justice. The Maximum liability with which the suit property is burdened only Rs.1 lakh and not anything more. Immediately, on coming to know of the illegal attachment, the plaintiff approached the defendants and requested them not to proceed with the sale proceedings. The defendants were in no mood to listen to the plaintiff's request. They finally proclaimed on 13.01.1999 that they would go ahead with the sale unmindful of the valid objections of the plaintiff. Hence, the plaintiff has filed the above suit for declaration that the order of the attachment of sale dated 05.06.1995 by the first defendant is unlawful, illegal and unenforceable and for permanent injunction restraining the defendants from enforcing the aforesaid order. During the pendency of the suit, the suit property was sold in public auction on 05.10.1999. Hence, the prayer in the plaint has been amended by including the prayer to declare that the sale dated 05.10.1999 also unlawful and illegal and unenforceable.

3. In the written statement and in the additional written statement filed by the defendants, it is averred as follows:

It is true that the husband of the plaintiff viz. B.S. Ponnusamy was an agent of the second defendant under the name and style of M/s.B.S.P. Tex. A sum of Rs.6,69,427.45P/- to be paid by the said Ponnusamy to the Vengamedu Anna Weavers Co-operative Society. It is false to state that the plaintiff has offered security to the maximum of Rs.1 lakh only. She has executed a security bond on 24.12.1986 and subsequently she has executed another security bond on 13.11.1989 to secure the loan availed by her husband. The said B.S. Ponnusamy has not paid the arrears of Rs.6,69,427.45P. Hence, the third defendant has attached the suit property on 08.07.1986. The Civil Court has no jurisdiction to entertain the suit. The jurisdiction of the Civil Court is barred by the Co-

operative Societies Act. Further, the suit is barred by the limitation. The suit property was sold on 05.10.1999 to one K.V. Senthilkumar for Rs.2,10,000/-. The suit is bad for non-joinder of necessary party. Therefore, the defendants prayed to dismiss the above suit.

4. Based on the aforesaid pleadings, the learned First Additional District Munsif, Erode had framed five issues and one additional issue and tried the suit. During the trial, on the side of the the plaintiff, the plaintiff examined herself as P.W.1 and marked two documents as Ex.A1 and A2. On the side of the defendants, one witness was examined as D.W.1 and Exs.B1 to B7 were marked as Exhibits.

5. The learned District Munsif, after considering the materials on record dismissed the suit as it is barred under Section 156 of the Tamil Nadu Co-operative Societies Act, 1983. Aggrieved by the same, the plaintiff had filed the First appeal in A.S.No.306 of 1999 on the file the Second Additional District Judge, Erode.

6. The First Appellate Court held that Section 90(1) of the Tamil Nadu Co-operative Societies Act, 1983 would apply only to a dispute among members, past members or persons claiming through them or between them and the society or the members of the Committee or officers or agents etc., as envisaged in Clauses (a) to (d) of Section 90(1) of the Tamil Nadu Co-operative Societies Act and not to the Third parties. Accordingly, the First Appellate Court had reversed the Judgment and Decree of the trial court and decreed the suit as prayed for. As against the same, the defendants have preferred this second appeal.

7. At the time of admitting the second appeal, the following substantial questions of law were formulated:

" 1. Whether the lower appellate Court is right in decreeing the suit in the face of express bar under Section 156 of the Co-operative Societies Act?

2. When the property had been sold in exercise of the powers conferred under the Co-operative Societies Act, is it proper or justified for a civil Court to interfere and nullify the proceedings?

3. Whether the lower appellate Court is justified in holding the respondent herein is not a member and therefore she is not subject to the jurisdiction of the Arbitration proceedings,

particularly her claim is not based independent of the member?"

8. I have heard the submissions made by the learned counsel for both sides and also perused the records and Judgments of the Courts below.

9. The undisputed facts are as follows:-

The plaintiff is the wife of one Mr. B.S. Ponnusamy and the said Ponnusamy was a selling agent of the second defendant society under the name and style of "M/s.B.S.P.Tex". The plaintiff had executed a registered security bond in favour of the second defendant charging the suit property to the tune of Rs.1 lakh, if payable by M/s.B.S.P. Tex. The said Ponnusamy being the proprietor of M/s.B.S.P. Tex, did not pay the arrears of Rs.6,69,427.45P to the second defendant. Hence, the defendants initiated proceedings under the provisions of the Tamil Nadu Co-operative Societies Act, 1983 and decree has been passed against the said Ponnusamy. In order to realize the decree amount, the defendants attached the property of the plaintiff (Suit Property) based on the security bond executed by her and subsequently the said property has been sold in public auction. Questioning the propriety of the defendants, the plaintiff has filed the above suit.

10. As already pointed out that the trial Court has dismissed the suit on the ground that the Civil Court is not having jurisdiction in view of the bar created under Section 156 of the Tamil Nadu Co-operative Societies Act, 1983. On appeal, filed by the plaintiff, the Appellate Court held that there is no bar to entertain the suit by the civil court. The First appellate Court for arriving such a conclusion, relied upon the decision of the Hon'ble Supreme Court in Supreme Co-operative Group Housing Society Vs. M/s. H.S. Nag and Associates (P) Ltd., AIR 1996 SC 2443.

11. In the above decision, the Hon'ble Supreme Court in Para-2 has observed as follows:

"2..... The first contention urged was that the petitioner being a Co-operative society registered under the Delhi Cooperative Societies Act, 1972, the dispute is arbitrable under Section 60 of that Act and Section 93 thereof, puts an embargo on the power of the civil court to decide the dispute and that, therefore, the suit is not maintainable. The learned single Judge and the Division Bench negatived the contention and in our view rightly, on the ground that Section 60 of the Co-operative Societies Act would apply to a dispute among members, past-members or person claiming through them

or between them and the society or the members of the committee or officers or agents etc. as envisaged in Clauses (a) to (d) of Section 60(1) of the Co-operative Societies Act. By operation of the non obstante clause, the bar of suit attracts only if the dispute falls within the parameters of Clauses (a) to (d) thereof and the bar of jurisdiction of the Court under Section 93 gets attracted in respect of the specified subjects in Sub-section (1) of Section 93 thereof. Therefore, the plea of the bar of Sections 60 and 93 is devoid of substance."

12. The aforesaid decision was rendered considering the non-obstante clause found in the Section 60(1) of the Delhi Co-operative Societies Act, 1972 (hereinafter referred to as 'Delhi Act'). But no such non-obstante clause is there in Section 90 (1) of the Tamil Nadu Co-operative Societies Act, 1983 (hereinafter referred to as 'Tamil Nadu Act'). For proper appreciation the relevant sections are extracted hereunder:-

13. Section 60(1) of the Delhi Act reads as follows:

"60. Disputes which may be referred to arbitration.- (1) Notwithstanding anything contained in any law for the time being in force, if any dispute touching the constitution, management or the business of a co-operative society other than a dispute regarding disciplinary action taken by the society or its committee against a paid employee of the society arises-

(a) among members, past members and persons claiming through members, past members and deceased members; or

(b) between a member, past member or person claiming through a member, past member or deceased member and the society, its committee or any officer, agent or employee of the society or liquidator, past or present; or

(c) between the society or its committee and any past committee, any officer, agent or employee, or any past officer, past agent or past employee or the nominee, heirs or legal representatives of any deceased officer, deceased agent, or deceased employee of the society; or

(d) between the society and any other co-operative society, between a society and liquidator of another society or between the liquidator of one society and

the liquidator of another society;
such disputes shall be referred to the Registrar for decision and no court shall have jurisdiction to entertain any suit or other proceedings in respect of such dispute".

(Emphasis supplied)

14. Section 90. Section 90(1) Tamil Nadu Act, reads as follows:

"90. Disputes:- (1) If any dispute touching the constitution of the board or the management or the business of a registered society (other than a dispute regarding disciplinary action taken by the competent authority constituted under sub-section (3) of section 75 or the Registrar or the society or its board against a paid servant of the society) arises

(a) among members, past members and persons claiming through members, past members and deceased members; or

(b) between a member, past member or person claiming through a member, past member or deceased member and the society, its board or any officer, agent or servant of the society; or

(c) between the society or its board and any past board, any officer, agent or servant, or any past officer, past agent or past servant, or the nominee, heirs or legal representatives of any deceased officer, deceased agent, or deceased servant of the society; or

(d) between the society and any other registered society, such dispute shall be referred to the Registrar for decision."

15. From the reading of the aforesaid provisions would clearly show that the non-obstante clause which is found in Section 60(1) of the Delhi Act has not been incorporated in Section 90(1) of the Tamil Nadu Act. Therefore, the decision in Supreme Co-operative Group Housing Society Vs. H.S.Nag and Associates (P) Ltd., (supra) will not apply to this case.

16. The Hon'ble Supreme Court in Supreme Co-operative Group Housing Society Vs. M/s.H.S. Nag and Associates (P) Ltd. (supra) also held that the bar of jurisdiction of the Civil Court under Section 93 of the Delhi Act, gets attracted in respect of the specified subjects in sub-section (1) of Section 93 thereof. So, it may be relevant to refer sub-section(1) of Section 93 of the Delhi Act which reads as follows:-

"93. Bar of Jurisdiction of courts (1) Save as provided in this Act, no civil or revenue court shall have any jurisdiction in respect of-

(a) the registration of a co-operative society or its

bye-

laws or of an amendment of a bye-law;

(b) the removal of committee;

(c) any dispute required under section 60 to be referred to

the Registrar; and

(d) any matter concerning the winding up and the dissolution of a co-operative society"

17. A bare reading of the aforesaid Section would show that the jurisdiction of the Civil Court or Revenue Court is barred only in respect of the subjects referred to in that Section. But, Section 156 of the Tamil Nadu Act bars jurisdiction of Civil Courts not only in respect of the order passed by the Registrar or an officer authorized or empowered by him but also in respect of the order passed by the Tribunal or the Government or any officer subordinate to them. For proper appreciation, Section 156 of the Tamil Nadu Act is extracted hereunder:

"156. Bar of jurisdiction of civil courts:-- Notwithstanding anything contained in any other law for the time being in force no order or award passed, decision or action taken or direction issued under this Act by an arbitrator, a liquidator, the Registrar or an officer authorized or empowered by him, the Tribunal or the Government or any officer subordinate to them, shall be liable to be called in question in any court and no injunction shall be granted by any court in respect of anything which is done or intended to be done by or under this Act".

18. So, it is clear that the bar imposed under Section 156 of the Tamil Nadu Act is not confined to the orders passed by the Registrar alone. There is a total bar under the said Section for entertaining any suit or proceeding by any Court in respect of the orders passed by the Registrar, Tribunal or the Government. Therefore, on this ground also the aforesaid decision in Supreme Co-operative Group Housing Society Vs. M/s.H.S. Nag and Associates (P) Ltd. (supra) will not apply to this case.

19. The learned Counsel for the respondent/plaintiff

relying upon the following decisions contended that there is no bar to entertain a suit by the Civil Court.

1) P. Sathyanarayanan and another Vs. Tamil Nadu Electricity Board Employees Cooperative House Construction Society, Vallioor in 1995-2-L.W..785

2. Mattadhari Primary Agricultural Co-op. Bank Vs. Saroja Ammal and another in 1997(I) CTC 378.

20. In the case of P. Sathyanarayanan and another Vs. Tamil Nadu Electricity Board Employees Cooperative House Construction Society, Vallioor (supra), this Court has referred to Section 90(1) of the Tamil Nadu Co-operative Societies Act only. Section 156 of the Tamil Nadu Co-operative Societies Act 1983 was not adverted to. Therefore, the plaintiff/respondent cannot rely upon the aforesaid decision.

21. In the case of Mattadhari Primary Agricultural Co-op. Bank Vs. Saroja Ammal and another (supra), the defendant/society had filed a petition under Order 14 rule 2 of C.P.C. to frame preliminary issue with regard to jurisdiction of the Court. The trial Court dismissed the said Interlocutory application by holding that the plaintiff is not a member or employee of the Co-operative Societies and hence, under Section 90 of the Tamil Nadu Co-operative Societies Act, 1983, there is no statutory bar for filing suit. As against the said order, the defendant had filed a Civil Revision petition. This Court held that the view expressed by the trial court on the question of bar of jurisdiction of the civil court in the interlocutory application cannot be taken as its final view expressed by the court relating to the statutory bar created by the Co-operative Societies Act as the decision of the court, does not determine the rights of the parties finally. Since no decision was taken with regard to bar created under Section 156 of the Tamil Nadu Co-operative Societies Act 1983, the aforesaid decision will not be helpful to the plaintiff/ appellant.

22. The learned Counsel for the appellants/defendants, in support of the contention that in view of the bar created under Section 152 of the Tamil Nadu Co-operative Societies Act, the suit is not maintainable, relied upon the decision in Tirunelveli (Separate) 55 Kadambur Agricultural Co-operative Society Bank Limited Vs. Jeyaram and another in 2012 (1) MWN (Civil) 213.

23. In para No.13 of the aforesaid decision, this Court

has held as follows:

"13. Section 156 deals with the bar of jurisdiction of Civil Courts in respect of orders passed by the statutory authorities under the act. There is also bare against grant of injunction by any Court. It is clear from a reading of Section 156 that to get protection under the Act, the authority under the Act must pass orders or awards or take action or issue direction, for which they are empowered under the Act."

From the above said decision, it is clear that the Civil Court has no jurisdiction to entertain the suit. Therefore, the suit filed by the plaintiff before the Civil Court is not maintainable, as the same is barred by the Section 156 of the Tamil Nadu Co-operative Societies Act, 1983. Accordingly, the substantial questions of law are answered.

24. It is also relevant to refer Para 20 of the decision in Tirunelveli (Separate) 55 Kadambur Agricultural Co-operative Society Bank Limited Vs. Jeyaram and another (supra).

"20. Having regard to the fact that the Plaintiff had approached the Civil Court directly without approaching the competent authority by invoking the relevant provisions of the Act, the question is whether the plaintiff should be deprived of his right to pursue his remedy under the Act. As pointed out by the Honourable Supreme Court, Section 152 of the Act provides the hierarchy of authorities, before whom Appeals could be filed as against various orders and award, to be passed under the Act and a period of limitation of 60 days is prescribed under Section 152(3) of the Act. The said provision also gives power to the Appellate Authority to condone the delay in filing such Appeal to entertain the same, in the event of Appellant showing sufficient cause for not preferring the Appeal within the said period. Therefore, having regard to the fact that the plaintiff has been pursuing the remedy before the Civil Court and it appears to be in bonafide manner, he can be permitted to file an Appeal before appropriate authority. Having regard to the circumstances and the facts of the case, the Plaintiff cannot be deprived of raising his legitimate objections and the Plaintiff is permitted to file an Appeal before the appropriate authority within two months from the date of receipt of a copy of the

order. If the 1st Respondent/Plaintiff has approached within the said period as specified above, the Appellant Authority shall entertain the Appeal on file without insisting on the question of limitation, since the matter was kept pending this Court".

25. In this case also, the plaintiff has pursued the remedy before the Civil Court and it appears to be in a bona-fide manner. So, she can be permitted to file an appeal before an appropriate authority within two months from the date of the receipt of a copy of this Judgment. If the plaintiff/respondent filed an appeal within the period as specified above, the appropriate authority is directed to entertain the appeal on file without insisting the question of limitation, since the matter has been kept pending before this Court.

In the result, with the aforesaid observations, the Second Appeal is allowed, Judgment and Decree of the II Additional District Judge passed in A.S. No.306 of 1999 dated 01.08.2000 are set aside and the Judgment and Decree passed in O.S. No.38 of 1999 dated 02.12.1999 on the file of the I Additional District Munsif Court, Erode are restored. Considering the circumstances of the case, no cost is ordered.

Sd/-

Assistant Registrar(CS-iv)

//True Copy//

Sub Assistant Registrar

lbm/gv

To

1.The II Additional District Judge,
Erode.

2.The First Additional District Munsif,
Erode.

3.The Section Officer, V.R. Section,
High Court, Madras.(2 copies)

+2cc to Mr.P.T. RAMA DEVI, Advocate, S.R.No.88195
+1cc to Mr.V.RAGHAVACHARI, Advocate, S.R.No. 87646

Judgment in
S.A.No.2005 of 2000

SKV(CO)
TR(27/04/2018)