

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 11.10.2017
PRONOUNCED ON : 13.10.2017
CORAM

THE HONOURABLE MR. JUSTICE T.RAVINDRAN

S. A.No.404 of 2001

Indian Primary School,
rep. by its Correspondent,
Rev. Fr. Francis M.Vincent,
S/o. Fr.V.Michel Pillai,
His power of attony M.Soosai Marian,
S/o. Vinmicheal Pillai,
No.7, 95 Institutional Area,
Muttom, Kanyakumari District. Appellant/Plaintiff

Vs.

1. State of Tamil Nadu,
rep. by Secretary to Government,
Education Department,
Fort St. George,
Chennai - 9.
2. The Director of School Education,
College Road,
Chennai - 6.
3. Joint Director of School Education,
(Elementary) College Road,
Chennai - 6. Respondents/Defendants

Second Appeal is filed under Section 100 of Civil Procedure Code, against the Judgment and decree in A.S.No. 78 of 1996 on the file of the Seventh Additional City Civil Judge, dated 22.11.1996 reversing the judgment and decree in O.S.No. 9294 of 1993 on the file of the Second Assistant City Civil Judge, Chennai, dated 20.06.1994.

For Appellant : Mr.V.Selvaraj

For Respondents : Mr. T.Jayaramaraj,
Government Advocate (C.S)

JUDGMENT

Challenge in this Second Appeal is made to the Judgment and decree dated 22.11.1996 passed in A.S.78 of 1996, on the file of the Seventh Additional Judge, City Civil Court, Chennai reversing the judgment and decree dated 20.06.1994 passed in O.S. No. 9294 of 1993, on the file of the Second Assistant Judge City Civil Court, Chennai.

2. The parties are referred to as per their rankings in the Trial Court.

3. Suit for declaration.

4. Seeking for minority status of the plaintiff's institution, the suit had been levied by the plaintiff for appropriate reliefs.

5. The claim of the minority status by the plaintiff was totally resisted by the defendants contended that the plaintiff's institution is not entitled to the grant of minority status.

6. In support of the plaintiff's case, PW1 has been examined and Exs.A1 to A21 were marked. On the side of the defendants, no oral and documentary evidence has been adduced.

7. The trial Court, on the basis of the materials placed in the matter, was pleased to decree the suit as prayed for by the plaintiff. Aggrieved over the same, the defendants preferred the first appeal and the First Appellate Court, on the basis of the materials, set-aside the judgment and decree of the Trial Court and thereby, allowed the first appeal preferred by the defendants and resultantly, dismissed the suit laid by the plaintiff. Impugning the same, the second appeal has been preferred.

8. At the time of the admission of the second appeal, the following substantial question of law was formulated for consideration.

Whether the Judgment and decree of Appellate Court reversing the judgment and decree of the trial Court on the basis of G.O.Ms.No.371 Education, dated 10-05-1995 is sustainable in law?

9. Seeking the minority status for the plaintiff's institution, the suit has been laid by the plaintiff for the relief of declaration.

10. As determined by the First Appellate Court, it is found that in respect of the claim of minority status of the various institutions in the country, it is found that W(C) No.317/93 has been pending in the Apex Court and in the said lis, it is found that the Apex Court, by order dated 17.10.1994 in I.A.No.20, has passed a general order staying the operation of all the decrees/orders, which may have been given by any Civil Court in respect of the minority status or otherwise of any of the institutions, which have been arrayed as the respondents in the I.A and accordingly, ordered that all the respondents/institutions shall be treated as non-minority institutions, till they comply with the directions given by the

Court, i.e., the Educational institutions claiming the minority status should approach the State Government and till the State Government issues an order declaring the institutions to be a minority institutions, it cannot operate as such and it is found that as determined by the First Appellate Court and also in tune with the above direction, the Government of Tamil Nadu has passed G.O.Ms.No.371, dated 10.05.1995, wherein it has been directed as follows:

"In their orders second read above the Supreme Court of India have stayed the operation of all the decrees/orders which may have been given by any Civil Court in respect of the Minority status to the Institutions concerned and directed

that institutions claiming minority status shall approach the Government for declaration that they are minority institutions and till such time the Government issues an order declaring that it is a minority institutions they cannot separate as Minority institutions".

11. The issuance of the above said Government order, following the Apex Court decision above referred to, is not in dispute. It is thus found that the declaration of the minority status of the institution can be made only by the State Government concerned. It is found that as per the order of the Apex Court above referred to, the decree, that might have been passed earlier in respect of the grant of minority status to the institutions, would have no effect and accordingly, it is found that the institution run by the plaintiff should also only approach the Government for seeking the minority status and in such view of the matter, it is found that the First Appellate Court did not find acceptance with the plaintiff's case and accordingly, set-aside the judgment and decree of the trial Court and thereby, dismissed the suit levied by the plaintiff.

12. It is argued by the plaintiff's counsel that inasmuch as the plaintiff had been granted the decree by the trial Court much earlier to the above said Government Order passed by the Government, the above said Government Order would not be applicable to the plaintiff's institution. However, when it is found that as per the Apex Court directions, the concerned Government Order has come to be issued and when as per the directions of the Apex Court, the decree of the Civil Court granting the minority status would not operate as such, as per law, it is found that the plaintiff's institution cannot be allowed to take advantage of the decree passed in its favour by the trial Court by contending that the relevant Government Order has come to be passed subsequently.

13. In my considered opinion, as rightly determined by the First Appellate Court following the directions of the Apex Court

and also with the passing of the necessary Government Order by the State Government, for the relief of obtaining the minority status of the institutions concerned, it is seen that the plaintiff has to only approach the concerned Government as per the Government Order, for seeking necessary status. In such view of the matter, it is found that the First Appellate Court has rightly reversed the Judgment and decree of the trial Court based on the G.O.Ms.No.371, Education, dated 10.05.1995, and the same is sustainable in law. Accordingly, the substantial question of law formulated in the second appeal is answered against the plaintiff and in favour of the defendants.

14. In conclusion the judgment and decree dated 22.11.1996 passed in A.S.No. 78 of 1996 on the file of the Seventh Additional Judge, City Civil Court are confirmed and resultantly, the Second Appeal is dismissed with costs. Consequently, connected miscellaneous petition, if any, is closed.

Sd/-

Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

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To

1. The Seventh Additional City Civil Court, Chennai.
2. The Second Assistant City Civil Court,
Chennai

+1cc to Special Government Pleader SR.No.73660

Judgment in
S. A.No.404 of 2001

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