

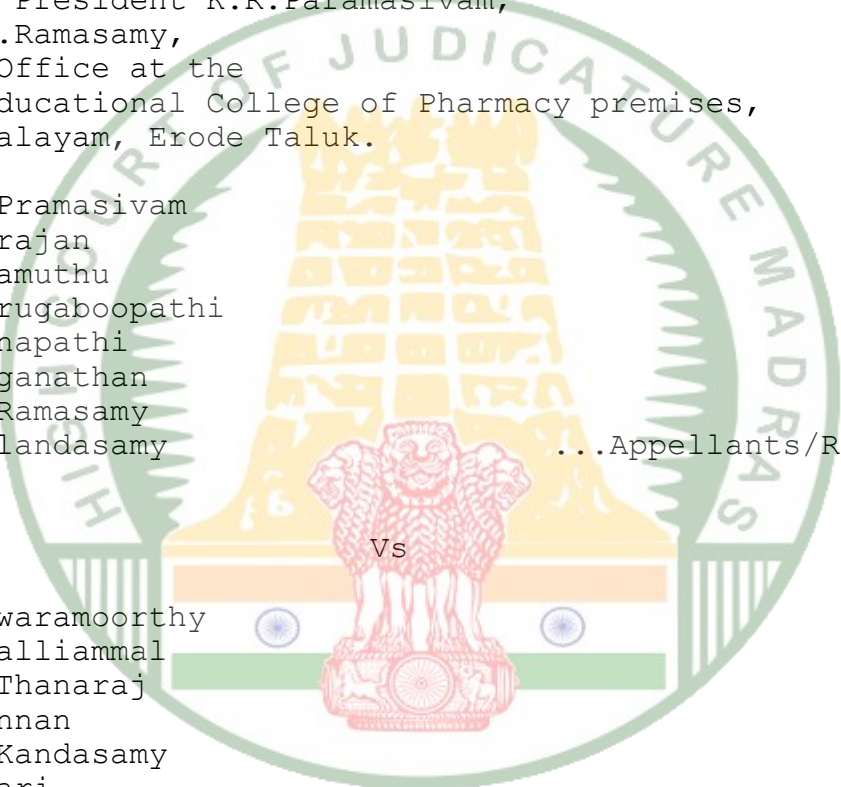
IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date : 04.12.2018

CORAM

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

Second Appeal No.98 of 2012

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1. Erode Educational Trust,
Rep. by President K.R.Paramasivam,
S/o.K.C.Ramasamy,
Having Office at the
Erode Educational College of Pharmacy premises,
Veppampalayam, Erode Taluk.
2. Mr.K.R.Pramasivam
3. Mr.Natarajan
4. M.Thangamuthu
5. Mr.M.Murugaboopathi
6. Mr.P.Ganapathi
7. Mr.P.Jeganathan
8. Mr.S.D.Ramasamy
9. Mr.R.Kolandasamy
- ...Appellants/Respondents/
Defendants
- Vs
1. Mr.S.Eswaramoorthy
2. Mrs.E.Valliammal
3. Mr.T.C.Thanaraj
4. Mr.T.Kannan
5. Mr.K.V.Kandasamy
6. Mrs.Eswari
7. Mr.D.Jeganathan
8. Mr.S.Murugvel
- ... Respondents/Appellants/Plaintiffs
(R7 & R8 set exparte
before Lower Court)

Prayer:-

Second Appeal has been filed under Section 100 of C.P.C., against the judgment and decree dated 23.11.2011 in A.S.No.10 of 2011 on the file of the I Additional Subordinate Court, Erode reversing the judgment and decree made in O.S.No.4 of 2008 dated 20.04.2010 on the file of the I Additional District Munsif Court, Erode.

For Appellants : Mr.V.Raghavachari
For Respondents : Mr.A.K.Kumarasamy, Sr. Counsel
For (1 to 8) for V.Anandamoorthy

JUDGMENT

This second appeal has been filed as against the decree and judgment dated 23.11.2011 in A.S.No.10 of 2011 on the file of the I Additional Subordinate Court, Erode reversing the judgment and decree made in O.S.No.4 of 2008 dated 20.04.2010 on the file of the I Additional District Munsif Court, Erode.

2. The brief facts of the plaintiff case is as follows :

The plaintiffs are the members of the first defendant Trust and they have contributed funds on various occasions. On 02.05.2002, they had received a show cause notice from the Trust levelling certain allegations with regard to the cases filed against the plaintiff. The above show cause notice has been properly replied. While that being the position, the plaintiffs were suddenly removed from the Trust by its resolution dated 27.12.2004 on the ground that they have not attended 3 consecutive meetings. The reasons for their removal is baseless and the plaintiffs have never failed to attend the General Body Meetings. Hence, the suit has been filed to declare that the resolution passed by the General Body of the first defendant Trust dated 27.12.2004 removing the plaintiffs from their membership as null and void and for consequential injunction restraining the defendants from preventing the plaintiffs from participating in the meetings of the Trust.

3. The defendants 2 to 8 took the defence to the effect that removal of the plaintiffs is according to law. The plaintiffs had not attended the meeting on 10.12.2002, 27.9.2003 and 25.09.2004 and their removal is a valid one. Further, the first plaintiff had acted against the interest of the Trust. Hence, prayed for dismissal of the suit.

4. The trial Court had framed necessary issues and P.W.1 was examined and Ex.A.1 To E.A.22 were marked on the side of the plaintiffs. On the side of the defendants, the sixth defendant was examined as D.W.1 and Ex.B.1 to Ex.B.9 were marked. The trial Court has decreed the suit and as against which an appeal has been filed. In the first appellate Court, the plaintiffs have filed an application under Order 41 Rule 27 of Code of Civil Procedure to adduce additional evidence, to mark the entire minutes book in I.A.No.1116 of 2011. The first appellate Court, however, dismissed the application filed for adducing additional evidence by holding that the plaintiff has not made

out a case to adduce additional evidence and rejected the contention of the plaintiffs in the minutes book. However, the first appellate Court disposed of the appeal by reversing the judgment of the trial Court.

5. It is curious to note that the first appellate Court, having rejected the document to be exhibited, relied on the same document to non-suit the defendants and recorded its finding as to the nature of the documents and contents and the interpolation and tampering, etc. as against which the present second appeal has been filed.

6. While admitting this second appeal, the following substantial questions of law has been framed :

1. Whether the reasoning of the lower appellate Court is not mutually inconsistent when it has concluded in para 23 of the notice for the meeting had been duly served and later on arriving at a totally perverse conclusion while observing that the resolutions are not genuine?

2. When the lower appellate Court had dismissed the application under I.A.No.1116 of 2011 holding that the entire minute books need not be marked, had not committed a patent error in para 24 by holding that the minute books have been improperly kept without even disclosing the error in the resolutions?

7. The learned counsel for the appellants submitted that the entire finding of the appellate Court is perverse and not based on proper appreciation of the entire evidence. The first appellate Court has not taken into consideration the limitation aspect that the suit has been laid much after three years and the suit ought to have been thrown out on the limitation aspect, which has not been considered by the first appellate Court. It is the further contention of the learned counsel that the document sought to be marked was rejected by the first appellate Court and on the contrary, the first appellate Court has relied on the same document and recorded the finding to reverse the finding of the trial Court. Hence, submitted that the entire finding of the first appellant Court cannot be sustained in the eye of law.

8. The learned Senior Counsel for the respondent submitted that the first appellate Court merely considered the document and admittedly, Ex.B.1 to Ex.B.4 has already been marked and those documents were part and parcel of the minutes book. Therefore, merely relying upon the minutes book would not cause

prejudice to anybody. The first appellate Court rightly appreciated the facts and came to the conclusion that the contention of the defendants that the plaintiffs failed to attend three consecutive meetings found to be false. The first appellate Court has reversed the factual finding and that there is no need to interfere with the finding of the first appellate Court. Hence, prayed for dismissal of the appeal.

9. Heard the learned counsel for the appellants and the learned Senior Counsel for the respondents and perused the entire material available on record.

10. The crux of the issue between the parties relates to the alleged resolution dated 27.12.2004 wherein the plaintiffs are said to have been removed from the Trust on the ground that they had not attended three consecutive meetings and also for acting against the interest of the Trust. Though the trial Court has found that the suit is not maintainable, the first appellate Court had reversed the finding. It is to be noted that the first appellate Court recorded the finding on the basis of the minutes book to come to the conclusion that prior to the alleged meetings there were meetings in the Trust and there is no evidence to show that the plaintiffs did not appear in those meetings. Similarly, the first appellate Court also recorded the finding to the effect that the minutes books were tampered and written to suit the convenience of the plaintiffs.

11. It is further to be noted that when the document itself has been rejected for being marked, the first appellate Court ought not have relied upon the same document without the same being marked as an exhibit. It is a clear error committed by the first appellate Court, relying upon a document which has not been permitted to be marked in the proceedings. Further, the first appellate Court culled out certain facts from the unmarked documents and recorded a definite finding to reverse the finding of the trial Court and such findings has been recorded without an opportunity being given to the parties. Such a finding in the opinion of this Court is nothing but perverse and cannot be sustained in the eye of law.

12. Therefore, this Court is of the view that the findings recorded by the first appellate Court is liable to be set aside and the matter has to be remanded to the first appellate Court for fresh consideration. It is not in dispute that the unmarked minutes book has been maintained by the first defendant Trust. That being the position, the first appellate Court ought to have admitted the document and should have given an opportunity to the parties to explain the contents or minutes found thereon. Without giving such an opportunity, modifying the finding of the

trial Court is against law.

13. Therefore, this Court is of the view that though the first appellate Court had dismissed the application for receipt of additional documents in view of the undisputed fact that the minutes book is being maintained by the first defendant, the first appellate Court is directed to receive the minutes book as an additional evidence and give an opportunity to both sides for oral evidence with regard to the minutes book alone and decide the issue afresh.

14. Accordingly, the decree and judgment of the first appellate Court dated 23.11.2011 in A.S.No.10 of 2011 is set aside and the matter is remanded back to the first appellate Court and the first appellate Court shall mark the minutes book as a document on the side of the plaintiffs and give an opportunity to the plaintiffs to explain the contents and other entries in the minutes book and decide the appeal afresh. Such exercise shall be completed within three months from the date of the receipt of a copy of this judgment.

15. With the above observations, this Second Appeal is disposed of. No cost. The registry is directed to send the entire records to the first appellate Court within one week from today.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

vrc

To

1. The I Additional Subordinate Court, Erode.
2. The I Additional District Munsif Court, Erode.
3. The Section Officer,
V.R.Section, High Court, Madras-104 (2 Copies)

+1cc to Mr.V.Anandamoorthy, Advocate, S.R.No.83253
+1cc to Mr.V.Raghavachari, Advocate, S.R.No.83288

Second Appeal No.98 of 2012

GJ(CO)
CS/03/01/2019