

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON :28.08.2018

PRONOUNCED ON:28.09.2018

CORAM:

THE HON'BLE MR.JUSTICE T.RAVINDRAN

S.A.No.394 of 2015

The Managing Director,
P.R.2, Perambalur District Consumer,
Co-operative Wholesale Stores Limited,
Thuraimangalam,
Perambalur.

[Cause title accepted vide
order of Court dated
11.12.2014 made
in M.P.No.1 of 2014 in
SA.SR.No.92209 of 2014] ...2nd Defendant/Appellant/Appellant

Vs.

1.Minor J.Monizha
Rep by her guardian
K.R.Manigandan

2.Minor.R.Jayanthi
Rep by her guardian
K.R.Manigandan ...Plaintiffs/Respondents 1&2 /
Respondents 1 & 2

3.The Deputy Registrar of Co-operative Societies
O/o Deputy Registrar of Co-op Societies,
Perambalur Circle,
Perambalur District. ...1st Defendant/ 3rd Respondent/ 3rd
Respondent

Prayer:

Second Appeal filed under Section 100 of C.P.C., against
the judgment and Decree dated 23.01.2013 made in A.S.No.10 of
2012 on the file of the Principal Subordinate Judge, Salem and
confirming the judgement and decree dated 15.06.2011 made in
O.S.No.602 of 2010 on the file of 1st Additional District
Munsiff, Salem.

For Appellant : Mr.M.S.Palanisamy

For RR1 and R2: Mr.S.Umapathy

For RR3 :Mr.V.Jaganathan
Government Advocate (CS)

J U D G M E N T

In this Second Appeal, challenge is made to the judgment and decree dated 23.01.2013 passed in A.S.No.10 of 2012 on the file of the Principal Subordinate Court, Salem, confirming the judgment and decree dated 15.06.2011 passed in O.S.No.602 of 2010 on the file of the I Additional District Munsif Court, Salem.

2.Parties are referred to as per the rankings in the trial court.

3.Suit for declaration and permanent injunction.

4.The case of the plaintiffs' in brief is that they are the grand children of K.Raja Gopal. Against him, surcharge proceeding had been initiated by the defendants and in continuation of the same, the first defendant had passed an order of conditional attachment against the immovable properties belonging to the plaintiffs' in C.E.P.No.18/2009 - 2010 dated 04.02.2010 and the abovesaid immovable properties described in the plaint schedule properties belong to the plaintiffs and they are in the possession and enjoyment of the same and the Revenue records also stand in the name of the plaintiffs with reference to the abovesaid properties and on obtaining the copy of the order of conditional attachment, the plaintiffs put forth serious objections to the same, however, the first defendant had not made any suitable and necessary orders on the objections preferred by the plaintiffs, and they had proceeded against the immovable properties belonging to the plaintiffs, as if the properties had come to be settled in favour of the plaintiffs by Tmt.Revathy Raja Gopal with a view to avoid the same being subjected to the proceeding in the surcharge action initiated against K.Raja Gopal. However, the plaintiffs are not responsible for the amount due from K.Raja Gopal to the department. The immovable properties described in the plaint had been purchased by Tmt.Revathy Raja Gopal through her own source of income and by settling the same in favour of the plaintiffs, it is only the plaintiffs, who have obtained ownership over the said properties and the Revenue records also stand in the name of the plaintiffs and hence the order of conditional attachment made in respect of the abovesaid

properties belonging to the plaintiffs is illegal, perverse and in violation of the principles of natural justice and hence according to the plaintiffs, they had been necessitated to lay the suit for appropriate reliefs.

5.The case the defendants in brief is that the suit laid by the plaintiffs is not maintainable either in law or on facts. On account of the various irregularities committed by K.Rajagopal, while working as Special Officer/ Co-operative Sub Registrar from 13.01.2004 to 30.11.006 causing huge financial loss to the department to the tune of Rs.33,43,342.10/-, it is stated that, after due enquiry conducted against him, proceeding had been initiated for conditional attachment of the properties described in the plaint schedule under section 167 of the Tamil Nadu Co-operative Societies Act 1983 and accordingly, the conditional order of attachment had been passed on 04.02.2010 and the properties are attached after giving due notice to K.Raja Gopal, which was acknowledged by him and furthermore, K.Raja Gopal was also dismissed from service and it is also stated that K.Raja Gopal had purchased the plaint scheduled properties in the name of his wife Revathy and his wife Revathy has no independent income to purchase the suit properties and only in order to defeat the action of recovery of the amount from K.Raja Gopal, his wife Revathy had executed a sham and nominal settlement deed dated 04.01.2007 in favour of the plaintiffs and hence the abovesaid settlement is not valid and binding upon the defendants. It is false to allege that the plaintiffs are in the possession and enjoyment of the suit properties and it is incorrect to state that the defendants are not entitled to pass order of attachment against the plaint schedule properties under the Tamil Nadu Co-operative Societies Act,. It is false to state that Tmt.Revathy purchased suit properties out of income from her business and that the plaintiffs are the owners of the suit properties. The order of conditional attachment dated 04.02.2010 is valid and there is no cause of action for the suit and hence the suit is liable to the dismissed.

6.In support of the plaintiffs' case, P.W.1 was examined. Exs.A1 to A5 were marked. On the side of the defendants, no oral and documentary evidence has been adduced. Based on the materials placed on record, the Courts below were pleased to accept the plaintiffs' case and accordingly granted the reliefs in favour of the plaintiffs. Impugning the same, the present Second Appeal has been laid.

7.At the time of admission of the Second Appeal, the following substantial questions of law were formulated for consideration.

(a) Whether the Civil Court has got jurisdiction to entertain a suit to injunct the officials of the Co-operative Societies Rules from acting under Rule 135 of the Tamilnadu Cooperative Societies Rules and declare that the attachment made by the 3rd respondent is null and void?

(b) Whether the Civil Court is barred from declaring or passing a judgment and decree of permanent injunction against the appellant and 3rd respondent as defendants in the suit from acting as per the Rule 135 of the Tamilnadu Co-operative Societies Rules?

© Whether a decree for permanent injunction can be granted against the appellant and the 3rd respondent?

8. Materials placed on record go to show that in connection with the various irregularities committed by K.Raja Gopal, the grandfather of the plaintiffs, it is found that the said surcharge proceeding had been initiated against him by the department and resultantly, the conditional order of attachment had been passed in respect of the plaint schedule properties by the department under section 167 of the Tamil Nadu Co-operative Societies Act 1983 and challenging the same, the present suit has come to be laid by the plaintiffs.

9. The plaintiffs claim title to the suit properties on the footing that the same belong to them by virtue of the settlement deed executed in their favour by their grandmother Revathy on 04.01.2007 and the xerox certified copy of the same has been marked as Ex.A3. Further, according to the plaintiffs, the plaint schedule properties had been purchased by the grandmother Revathy by way of a sale deed dated 03.05.2006 and it is stated that the same had been acquired by Revathy from her source of income derived from the business done by her. On that footing, contending that the suit properties belonging to the plaintiffs and in relation to the same, the defendants are not entitled to proceed against the suit properties pursuant to the surcharge proceeding initiated against their grandfather K.Raja Gopal, the present suit has come to be laid by the plaintiffs.

10. Two main defence had been raised by the defendants for dismissing the plaintiffs' suit. At the foremost, they would dispute that the plaintiffs have a valid title to the suit properties. According to the defendants, the suit properties belong to K.Rajagopal and it is only he, who had acquired the suit properties in the name of his wife Tmt.Revathy and according to the defendants, Tmt.Revathy had no independent income to acquire the suit properties and accordingly, it is their case that Tmt.Revathy has no entitlement to settle the suit properties in favour of the plaintiffs and thus, according to the defendants only with a view to avoid and prevent the

defendants from initiating against K.Rajagopal, against the plaint schedule properties in respect of the surcharge proceeding initiated against K.Rajagopal, the present suit had been laid by the plaintiffs and thereby the plaintiffs are not entitled to obtain the reliefs sought for. Further, it is also contended by the defendants that the plaintiffs have no cause of action to institute the suit and the suit laid by the plaintiffs is barred as per the provisions of the Tamil Nadu Co-operative Societies Act 1983.

11. In support of the plaintiffs' case, P.W.1 has been examined. Despite the defendants having taken the plea that the settlor Revathy has no independent income to acquire the suit properties and not entitled to settle the suit properties in favour of the plaintiffs, still the plaintiffs had not endeavored to examine their settlor Revathy in support of their case. P.W.1 K.R.Manikandan examined on behalf of the plaintiffs, during the course of examination has testified that his mother was engaged in real estate business and also selling groceries on a whole sale basis and on being confronted as to the production of the documents pertaining to the same, though he would claim that with reference to the abovesaid business conducted by her, she had obtained registration certificate, but admitted that the said registration certificate or the copy of the same has not been produced and also admitted that he does not know whether the accounts maintained with reference to the abovesaid business had been produced in the court and though, he would claim that the his mother Revathy was an income tax assessee, admitted that no document pointing to the same has been produced and also admitted that he does not know the PAN number of his mother and though, he would claim that the acquisition of the suit properties by her, has been reflected in the income tax returns filed, would say that the said records had not been exhibited and further also admitted that the plaintiffs are residing with their mother and also would state that the plaintiffs' mother is alive and has not given any proper explanation as to why he has been appointed the guardian for the minor plaintiffs in the settlement deed said to have been effected in favour of the plaintiffs by his mother and also would state that he does not know whether the patta had been changed in favour of the plaintiffs in respect of the suit properties and does not know whether the house tax receipts had been mutated in the name of the plaintiffs and suggestion has been put to him by the defendants that the suit properties had been only acquired by the father Rajagopal in the name of his mother Revathy and with a view to defeat the surcharge proceeding initiated against his father, the false case has been projected by the plaintiffs as if the suit properties had been acquired by Tmt.Revathy out of her income and that she had settled the properties in favour of the plaintiffs. Despite the

abovesaid cross examination of P.W.1 and when it is noted that P.W.1 is not competent to speak about the acquisition of the suit properties by Tmt.Revathy, his mother and when the competency of his mother to acquire the suit properties is not buttressed by placing acceptable materials with reference to the same and when there is no proof at all placed that Tmt.Revathy had any means of source of income on her own to acquire the suit properties and there is no material at all placed to hold that she was doing business as claimed by P.W.1 and earning income and if that be so, she would have been an income tax assessee and when there is no material to hold that she is an income tax assessee and the acquisition of the suit properties is also not shown to be reflected in the income tax records of Tmt.Revathy as claimed by P.W.1, accordingly, it is found that Tmt.Revathy had not validly acquired the suit properties of her own and out of her self income as projected by the plaintiffs and claimed by P.W.1. Such being the position, on the mere marking of the certified copy of the sale deed in the name of Tmt.Revathy, it cannot be safely concluded that she has a valid title to the suit properties. Accordingly, in the light of the defence projected by the defendants, challenging her title to the suit properties in toto, despite the same, the plaintiffs have not endeavored to examine their grandmother Revathy to establish that she had validly acquired the suit properties as per law, out of her own income by doing business as projected.

12. Furthermore, when there is no material placed to show that Tmt.Revathy, had the competency to settle the plaint schedule properties and the original settlement deed dated 04.01.2001 having not been placed on record and there is no material to show that the suit properties had been validly settled in favour of the plaintiffs and that the plaintiffs had accepted the same and when it is seen that the plaintiffs' mother is available, to say that the plaintiffs had been settled the suit properties by showing P.W.1, their maternal uncle as their guardian throws a great suspicion in the abovesaid transaction and when there is no proof that pursuant to Ex.A3 settlement deed, it is only the plaintiffs who had acquired a valid title to the suit properties as such, in all, it is found that, when on the basis of the xerox copies of Exs.A2 and A3, it is found that the plaintiffs cannot be held to have established that the suit properties belonged to Tmt.K.Revathy and that she had settled the suit properties in favour of the plaintiffs and it is only the plaintiffs, who had valid title to the suit properties. As rightly put forth, when the defendants have thrown a serious challenge to the claim of title to the suit properties by the plaintiffs as projected by them and the defendants had also thrown a serious challenge to the title of the plaintiffs' settlor to the suit properties, in such view of

the matter, when there is no material placed on record worth acceptance on the part of the plaintiffs that Tmt.Revathy had a valid claim of title to the suit properties as projected and she had the competency to settle the same in favour of the plaintiffs as claimed, in all, it is seen that accordingly, the plaintiffs are unable to place the best evidence to sustain their case as sought to be projected by them and in such view of the matter, it has to be held that the plaintiffs had miserably failed to establish that the suit properties validly belonged to their settlor by way of Ex.A2 sale deed and validly belong to them by way of Ex.A3 settlement deed as sought to be made out.

13. Admittedly, already surcharge proceeding had been initiated against the plaintiff's grandfather K.Rajagopal and following the same, the suit properties had been proceeded with and conditional order of attachment had been passed in the surcharge proceeding in respect of the plaint schedule properties. In such view of the matter, as rightly put forth by the defendants, when pursuant to the surcharge proceeding, the suit properties had come to be attached by passing an order under section 167 of the Tamilnadu Cooperative Societies Act 1983, if at all the plaintiffs have any grievance in respect of the aboveasid conditional order of attachment, as rightly putforth by the defendants' counsel, the only remedy available to the plaintiffs is to challenge the said order by way of an appeal as provided under the abovesaid Act and when the plaintiffs fall within the ambit of any person aggrieved by any decision or award passed or order made or proceeding taken under subsection (1) of 87, subsection 2, subsection 3 or subsection 4 of section 90, section 118, section 119, section 143, section 144 or section 167 of the Tamil Nadu Co-operative Societies Act 1983, as rightly put forth, the only remedy available to the plaintiffs is to prefer an appeal as provided under section 152 of the abovesaid act and in such view of the matter, the plaintiffs cannot be allowed to circumvent the said remedy by filing a civil suit and accordingly, it is seen that, as rightly put forth by the defendants' counsel, when the remedy of the plaintiffs in challenging the conditional order of attachment made in respect of the suit properties by way of a civil suit is expressively barred under the provisions of the Tamil Nadu Co-operative Societies Act 1983, it is seen that, as contended by the defendants' counsel and in the light of the decision of the division bench of this court reported in 2009 (3) MLJ 1032 [A.Balaraman and others Vs. Deputy Registrar of Co-operative Societies, Cheyyar and others] the suit laid by the plaintiffs is found to be misconceived and not maintainable. Similar is the view taken by this Court in the order passed in W.P.Nos.11143 to 11146 of 015 dated 17.04.015. It is thus found that the Civil Court has no jurisdiction to entertain the said laid by the plaintiffs' for injuncting the defendants from

proceeding under rule 135 of Tamil Nadu Societies Rules and thereby, it is found that the plaintiffs are not entitled to question the attachment made in respect of the suit properties by way of a civil action.

14. In the light of the above position, it is found that the decision relied upon by the plaintiffs' counsel reported in 2009 (6) MLJ 800 [Srivilliputtur Agricultural Producers Co-operative Marketing Society Limited through its Special Officer Vs. V. Kannammal and others] may not be applicable to the facts and circumstances of the present case. Furthermore, when the plaintiffs have failed to establish that they have a valid claim of title to the suit properties as projected by them and also failed to establish the alleged claim of title of their settlor in respect of the suit properties by placing the acceptable and reliable materials, in such view of the matter, it is seen that the plaintiffs have no cause of action at all to institute the suit against the defendants, particularly, seeking a challenge to the conditional order of attachment made by the defendants under the provisions of the Tamilnadu Cooperative Societies Act and the rules pertaining thereto.

15. In the light of the abovesaid discussions, the substantial questions of law formulated in the Second Appeal are accordingly answered in favour of the defendants and against the plaintiffs.

16. In conclusion, (i) the judgment and decree dated 23.01.2013 passed in A.S.No.10 of 2012 on the file of the Principal Subordinate Court, Salem, confirming the judgment and decree dated 15.06.2011 passed in O.S.No.602 of 2010 on the file of the I Additional District Munsif Court, Salem are set aside. Resultantly, (ii) the suit laid by the plaintiffs in O.S.No.602 of 2010 is dismissed with costs. Accordingly, the Second Appeal is allowed with costs. Consequently, connected miscellaneous petition, if any, is closed.

Sd/-

Assistant Registrar

//True copy//

Sub Assistant Registrar

To

1. The Principal Subordinate Judge, Salem.

2.The 1st Additional District Munsiff, Salem.
Copy to

The Section Officer,
VR Section,
High Court, Madras.

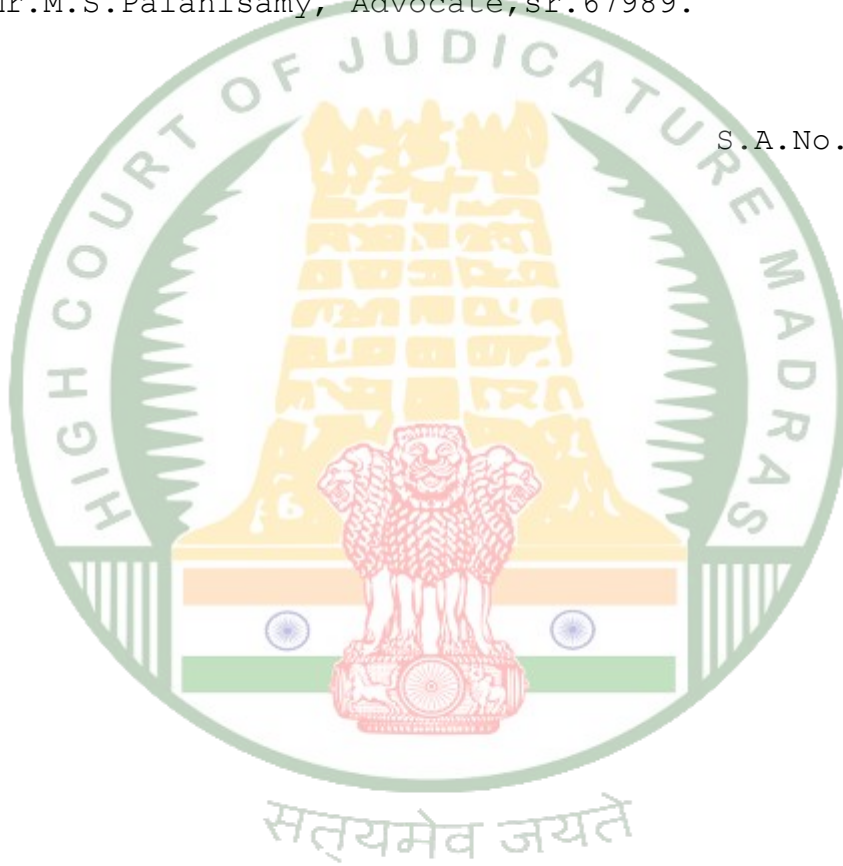
+1 cc to Mr.S.Umapathy, Advocate,sr.67347

+1 cc to Government Pleader,sr.67598

+1 cc to Mr.M.S.Palanisamy, Advocate,sr.67989.

Pvs (co)
krd 4/1

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