

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON :27.02.2018

PRONOUNCED ON:26.03.2018

CORAM:

THE HON'BLE MR.JUSTICE T.RAVINDRAN

S.A.No.1740 of 2003

The Salem District Central
Co-operative Bank Limited,
Salem. Representated by its Secretary.

.... Appellant/II nd Defendant

Vs.

1. S.K.Parameswari
2. The Mettur Dam Co-operative
Urban Society Limited, K.K.99,
represented by its Secretary,
Mettur Dam - 636 401.
3. The General Manager,
L.I.C of India,
P& G.S. Section,
Divisional Office -I,
L.I.C. Building,
Chennai - 2.

.... Respondents/Plaintiff,
1st Defendant & IIIrd Defendant

Prayer: Second Appeal filed under Section 100 of C.P.C.,
against the judgment and Decree dated 30.07.2002 passed by
First Additional District Judge-cum-Chief Judicial Magistrate
Court,Salem in A.S.No.122 of 2001 reversing the judgment and
decree dated 24.04.2001 passed by Subordinate Court Mettur in
O.S.No.201 of 1999 on its file.

For Appellant :Mr.M.R.Raghavan
For RR1 :Mr.A.Sundaravadanam
For R2 :Mr.K.Selvaraj
For R3 :Mr.M.B.Gopalan

J U D G M E N T

Challenge in this second appeal is made to the judgment and
decree dated 30.07.2002 passed in A.S.No.122 of 2001 on the
file of the First Additional District Judge cum Chief Judicial

Magistrate Court, Salem reversing the judgment and decree dated 24.04.2001 passed in O.S.No.201 of 1999 on the file of the Subordinate Court, Mettur.

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

3. Suit for declaration and recovery of money by way of mandatory injunction.

4. The case of the plaintiff in brief is that the plaintiff's only son Kumaresan joined as a clerk under the first defendant's society on 24.12.1993 and completed his probation and declared as permanent employee under the first defendant's society on 27.12.1995 and the first defendant is acting as per rules and regulations of the second defendant and the third defendant has come forward with the Group Insurance Scheme to the employees of the first defendant through the second defendant. The letter dated 16.03.1995 issued by the second defendant is confirming to the terms and conditions of the Insurance Scheme between the defendants 1 to 3, it is a tri lateral agreement. As per the above said terms and conditions, the employees of the first defendant should pay a sum of Rs.120/- per annum as a lump sum payment towards the Group Insurance Scheme and similarly, the first defendant should pay an equal sum of Rs.120/- as employer's contribution and so in total a sum of Rs.240/- is to be paid and the plaintiff's son Kumerasan's annual contribution amount of Rs.120/- was paid through the first defendant and the plaintiff's son had also nominated the plaintiff as his nominee and in case, the employee dies during the course of his service, his nominee is entitled to receive a sum of Rs.60,000/- under the Group Insurance Scheme as above stated. The plaintiff's son's contribution was paid by the first defendant through the second defendant on 12.02.1996, by way of a pay-in-slip system and the same was acknowledged by the second defendant and after the payment of sum of Rs.1440/- towards the contribution for the employees of the first defendant as on 12.02.1996 itself and the plaintiff's son having died as a bachelor on 18.02.1996 in a road accident, the plaintiff is entitled as his nominee to receive the fund in the Family Benefit Scheme. As per the terms and conditions of the Group Insurance Scheme called as Family Benefit Scheme, the plaintiff requested the defendants to settle the amount due to her, under the scheme and despite the same, the defendants did not take any steps to settle the amount due, to the plaintiff and in this connection, the plaintiff's husband approached the Salem District Consumer Disputes Redressal Forum, however the forum dismissed the said petition. However, the plaintiff is not bound by the same and ignoring the same and despite the request of the plaintiff to settle the amount to her, by a letter dated 04.03.1999, inasmuch as the amount had

not been settled, according to the plaintiff, she has been necessitated to lay the suit for appropriate reliefs.

5.The case of the first defendant in brief is that the suit laid by the plaintiff is not maintainable either in law or on facts. Kumaresan joined only on 27.12.1993 and not on 24.12.1993 as alleged in the plaint and all the benefits accrued to the legal heirs, on the death of Kumaresan, had been disbursed by the first defendant and hence the defendant is not a necessary party to the present proceeding and the plaintiff has not produced any succession certificate to get the amount claimed in the suit and inasmuch as the benefits accrued to the deceased employee had already disbursed, the plaintiff is not entitled to any relief, there is no cause of action for the suit and hence the suit liable to be dismissed.

6.The case of the second defendant in brief is that the suit laid by the plaintiff is not maintainable either in law or on facts and after denying the the averments contended in the plaint, it is stated by the second defendant that as per the Family Benefit Fund Scheme, the employee, on becoming a member, appoint a nominee under the specified forum and on the death of the employee, if he had been a member under the scheme on that date, the original nomination form along with the claim should be sent by the first defendant, to the second defendant and the same would be conveyed by the second defendant to the third defendant. However, in this case, when the claim form was sent by the first defendant on 01.06.1996, no nomination form was enclosed and the above fact would go to disclose that the deceased Kumaresan was not a member under the Family Benefit Fund Scheme on the date of his death and the plaintiff and her husband had conspired with the first defendant and create false documents by forgery and fraudulently falsifying the account for the purpose of cheating and has come forwarded with forged documents as genuine, with a view to obtain unlawful gain and the plaintiff's claim is that the contribution of her son Kumaresan was made on 12.02.1996 is falsified by the fact that no deduction had been from his pay for the payment towards the Family Benefit Fund and the first defendant has presented a cheque dated 20.02.1996 bearing number F784887 and drawn a sum of Rs.50,000/- on that date itself. So, further cheques would have been drawn only subsequent to 20.02.1996, but the next cheque bearing number F784888 has been drawn in favour of the second defendant for a sum of Rs.1,440/- as if, it was drawn on 12.02.1996. This fact also would go to show that premium was not paid on the date of the death of Kumaresan and the first defendant had paid the premium of Rs.480/- towards premium of three persons at the rate of Rs.160/- per annum as prevailing for the period of 1994-1995 under the form sent by the first defendant, the amount has been debited towards the three

employees Thillainayagam, Kuppusamy and Ashok Kumar. But, after the death of Kumaresan, when the claim was made by the first defendant, another form has been substituted, which shows that the deceased had paid the premium even for the period 1994-1995 and during the said period, he was not a regular employee and the abovesaid form had been created by removing the name Ashok kumar and inserting the name Kumaresan and the original form has been signed by the Secretary as well as the Special Officer of the first defendant's society whereas the substituted form has been signed only by the secretary of the first defendant with whose connivance, all the documents have been fabricated. Further, when the deceased Kumaresan has been made a regular employee only on 20.01.1996, it is impossible for him to pay the premium even for the period from 01.05.1994 to 30.04.1995. Suspecting the claim made by falsification of accounts, on inspection, all the malpractices have been found out and when the same had been brought to the knowledge of the third defendant, the third defendant negatived the same and hence there is no cause of action for the suit and the suit is liable to be dismissed.

7. In support of the plaintiff's case, P.W.1 was examined. Exs.A1 to A9 were marked. On the side of the defendants, D.W.1 was examined. Exs.B1 to B18 were marked.

8. On a consideration of the oral and documentary evidence adduced by the respective parties and the submissions made, the trial court was pleased to dismiss the suit. Aggrieved over the same, the first appeal was preferred and the first appellate court, on an appreciation of the materials placed on record, was pleased to set aside the judgment and decree of the trial court and by way of allowing the appeal preferred by the plaintiff, decreed the suit as prayed for.

9. At the time of admission of the second appeal the following substantial questions of law were formulated for consideration.

"(i) Could relief of mandatory injunction be granted against the appellant in the absence of privity of contract between the plaintiff and the second defendant?

(ii) Could the second defendant be termed as an agent in order that relief could be granted against it in accordance with the ratio laid down in 2000 (1) L.W. 868?

10. It is not dispute that the plaintiff is the mother of deceased Kumaressan. Materials placed on record go to disclose

and also not disputed as such that the deceased Kumaresan joined the services of the first defendant on 27.12.1993 and after the completion of probation, he has been made permanent on 27.12.1995 and thereafter, it is found that he met with an accident and died on 18.02.1996.

11. The suit has been laid by the plaintiff on the footing that her son being a member of the Family Benefit Fund Scheme floated by the defendants 1 to 3 together and as her son contributed the amount under the scheme along with other employees and as the same had been conveyed to the second defendant through the first defendant and despite the above position, inasmuch as the defendants did not pay the amount to the plaintiff under the above scheme as the nominee of her son, according to the plaintiff, she has been necessitated to lay the suit for appropriate reliefs.

12. The first defendant has not raised any specific plea opposing the claim of the plaintiff. However, the second defendant had taken the defence that the deceased Kumaresan was not a member of the scheme and not appointed the plaintiff as the nominee and accordingly, the first defendant had not forwarded the nomination form of the deceased Kumaresan, appointing the plaintiff as the nominee, to the second defendant and no contribution of the deceased Kumaresan was also forwarded to the second defendant under the scheme and it is the specific case of the second defendant that the plaintiff and her husband in collusion with the officials of the first defendant created false documents and thereby falsified the accounts for the purpose of obtaining unlawful gain and therefore for the reasons detailed in the written statement, contended that the plaintiff is not entitled to the reliefs sought for and the suit is liable to be dismissed.

13. As above seen, the deceased Kumaresan's service has been made permanent only on 27.12.1995. It is therefore evident that there is no possibility of the deceased becoming the member of the abovesaid scheme prior to the same. As per the terms of the scheme, it is found that, on the employee becoming permanent and joining the scheme, as per the terms, should appoint a person as his nominee and on the death of the employee, the nomination form along with the claim should be sent by the first defendant to the second defendant for further process. However, it is found that no such nomination form had emanated from the first defendant that the deceased Kumaresan had appointed the plaintiff as his nominee under the scheme. It is thus found that, inasmuch as the deceased Kumaresan had not become a member of the scheme, no requisite nomination form has been submitted by the first defendant to the second defendant, as regards the nomination of the plaintiff by the deceased

Kumaresan under the scheme.

14.The plaintiff's case is that the contribution made by her son also towards the scheme, in all amounting to Rs.1440/- was paid and forwarded to the second defendant even on 12.02.1996. In this connection, the copy of the covering letter of the first defendant along with the enclosure therein has been marked as Ex.A3. A perusal of Ex.A3 would go to show that in respect of the employees' contribution as detailed in the enclosure numbering six, the individual contribution for each being Rs.240/- in all totalling Rs.1440/- has been forwarded to the second defendant, by way of a cheque number F784888/1440 and as rightly determined by the trial court, the said document does not appear to have been received or acknowledged by the second defendant in accordance with law. When, it is found that the services of the deceased Kumaresan has been made permanent only on 27.12.1995, it is found that without any explanation being offered as to how, without any proof, Kumaresan has become a member of the scheme, the plaintiff or the first defendant's claim that he has joined as a member of the above said scheme and chosen to forward his contribution in a sum of Rs.240/- as on 12.02.1996 as depicted in Ex.A3, is found to be untenable.

15.As per the terms and conditions of the scheme covering from 01.05.1994 to 30.04.1995, during the said period, the deceased Kumaresan would not have become a member of the scheme, as his services had been made permanent only on 27.12.1995. It is thus found that the claim made by the plaintiff through Ex.A2 that a sum of Rs.160/- has been contributed by the deceased Kumaresan, towards the scheme during 1994-1995 marked as Ex.A2 as such cannot be accepted. It is found that Ex.A2 has been signed only by the secretary. The original of Ex.A2 has come to be marked as Ex.B9, whereunder it is found that, the contribution has been sent only for the employees namely Thillainayagam, Kuppusamy and Ashok Kumar and the premium is for the period 1994-1995 and the original has been signed not only by the secretary but also by the special officer, whereas the document relied upon by the plaintiff marked as Ex.A2, the copy of Ex.B9 has been signed only by the secretary. Be that as it may, when Kumaresan could not have been a member under the scheme during 1994-1995, no valid reason has been shown as to how the abovesaid document marked as Ex.A2 had come to be projected by the first defendant. Therefore, on a perusal of Ex.A2, and on a comparison of the original of the same marked as Ex.B9, it is found that as rightly contended by the second defendant and as rightly determined by the trial court, Ex.A2 has come to be fabricated by deleting the name of Ashok kumar and inserting the name of the deceased Kumaresan as if he had made a contribution of Rs.160/- towards the scheme even during 1994-1995. However, when there is no possibility of any

contribution being made by the deceased Kumaresan, prior to his becoming permanent and he having been made permanent only on 27.12.1995, the claim projected by the plaintiff that even for the period 01.05.1994 to 30.04.1995, Kumaresan had made a contribution of Rs.160/- by way of Ex.A2 is found to be untenable and accordingly, it is seen that for the reasons aforestated, no safe reliance could be placed on Ex.A2 to uphold the plaintiff's claim.

16.In addition to that, as above pointed out, the letter alleged to have been sent by the first defendant's society to the second defendant forwarding the contribution of six employees including the deceased Kumaresan, in all amounting to Rs.1440/- by way of a cheque as mentioned in the said letter marked as Ex.A3, as above seen, there is no proof placed that the said letter had been duly received by the second defendant. The original of the said letter has been marked as Ex.B10 and from Ex.B10, it is found that no proof of acknowledgment of the same by the second defendant is found therein. It is thus found that there is no proof that such a letter along with the contribution had been forwarded by the first defendant to the second defendant particularly, containing the contribution of the deceased Kumaresan under the above said cheque. The cheque mentioned in Ex.A3 has been produced as Ex.B8 and from the same, it is found that there is no proof placed that the amount mentioned therein has been duly given credit to by the second defendant under the abovesaid scheme and forwarded to the third defendant. The said cheque is dated 12.02.1996 and it bears the number F784888. If that be so, as rightly contended by the second defendant, the cheques issued prior to the above said cheque should have been drawn only on or prior to 12.02.1996. However, from Ex.B7, the cheque bearing number F784887 is found to have been drawn in favour of the second defendant for a sum of Rs.50,000/- on 20.02.1996. This itself is evident as contended by the second defendant, that no payment would have been forwarded by the first defendant to the second defendant towards the contribution of the employees' fund under the scheme, by way of the covering letter marked as Ex.A2 and the cheque enclosed therein, the original of which has been marked as Ex.B8. As above seen, there is no proof that Ex.A3 has been acknowledged by the second defendant and considering the abovesaid discrepancies with reference to the same, when compared with the original, it is found that the trial court has rightly disbelieved the case of the plaintiff, on the basis of the above said projected documents.

17.Equally, it is found that the trial court on an appreciation of the materials placed on record, particularly, noting the daily statement submitted for inter branch account form No.II finding that there is no reference about the amount of Rs.1440/- as well as the cheque marked as Ex.B8 and also

comparing the statement of account marked as Ex.B5 and B6 finding that the said amount of Rs.1440/- had not been properly given credit to and noting that the same had been inserted with a view to lend a true colour to the same and accordingly, rightly determined that the alleged payment of Rs.1440/- said to have been forwarded by the first defendant to the second defendant would not have been forwarded by the first defendant as projected by way of Ex.A3.

18.In the light of the above position, when it is found that the materials placed on record on the whole go to disclose that the deceased Kumaresan would not have been a member of the scheme prior to becoming permanent and in such view of the matter, when the document placed by the plaintiff with reference to the same, marked as Ex.A2 belies his case and further when it is also noted that the alleged payment of Rs.1440/- inclusive of the contribution of the deceased Kumaresan had not been shown to be forwarded to the second defendant by the first defendant by way of Ex.A3 and when the amount mentioned in Ex.A3 is not found to be tallying with the statement of account marked as Ex.B5 and B6 and to cap it all when there is no proof at all placed that Kumaresan had made claim to become a member of the scheme and forward the nomination form appointing his mother as his nominee, as rightly contended there is complete collusion between the plaintiff and the officials of the first defendant and thereby, they same to have fabricated the documents falsifying the account with a view to enrich themselves unlawfully and thus it is found that the trial court has rightly disbelieved the case of the plaintiff on a proper analysis of the materials placed on record by giving proper reasonings and conclusions.

19.Materials placed on record would further go to show that in this connection, action had been initiated against the concerned erring officials of the Cooperative society.

20.Thus, it is found that, there is no valid material projected by the plaintiff to show her entitlement to receive the amount, under the Family Benefit Fund Scheme and in such view of the matter, as rightly argued by the second defendant's counsel, when there is no privity of contract between the plaintiff and the second defendant as per the terms and conditions of the Family Benefit Fund Scheme, the plaintiff is not entitled to obtain the relief sought for and only on the plaintiff establishing her entitlement to obtain the benefits under the scheme, the principles of law adumbrated in the decision reported in 2000 (1) Law weekly 868 [Delhi Electric Supply Undertaking Vs. Basanti Devi and another] would apply and in such view of the matter, it is found that the first appellate court has erred in upholding the plaintiff's claim without

analysing the materials placed on record in the correct perceptive and on the other hand, on an erroneous appreciation of the materials, came to the conclusion that the plaintiff is entitled to secure the reliefs as prayed for and in such view of the matter, the reasonings and conclusions of the first appellate court are found to be perverse and illogical and cannot be allowed to sustain further. The substantial questions of law formulated in the second appeal are accordingly answered against the plaintiff.

21.In conclusion, judgment and decree dated 30.07.2002 passed in A.S.No.122 of 2001 on the file of the First Additional District Judge cum Chief Judicial Magistrate Court, Salem are set aside and the judgment and decree dated 24.04.2001 passed in O.S.No.201 of 1999 on the file of the Subordinate Court, Mettur are confirmed. Accordingly, the second appeal is allowed with costs. Consequently, connected miscellaneous petition, if any, is closed.

Sd/-

Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

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To

1. The First Additional District Judge-cum-Chief Judicial Magistrate, First Additional District Judge-cum-Chief Judicial Magistrate's Court, Salem.
2. The Subordinate Judge, Subordinate Court, Mettur .

Copy To

The Section Officer,
VR Section, High Court. (2 Copies)

+1cc to Mr.K.Selvaraj, Advocate, S.R.No.23274
+1cc to Mr.M.R.Raghavan, Advocate, S.R.No.22693
+1cc to Mr.M.B.Gopalan, Advocate, S.R.No.22956
+1cc to Mr.A.Sundaravadanam, Advocate, S.R.No.22899

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