

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 18.06.2019

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA

C.M.S.A. No.39 of 2003

K.Avinasiappan

... Appellant

-vs-

1.The Sub Registrar of Co-operatives Societies,
Avinashi.

2.K.2019, Thekkalur Primary
Agricultural Co-op. Bank
Thekkalur, rep. by its
Special Officer.

3.A.Angathal

... Respondents

(3rd respondent has filed separate appeal hence she is given up)

Prayer: Civil Miscellaneous Second Appeal filed under
Section 152(1) of Tamil Nadu Co-op. Society Act r/w 100 of
C.P.C. against the judgment and decree dated 03.09.2002 made in
Co.op. C.M.A. No.177 of 2001 on the file of the Special
Tribunal, Co-operative Societies cum District Court, Coimbatore,
confirming the award dated 07.08.2001 made in case No.1/2001 on
the file of Sub Registrar, Co-operative Societies, Avinashi.

For Appellant : Mr.R.Babu

For Respondents: Mr.T.M.Pappiah,
Special Government Pleader
for R1
Mr.K.Sathish for
Mr.N.Umapathi for R2
R3-given up

JUDGMENT

The Civil Miscellaneous Second Appeal has been directed
against the impugned judgment and decree dated 03.09.2002 made
in Co.op. C.M.A. No.177 of 2001 passed by the Special Tribunal,
Co-operative Societies cum District Court, Coimbatore,
confirming the award dated 07.08.2001 made in Case No.1/2001 on

the file of the Sub Registrar, Co-operative Societies, Avinashi.

2.Learned counsel appearing for the appellant would submit that the the appellant was the first defendant, who was working as a Secretary of the second respondent namely, K.2019, Thekkalur Primary Agricultural Co-op. Bank, Thekkalur, from 30.10.1970 to 09.01.1998 and due to an allegation of mis-appropriation and mis-conduct said to have been committed by him, he was dismissed from service on 29.09.1999. Learned counsel appearing for the appellant would further submit that one Angathal, the third respondent herein, who is the wife of the appellant, was appointed as Sales Woman on 28.09.1983 and she was working till 13.07.1999 in the second respondent Co-opetaive Bank as a Fertiliser Sales Woman. Therefore, she was also drawing salary for the post of Fertiliser Sales Woman, but the case of the second respondent Bank was that A.Angathal was appointed only as a Sales Woman and taking advantage of the fact that her husband was working as a Secretary, in order to gain illegal benefit, they have corrected a resolution in the Minutes of the Bank as if Angathal was appointed as a Fertiliser Sales Woman and as a result excess payment was drawn to which she was not eligible.

3.Learned counsel appearing for the appellant would further contend that after enquiry, it was found that A.Angathal was appointed only as a Sales Woman, but claimed salary for the post of Fertiliser Sales Woman. When the said Angathal has not even completed 5th std., as the educational qualifications were 5th std. and 10th std. pass respectively for the post of Sales Woman and Fertiliser Sales Woman, the appellant, who is the husband of said Angathal, could not have taken special efforts to tamper the minute records of his wife thereby causing financial loss to the second respondent Bank. Therefore, he prayed for allowing the appeal.

4.Learned counsel appearing for the second respondent Bank would submit that the appellant was issued with a charge memo for various irregularities including mis-appropriation committed on the Bank and after due enquiry, he was dismissed from service by order dated 29.09.2009. Aggrieved thereby, he also filed a Revision Petition challenging the order dated 29.09.1999 before the Joint Registrar of Co-operative Societies, which confirmed the order of dismissal, by order dated 12.04.2001 and the appeal filed against the order of the Joint Registrar was also dismissed by the Government in G.O. Ms. No.3D No.88 dated 13.09.2002. Learned counsel appearing for the second respondent would further submit that challenging the Award Surety No.1/2001, the appellant and the third respondent preferred C.M.A. Nos.176 and 177 of 2001 respectively before the Principal District Judge, Coimbatore and the said appeals were also

dismissed by common judgment dated 03.09.2002 by the District Court, after elaborately dealing with the cases and aggrieved thereby, the appellant is before this Court.

5.Substantial questions of law have been framed by the appellant as under:

a)Whether the second respondent had proved the charges against the appellant and the ingredients contemplated in Section 90 of the Tamil Nadu Co-operative Society Act 1983?

b)Whether the Settlement under Section 12(3) of the Industrial Disputes Act 1947 reached between the second respondent society with the Bank Employers Union is binding on the second respondent?

c)Whether the appellate order is sustainable in the absence of no finding regarding who is incharge of the Society?

6.The first substantial question of law raised by the appellant can never be accepted as substantial question of law, namely, whether the second respondent had proved the charges against the appellant and the ingredients contemplated in Section 90 of the Tamil Nadu Co-operative Society Act is only a factual issue. As a matter of fact, the allegation levelled against the appellant was proved repeatedly. Therefore, the finding of fact given by the Enquiry Officer which was accepted by the disciplinary authority, passing an order of dismissal against the appellant, was uphold by the Appellate Court. Therefore, this Court is unable to find any infirmity therein.

7.As the third respondent has not even having minimum qualification for the post of Sales Woman namely, she has not even completed 5th std., the second substantial question whether the Settlement under Section 12(3) of the Industrial Disputes Act 1947 reached between the second respondent and the Bank Employers Union was binding on the second respondent is nothing to do with the case of the appellant.

8.It is seen that by order dated 11.06.1998, the Deputy Registrar issued Proceedings No.1079 of 1997 directing the second respondent Bank to recover the excess amount paid to the said Angathal and also to take action against Angathal and her husband and based on the direction issued by the Deputy Registrar, the second respondent initiated action against both the appellant and the third respondent. Finally, the second respondent Bank by order dated 25.09.1998, reverted the said Angathal as Sales Woman. Aggrieved by the order of reversion, the said Angathal through her Union filed a petition before the Labour Court under Section 2k of the Industrial Disputes Act and during the Conciliation Proceedings, it was stated that she was never appointed as a Fertiliser Sales Woman and she was only given the post of Sales Woman. Thereafter, an order was passed by the Co-operative Sub Registrar on 07.08.2001 against the

appellant and the third respondent for recovery recovering a sum of Rs.1,31,530/- with interest at 22% per annum from 08.08.2001 in A.R.C. No.1/2001. But the said order has not been questioned by the third respondent and she also did not return for her duty. Subsequently, she was charge sheeted for unauthorised absence and finally, she was dismissed from service on 16.05.2001. Challenging the said order of dismissal, Revision Petition was filed before the Joint Registrar, who has dismissed her Revision Petition on 16.04.2002 and as against that an appeal was preferred by the said Angathal. By G.O. No.2D No.7 dated 10.01.2003, the Government dismissed the appeal confirming the order of dismissal.

9.As there was a factual finding reached by the Appellate Court that Angathal was appointed only as a Sales Woman and not as a Fertiliser Sales Woman, she should not have been appointed for the post of Fertiliser Sales Woman which is a higher post than the post of Sales Woman. When in the enquiry it was revealed that the appellant, who is the husband of Angathal, has manipulated all the records of the second respondent Bank and paid huge salary to his own wife Angathal, the third substantial question of law, namely, there is no finding regarding as to who is the incharge of the Society is nothing to do with the case of the appellant, accordingly, the same is answered.

10.The impugned decretal order clearly shows that the appellant, while holding the post of Secretary, has manipulated the document and paid huge salary to his own wife though she was not even having the educational qualification for the post of Fertiliser Sales Woman. However, the records produced by the second respondent Bank clearly proved the irregularities and the manipulations made by the appellant for securing appointment to the third respondent and no other documents are produced before this Court to interfere with the well considered findings given by both the Courts below. Finding no merit whatsoever in the appeal filed by the appellant and no ground to interfere with the impugned judgment and decree passed by both the Courts, this Court is not inclined to entertain the same. Accordingly, the appeal is dismissed. No costs.

vga

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

To

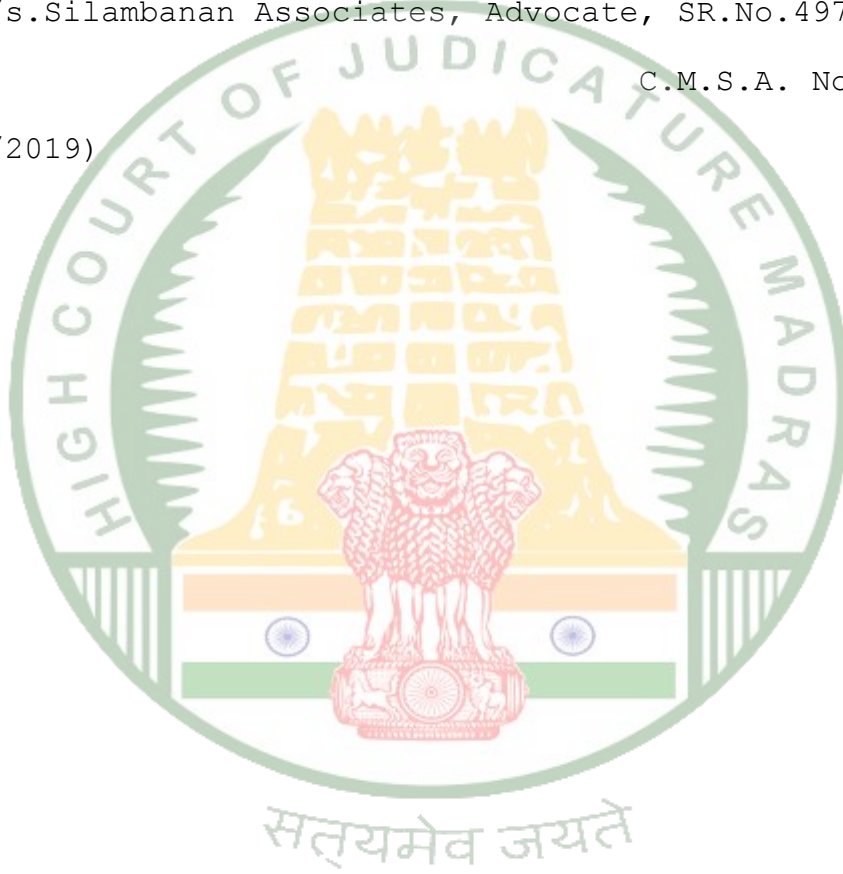
1.The Special Tribunal,
Co-operative Societies cum
District Court, Coimbatore.

2.The Sub Registrar,
Co-operative Societies,
Avinashi.

+1cc to M/s.Silambanan Associates, Advocate, SR.No.49775

C.M.S.A. No.39 of 2003

Kak (03/09/2019)



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