



WEB COPY

S.A(MD)No.619 of 2009

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 19.11.2019

DELIVERED ON : 11.12.2019

CORAM

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

S.A(MD)No.619 of 2009

Livingston

.. Appellant /
Appellant/Plaintiff

Vs.

1.Reach in the Nilgiris,
Registrar,
Sangam Registered at Uthagamandalam
Reg.No.25/89, through its President,
Office at Reach Matriculation Higher
Secondary School, Ottupattarai,
Coonoor,
Nilgiris District.

2.Sulochana Daniesl

3.Moses

4.Paulraj

.. Respondents /
Respondents / Defendants

PRAYER: Second Appeal is filed under Section 100 of C.P.C., against the judgment and decree, dated 17.11.2008, passed in A.S.No.145 of 2007 by the Sub Court, Valliyoor, confirming the judgment and decree, dated 28.06.2007, passed in O.S.No.91 of 2005 by the Principal District Munsif Court, Nanguneri.

For appellant : Mr.M.S.Sureshkumar

For 1st Respondent : Mr.K.N.Guru,
for M/s.Veera Associates

For R2 to R4 : No appearance

JUDGMENT

The concurrent Judgments passed in O.S.No.91 of 2005 by the Principal District Munsif, Nanguneri and in A.S.No.145 of 2007 by the Subordinate Court, Valliyoor, are under challenge in the present second appeal.

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2. For better appreciation and understanding, the parties are referred to as per their rank in the suit.

3. It is the case of the plaintiff that "Reach in the Nilgiris" is a Society registered under the Tamil Nadu Societies Registration Act in the year 1989 by one Mr.Margo. In the year 1990, the said Society encouraged the plaintiff to establish an educational institution. The plaintiff has invested huge amount for purchasing the land and for putting up construction. Though initially the school was started for primary education, it was upgraded as Higher Secondary School under the name and style of "Reach Matriculation Higher Secondary School". The President of the first defendant/Society, by his letter dated 30.05.1990, appointed the plaintiff as Correspondent and Director of the school and he appointed the teaching and non-teaching staff of the school. The Registration of the Society was cancelled in the year 2002 due to non furnishing of necessary papers periodically and it was subsequently restored on 25.01.2003. While so, the 2nd defendant claimed that she is the Secretary of the Society without any resolution in the general body meeting and she appointed the 3rd defendant as Principal of the School and the 4th defendant as Treasurer of the school. The 2nd defendant issued notices to the plaintiff to hand over the possession of the school. The plaintiff has sent a suitable reply to the 2nd defendant. On 04.07.2005, the defendants 2 and 3 attempted to dispossess the plaintiff, the Police advised the parties to approach the Civil Court. Hence, the plaintiff has filed the suit for permanent injunction restraining the defendants from taking forcible possession of the school building and other properties of the school without recourse to legal process through Court.

4. It is the case of the defendants that out of the funds provided by REACH International at USA, the first defendant/Society has established schools and hostels to accommodate orphan children. Due to change of law in getting foreign contributions, there was various confusions and it was set right through legal proceedings. In the meantime, the plaintiff sent a letter dated 22.06.2004 claiming to be the school at Moolakkaraipatti as his own. On 17.10.2004, the plaintiff had given an undertaking that the school belongs to the first defendant/Society and the same was countersigned by the 2nd defendant herein. In the said undertaking, the plaintiff also agreed to act along with a Co-principal and eventually vacate the school premises and establish his own school. Suppressing the said undertaking given by him, the plaintiff has filed the present suit. The plaintiff has no source of income to establish the school. As the plaintiff has acted against the first defendant, on 08.05.2005 a resolution was passed to take legal action against the plaintiff and based on the same, a police service given on 31.07.2005 alleging criminal trespass. As



the plaintiff created law and order problem with the help of the students and staff of the school, the said complaint is still pending. The plaintiff has come forward with a false suit suppressing the real facts and hence, it is liable to be dismissed.

5. Before the trial Court, on the side of the plaintiff, the plaintiff herself was examined as P.W.1 and Exs.A1 to A8 were marked. On the side of the defendants, the fourth defendant was examined as D.W.1 and Exs.B.1 to B.31 were marked.

6. The trial Court, after considering the oral and documentary evidence, has dismissed the suit holding that the plaintiff has not proved that the school was established by his own funds and that without resorting the declaratory relief, the plaintiff has sought for only injunction relief. The first appellate Court, after reappraising the oral and documentary evidence, has confirmed the judgment and decree passed by the trial Court. Challenging the said concurrent Judgment passed by the Courts below, this second appeal has been filed by the plaintiff as appellant.

7. Heard the learned counsel appearing for the plaintiff/appellant as well as the learned counsel appearing for the first defendant / first respondent and perused the records carefully.

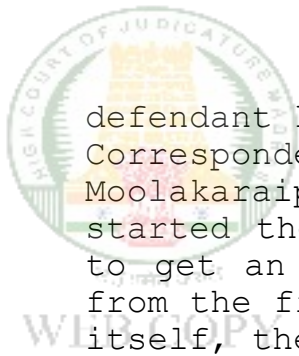
8. This second appeal was admitted on the following substantial question of law:

"Whether the Courts below are right in holding that without resorting to the declaration relief against the respondent, a suit filed by the plaintiff is not maintainable?

9. The plaintiff has filed the suit for permanent injunction restraining the defendants from taking forcible possession of the school building and other properties of the school on two contradictory grounds. They are (a) as he has spent huge amount in purchasing the land and constructing the school building, he cannot be dispossessed, without settling the dues; and (b) As per Ex.A2 letter dated 03.06.1990, he was permitted to work in the school upto the age of 60 and therefore, he cannot be dispossessed.

10. Admittedly, the plaintiff has not produced any document to show that the suit properties have been purchased by him on his own funds. He has also not produced any document to show on whose name the suit properties lie. The plaintiff has not even mentioned the survey numbers of the suit properties in the plaint. In vague manner, he has stated in the plaint the door numbers of the school buildings and the vacant site appurtenant thereto at Moolakaraipatti Village, Nanguneri Taluk. More over, the plaintiff himself has

<https://hscservices.mca.gov.in/hscservices/> plaint at paragraph No.8 that "the President of the 1st



defendant by his letter dated 30.05.1990 appointed the plaintiff as Correspondent and Director of the School, which he has started at Moolakaraipatti". If it is the case of the plaintiff that he has started the school by his own funds, there is no necessity for him to get an appointment as Correspondent and Director of the School from the first defendant. From the above admission of the plaintiff itself, the plaintiff has to be non suited on the first ground.

11. So far as the second ground is concerned, as rightly stated by the plaintiff in Ex.A2 - letter dated 03.06.1990, he was permitted to work upto 60 years. However, as rightly held by the Courts below, the plaintiff has not challenged either his removal or the appointment of the defendants 2 to 4 in the Society. When that be so, without the relief of declaration, the injunction relief alone sought for by the plaintiff cannot be granted. Thus, the question of law is answered against the plaintiff. Both the Courts below have rightly negatived the relief sought for by the plaintiff. The concurrent judgment passed by the Courts below are liable to be confirmed.

12. In the result, this second appeal is dismissed. No costs.

Sd/-

Assistant Registrar ()

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

gcg

To

1.The Subordinate Judge, Valliyoor.

2.The Principal District Munsif,
Nanguneri.

3.The Record Keeper, (2 COPIES)
V.R. Section,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to MR.M.S.SURESH KUMAR, Advocate (SR-104569[F] dated 11/12/2019)

+1 CC to M/s.VEERA ASSOCIATES, Advocate (SR-104604[F] dated 12/12/2019)

Judgment Made in
S.A(MD)No.619 of 2009
11.12.2019

VB(03.02.2020) 4P 7C

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