



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON: 31.10.2018

DELIVERED ON : 15.04.2019

CORAM

THE HONOURABLE MRS. JUSTICE R. THARANI

S.A.(MD)No.339 of 2013

Krishnan

.. Appellant/Appellant/Plaintiff
Vs.

1.Surlivelu
2.A.R.Rayappan (Died)
3.Tharmar
4.Antony Metilda
5.Arokiasamy
6.Cavitin Raj
7.Stephen Sengol
8.Mary

.. Respondents/Respondents/Defendants

(Respondents 4 to 8 are impleaded as legal heirs of the deceased second respondent vide Court order dated 08.12.2017 made in M.P.(MD)Nos.1 to 3 of 2014 in S.A.(MD)No.339 of 2013 by SBJ)

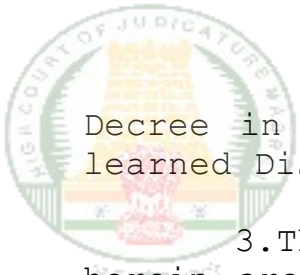
Prayer : Second Appeal is filed under Section 100 of Civil Procedure Code and Order XLII Rule 1 CPC, to set aside the Judgment and Decree passed in A.S.No.95 of 2006 dated 31.01.2013 on the file of the learned Subordinate Judge, Pudukkottai confirming the Judgment and Decree in O.S.No.10 of 2002 dated 27.02.2006 on the file of the learned District Munsif cum Judicial Magistrate, Thirumayam.

For Appellant : Mr.R.Vijayakumar
For Respondents 1 and 2 : Died
For Respondent No.3 : Mr.R.Raja Raman
For Respondents 4 to 8 : Mr.N.Bala Krishnan

JUDGMENT

Heard Mr.R.Vijayakumar, learned counsel appearing for the appellant, Mr.R.Raja Raman, learned counsel appearing for the third respondent and Mr.N.Bala Krishnan, learned counsel appearing for the respondents 4 to 8.

2.This appeal is filed against the Judgment and Decree passed in A.S.No.95 of 2006 dated 31.01.2013 on the file of the learned Subordinate Judge, Pudukkottai confirming the Judgment and

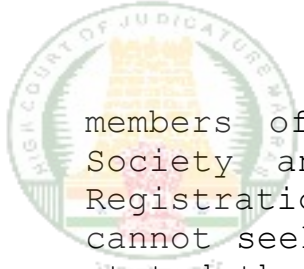


Decree in O.S.No.10 of 2002 dated 27.02.2006 on the file of the learned District Munsif cum Judicial Magistrate, Thirumayam.

3.The appellant herein is the plaintiff and the respondents herein are the defendants in the suit. The appellant herein has filed a suit in O.S.No.10 of 2002 before the learned District Munsif cum Judicial Magistrate, Thirumayam for a prayer of declaration and for permanent injunction. The suit was dismissed by the trial Judge. Against the dismissal of the suit, the appellant has filed an appeal in A.S.No.95 of 2006 before the learned Sub Judge, Pudukkottai and the appeal was dismissed by confirming the Judgment and Decree passed by the trial Court. Against the Judgment and Decree, the appellant has filed this second appeal.

4.The case of the plaintiff herein is that the property was purchased by the President of the Government Officers Residential Society on 13.02.1985. The third defendant and some persons formed a Society to provide education, culture, own house, loan for building house and for buying house and to raise the economy of the society and the third defendant registered the Society in the Singampudukottai Sub Registrar Office in registration no.15/86. The plaintiff was an ex-member of the Society and he has also paid his entry fee. The plaintiff also gave some amount for the Society at the request of the third defendant. As evidence, the third defendant in the capacity of the President of Society has given a hand written letter. On 29.03.1993, the Society was dissolved. After the dissolution of the Society, the property in the name of the Society is not divided between the plaintiff and the other members. No information was sent to the members of the Society regarding the properties of the Society and also the loan obtained by the Society. But on 12.06.1996 the first defendant sold the property to the second defendant in the capacity of the President after the winding up of the Society. A Society's property can only be sold only to some other Society as per the Tamil Nadu Societies Registration Act. However, the first defendant did not follow it. After winding up of the Society, the property of the Society is to be handed over to some other similar Society and liquidation proceedings should have been taken and that without following the proper procedure, the first defendant sold the property to the second defendant and that sale is to be declared as null and void. The plaintiff and the other members have rights in the property.

5.The case of the defendants 1 and 2 herein is that there is no registered or unregistered Government Officers Residential Society at the time of filing of the suit and that the said Society was already dissolved. The plaintiff admitted that as on 29.03.1995 Government Officers Residential Society was dissolved and hence it is no legal entity and that this suit filed by the plaintiff is not maintainable. As per Section 41 of Tamil Nadu Registration Act, after the dissolution of the Society, the



members of the Society has no right over the property of the Society and that under Section 41(j) of Tamil Nadu Society Registration Act, the plaintiff who is having no locus standi cannot seek for permanent injunction against the defendants. It is stated that the plaintiff Krishnan is not a member of the Society and he did not pay the subscription for the Society and he did not pay any amount for the purchase of the suit property. It is stated that since so many persons including the plaintiff failed to repay the loan, the interest was accumulated and it was decided by the eligible members of the Society to sell away the property and to pay the loan due and they passed a resolution empowering the then President Surili Velu to sell away the property and to pay back the existing loan with interest. The resolution was signed by the eligible members. The third defendant with an intention to grab the suit property, created some forged documents and filed the case against these defendants in O.S.No.20 of 1997 and the suit was dismissed and he instigated the plaintiff to file this suit.

6.The case of the third defendant is that the suit property was purchased in his name as the President on behalf of the Government Officers Residential Society on 13.12.1985. The purpose of the Society was to improve the education, culture of the Government servants and for purchasing house sites and to construct houses after getting Government loan and the Society was registered before the Sub Registrar, Pudukkottai as 15/86. Only after the suit filed by these defendants in O.S.No.20 of 1997, this defendants came to know that the Society was dissolved. After the dissolution of the Society, the ex-members are not entitled to sell away the properties of the Society. There is no loan or liability for the Society. The first defendant was never the President of the Society and the sale deed dated 12.05.1996 executed by the first defendant in favour of the second defendant is void and the second defendant cannot claim any right over the property and prayed the suit to be allowed.

7.This Court by an order dated 11.10.2018, has admitted the second appeal and has framed the following substantial questions of law:

"(i)When the properties of the Society are administered by its office bearers as trustees under Section 18 of the Tamil Nadu Societies Registration Act, 1975, whether Article 59 of the Limitation Act would be attracted in setting aside a sale deed?

(ii)When Section 10 of the limitation Act provides for recovery of the property from the trustee and their representatives without any limitation, whether the Courts below were right in holding that suit is bared by limitation?

(iii)Whether the interpretation of Section 42 of the Tamil Nadu Societies Registration Act, 1975, by the Courts below that the Society shall have no locus standi to challenge the sale deed executed by the President of a dissolved Society is correct?"



Issue No.1:

8. On the side of the appellant, it is stated that the properties of the Society are administered by its office bearers as trustees under Section 18 of the Tamil Nadu Societies Registration Act, 1975, and that Article 59 of the Limitation Act will not be attracted.

9. On the side of the appellant, it is stated that the property was purchased by the President of the Society on 13.02.1985 and that on 29.03.1993, the Society was wound up. But on 12.06.1996 the first defendant sold the property to the second defendant in the capacity of the President after the winding up of the Society and that the President is only a trustee and that the case against the action of an ex-President is not barred by Section 59 of the Limitation Act.

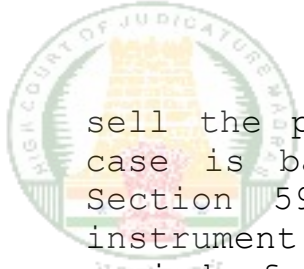
10. On the side of the appellant, it is stated that there is no chance for a special resolution as there was no Society and that the sale deed, Exs.B1 and B2 are to be declared as null and void. It is stated that after the winding up of the Society, the property of the Society is to be handed over to some other similar Society and liquidation proceedings should be taken and that without following the proper procedure, the first defendant has sold the property to the second defendant and that sale is to be declared as null and void.

11. The learned counsel appearing for the appellant relied on the Judgment passed by this Court in the case of **Shri Chaudhary Avadhesh Kumar v. Volleyball Federation of India**, reported in **2017 (3) CTC 1**, which reads as follows:

" In any democratically run institution, any office created by its constitution or Bye-law to preside over its affairs cannot ignore the spirit of the democratic principles that govern it. After all, VFI is not the personal property of its President or any of its other office-bearers, or of the Committee created for its governance under its Bye-law"

12. On the side of the fourth respondent, it is stated that the property was purchased for the Society in the name of the President. If the President loses his right, after the dissolution of the Society, so also the appellant loses his right as a member and that he cannot question the sale.

13. It is further stated that after dissolution, the first defendant was in charge of the Society. The Society was having some debts and a special resolution was passed by the members to



sell the property to discharge the debts. It is stated that the case is barred by limitation. It is further stated that under Section 59 of the Limitation Act to cancel or set aside an instrument or decree or for the rescission of a contract, the period of limitation is only three years and that the sale deeds, Ex.B1 and B2 were executed on 12.06.1996 but the suit was filed only during the year 2002 after the lapse of five years and that the third defendant has only filed a suit against the second defendant in O.S.No.20 of 1997 and that the suit was dismissed and the decree and the Judgment are marked as Exs.B7 and B8 and that P.W.1 has deposed that he waited till the case between the defendants 2 and 3 was disposed of. It is further stated that the plaintiff was aware of the earlier proceedings and even calculated from the date of earlier proceedings, this case is barred under Section 58 of the Limitation Act.

14.The learned counsel appearing for the respondents relied on the Judgment passed by this Court in the case of **Rajapalayam Municipality through its Commissioner v. Jayabhaskaran and Others** reported in **2013(1) CTC 171**, which reads as follows:

"27.the present suit has been instituted for the reliefs of declaration and perpetual injunction. The present case has not been filed for the relief of recovery of possession based on title. Since the present case has been instituted for the reliefs of declaration and perpetual injunction, the same should be filed within the period of limitation mentioned in Article 58 of the Limitation Act, 1963. Therefore, the plaintiffs cannot take umbrage either under Section 27 or Article 65 of the Limitation Act, 1963."

15.On the side of the respondents, it is stated that the plaintiff filed this suit only on the instigation of the third defendant and that no allegation was made against the third defendant and that no prayer was sought against the third defendant.

16.The learned counsel appearing for the respondents relied on the Judgment passed by this Court in the case of **Tamil Nadu Handloom Weavers' Co-operative Society v. S.R.Ejaz** reported in **2009 (5) CTC 710**, which reads as follows:

"57.The present suit is clearly vexatious and the attempt is nothing but re-litigation. The respondent has scant respect towards the Court and the rule of law. His attempt is to continue in possession at any cost. The learned Trial Judge should have rejected the plaint at the earliest opportunity and at least after filing counter by the revision petitioner, opposing the plea raised in the suit as well as in the Interlocutory Application."



17.As per Section 18 of the Society Registration Act, 1975 all properties acquired before or after the registration. If not vested within trustees, shall vest in the committee and any such property may be referred to as the property of the committee. The appellant failed to prove that the property is vested with a trustee. No documents to that effect is filed. There was no such pleadings in the plaint. Since the plaintiff fail to plead that the property is vest with the trust, the question of law raised by the appellant is unsustainable.

Issue No.2:

18.On the side of the appellant, it is stated that Section 10 of the Limitation Act provides for the recovery of the property from the trustee and their representatives without any bar of limitation and that both the lower Courts were wrong in holding that the suit is barred by limitation.

19.The learned counsel appearing for the respondents relied on the Judgment passed by this Court in the case of **Balasaria Construction (P) Limited v. Hanuman Seva Trust and Others** reported in **(2006) 5 Supreme Court Cases 658**, which reads as follows:

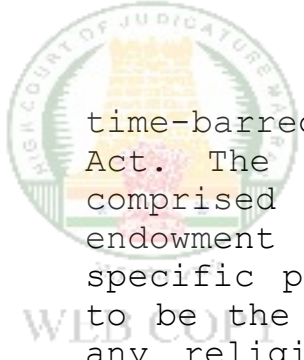
"We are of the opinion that the present suit could not be dismissed as barred by limitation without proper pleadings, framing of an issue of limitation and taking of evidence. Question of limitation is a mixed question of law and fact. Ex facie in the present case on the reading of the plaint it cannot be held that the suit is barred by time."

20.On the side of the appellant, it is stated that the first defendant cannot be the President, after the dissolution of the Society and there was no possibility for passing any special resolution, after the dissolution of the Society.

21.On the side of the third respondent, it is stated that fund was collected and the property was purchased on 13.12.1985 in the name of the third defendant on behalf of the Association and that the Association was registered only in 1986.

22.On the side of the fourth respondent, it is stated that only the third defendant has filed the suit with the help of this plaintiff and only after the dismissal of the suit filed by the third respondent against the second defendant, the suit was filed and that any such suit is to be filed within 3 years from the date of sale and hence this suit is time barred.

23.On the side of the appellant, it is stated that the suit property vest in trust for specific purpose, and this suit is not



time-barred as per the provisions of Section 10 of the Limitation Act. The Explanation to Section 10 reveals that the property comprised in a Hindu, Muslim or Buddhist religious or charitable endowment shall be deemed to be property vested in a trust for a specific purpose and the manager of the property shall be deemed to be the trustee thereof. The suit property is not vested with any religious or charitable endowment. The plaintiff has never pleaded that the property was a trust property. The plaintiff/appellant cannot raise a new point at the time of second appeal. The suit property is not an endowment or charitable property. No document was filed to show that the suit property vested with a trust. Hence, this question of law raised by the appellant is unsustainable.

Issue No.3:

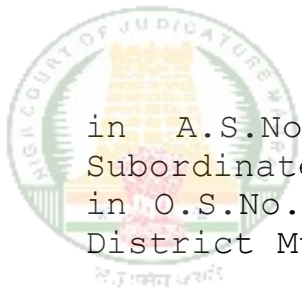
24.On the side of the appellant, it is stated that both the lower Courts were wrong in their interputation that Section 42 of Tamil Nadu Societies Registration Act, 1975 and have decided that the plaintiff was not having locus standi to file the suit.

25.On the side of the appellant, it is stated that all the members of the society are having a right to question the sale by the ex-President. After the dissolution of the Society and that President was not having a right to sell the property and that a special resolution cannot be passed after the dissolution of the Society. The third respondent supports the case of the plaintiff.

26.On the side of the respondents 2 and 3, it is stated that the plaintiff seizes to be a member after the dissolution of the Society and he has no locus standi to file this case. It is further stated that special resolution and formation of special committee to discharge the debts of the Society is permissible under Section 41 of the Society Registration Act.

27.The plaintiff has taken a duel stand. He has claimed that after the dissolution of a Society, the President has no authority to sell the property and that as a member of the Society, he is having a right to sue, after the dissolution of the Society. The plaintiff failed to prove that no special Committee was formed and he fails to prove that steps were not taken for the disposal and settlement of the properties and its claims and liabilities. He has failed to prove that there was no special committee appointed and the plaintiff/appellant fails to prove that State Government is a member of the Society and the appellant fail to prove that there was property left after the satisfaction of all its debts and liabilities.

28.In the above circumstances, there is nothing wrong in the decisions of both the lower Courts and the question of law raised by the appellant is unsustainable. This second appeal is **dismissed** by confirming the Judgment and decree passed



in A.S.No.95 of 2006 dated 31.01.2013 on the file of the learned Subordinate Judge, Pudukkottai confirming the Judgment and Decree in O.S.No.10 of 2002 dated 27.02.2006 on the file of the learned District Munsif cum Judicial Magistrate, Thirumayam. No Costs.

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Assistant Registrar (CS-II)

// True Copy //

Sub Assistant Registrar (CS)

To

1.The Subordinate Judge, Pudukkottai.

2.The District Munsif cum Judicial Magistrate, Thirumayam.

COPY TO

The V.R.Section, -2 COPIES
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.N.BALAKRISHNAN, Advocate (SR-61166[F] dated 16/04/2019)

+1 CC to M/s.R.RAJARAMAN, Advocate (SR-61187[F] dated 16/04/2019)

+1 CC to M/s.R.VIJAYAKUMAR, Advocate (SR-61416[F] dated 16/04/2019)

MRM

S.A.(MD)No.339 of 2013
15.04.2019

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