



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 10.03.2020

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THE HONOURABLE MR.JUSTICE P.VELMURUGAN

C.R.P. (MD) .No.438 of 2020

and

C.M.P. (MD) .Nos.2598 and 2599 of 2020

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1.Mrs.Sheeja

2.Mr.Bino

... Petitioners/Petitioners
/4th and 5th Defendants

Vs.

1.The Elanchirai Primary Agricultural
Co-operative Credit Society Rep by its
President, Y.245,
Elanchirai(Post)
Edaicode Village,
Vilavancode Taluk,
Kanyakumari District.

...1st Respondent/1st Respondent
/Plaintiff

2.The District Collector,
Kanyakumari District.

3.The Revenue Divisional Officer,
Padmanabhapuram,
Thuckalai,
Kanyakumari District.

4.The Tahsildar,
Vilavancode Taluk,
Kuzhithurai (Post)
Kanyakumari District.

... Respondents/Respondents/
Defendants 1 to 3

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order passed in I.A.No.496 of 2018 in O.S.No.55 of 2018 on 21.12.2019, on the file of the Principal District Munsif Court, Kuzhithurai and reject the plaint in O.S.No.55 of 2018.

For Petitioners	: Mr.S.C.Heroldsingh
For R1	: Mr.M.R.Sreenivasan for Mr.R.Nandakumar
For R2 to R4	: Mr.M.Jeyakumar Addl. Govt. Pleader



O R D E R

This Civil Revision Petition has been filed against the order dated 21.12.2019, passed in I.A.No.496 of 2018 in O.S.No.55 of 2018 passed by the Principal District Munsif Court, Kuzhithurai.

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2.The first respondent, as plaintiff, has filed a suit in O.S.No.55 of 2018 before the District Munsif Court, Kuzhithurai, for permanent injunction restraining the defendants from taking revenue action against the plaintiff Society in any manner till the disposal of the suit. After serving of the summons, the petitioners/fourth and fifth defendants have filed an application under Order 7 Rule 11 and Section 151 of CPC, for rejection of the plaint. The trial Court after hearing the parties, dismissed the application, which was under challenge before this Court by way of Civil Revision Petition.

3.The learned counsel appearing for the petitioners/fourth and fifth defendants would submit that the revision petitioners' father was an employee of the first respondent Society. After his demise, for non-payment of gratuity amount, the revision petitioners' father has filed a petition in P.G.No.10 of 2012 before the Assistant Commissioner of Labour, Tirunelveli. During the pendency of the said petition, the revision petitioners' father died and therefore, the revision petitioners and his mother and brother were impleaded as legal heirs of the deceased father in P.G.No.10 of 2012. On 28.11.2013, the Assistant Commissioner of Labour, Tirunelveli, has passed an order directing the first respondent society to pay the gratuity amount to the revision petitioners. The first respondent Society has not challenged the said order passed by the Assistant commissioner of Labour, Tirunelveli. As per statue, if the gratuity amount is not payable, the Collector can recover the said amount under the Revenue Recovery Act. If the first respondent Society has apprehended the revenue recovery proceedings and to avoid the same, the first respondent Society has filed a suit against the revision petitioners for permanent injunction and restraining the defendants from taking revenue action against the first respondent society. According to the petitioners, the said suit is not maintainable. Even though the revision petitioners have filed an application in I.A.No.496 of 2018 to reject the plaint, the trial Court has failed to consider this aspect and dismissed the said application.

4.The learned counsel for the first respondent Society would submit that even during the life time of the employee, who is the father of the revision petitioners, has misappropriated the fund of the first respondent Society and surcharge proceedings has been initiated against the revision petitioners' father. The revision petitioners are not entitled to file a petition in P.G.No.10 of 2012 since they are not employees of the respondent Society. The respondent Society has filed the suit. Therefore, trial Court has



there is no reason to interfere with the order of the trial Court.

5. Heard the learned counsel for the revision petitioners and the learned counsel appearing for the first respondent Society and the learned Additional Government Pleader appearing for the respondent Nos.2 to 4 and perused the materials available on record.

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6. Admittedly, the father of the revision petitioners was an employee of the first respondent Society. The revision petitioners' father has filed a petition before the Commissioner of Labour, Tirunelveli, for payment of wages and gratuity. The Commissioner of Labour, after considering the facts, directed the Society to pay the gratuity to the petitioners. The first respondent society has not challenged the order passed by the Commissioner of Labour regarding the payment of gratuity to the petitioners. Since the first respondent Society has not obeyed the order passed by the Commissioner of Labour, the Collector has power to initiate the proceedings under Revenue Recovery Act. Therefore, without challenging the order passed by the Commissioner of Labour, the first respondent Society has filed the suit and therefore, the said suit is not maintainable. According to the learned counsel appearing for the first respondent, the father of the petitioners himself has given up a right of the gratuity, since there was a SARFAESI proceeding. However, even though the first respondent society has taken that stand before the recovery of the gratuity proceedings, the Commissioner of Labour does not accept the contention of the respondent Society and directed to pay the gratuity to the petitioners. The first respondent society has to challenge the said order either before the appellate authority or before the writ Court. Instead of challenging the order passed by the Commissioner of Labour, the first respondent society has filed a suit restraining the defendants from taking revenue proceedings.

7. The learned Judge has failed to consider the settled proposition of law and taken the plaint on file and therefore, when the petitioner has filed an application to reject the plaint in I.A.No.496 f 2018 in O.S.No.55 of 2018, the Trial Court has failed to consider the said fact. Therefore, the order of the trial Court Judge is perverse. While deciding the application under Order 7 Rule 11 CPC, the Court has to see the averment made in the plaint and not the defence taken by the defendants.

8. On reading of the plaint itself, the claim of the plaintiff is barred under law, especially under Section 9 of C.P.C. Therefore, the trial Court should have rejected the plaint. This Court finds that the order of the trial Court requires in interference. Therefore, this Civil Revision Petition stands allowed and the order passed by the Trial Court in I.A.No.496 of 2018 is set aside and consequently, the plaint in O.S.No.55 of 2018 on the file of the Principal District Munsif Court, Kuzhithurai, is struck off.

<https://hdservices.courts.gov.in/hdservices/>



appropriate remedy before the appropriate Court. No costs.
Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (Cr1 Side)

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// True Copy //

/ /2020

Sub Assistant Registrar(CS)

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To

The Principal District Munsif, Kuzhithurai.

+1 CC to M/s.SPL.GP (SR-11342[F] dated 12/03/2020)

+1 CC to M/s.S.C.HEROLD SINGH, Advocate (SR-10881[F] dated 10/03/2020)

+1 CC to M/s.R.NANDAKUMAR, Advocate (SR-10890[F] dated 10/03/2020)

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