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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 29.06.2021

PRONOUNCED ON : 12.07.2021

CORAM :

THE HONOURABLE MR.JUSTICE R.PONGIAPPAN

S.A.No.1189 of 2007
& M.P.No.1 of 2007

The Shevaroy's Planters Association,
Rep. By its Secretary,
SPA Buildings, 5 Roads,
Yercaud - 636 601, Salem.

... Appellant/1st Defendant

Vs.

Mohan Rajes

... Respondent/Plaintiff

Prayer:- This Memorandum of Second Appeal is filed under Section 100 of Code of Civil Procedure, against the Judgment and decree dated 26.03.2007 passed in A.S.No.162 of 2006 on the file of the Additional Subordinate Court, Salem reversing the judgment and decree dated 21.07.2006 passed in O.S.No.165 of 2004 on the file of the Principal District Munsif Court, Salem.

For Appellant : Mr.S.Kalyanaraman

For Respondent : Mr.S.Sethuraman

J U D G M E N T

The 1st defendant in O.S.No.165 of 2004, on the file of the learned Principal District Munsif, Salem, is the appellant herein. Before the said Court, the respondent herein filed the above referred suit, as against the appellant, seeking the relief of declaration, declaring that the expulsion of the plaintiff from the Shevaroy's Planters Association and the decision of the 1st defendant Association dated 15.10.1994, expelling the plaintiff is illegal, void, malafide and ultra vires of the Rules. Also he prayed the relief of mandatory injunction directing the 1st defendant Association to permit the plaintiff to continue as a member of the defendant Association and to enable him to continue to utilize all the rights and privileges attached to the said membership and for Costs.



was prejudicial to the interest of the Association. According to him, his expulsion is illegal. The principal of natural justice cannot be left to the whims and fancies of individuals controlling the affairs of the Association. The right of the plaintiff is infringed. Hence, the suit.

6. The case of the defendants, is as follows:

It is denied that the plaintiff was taking active part in the Association. It is also denied that the Chairman was dictatorial in nature and also adopted vindictive and in-human attitude towards the plaintiff. The expulsion of the plaintiff in the membership is done in proper grounds. It was proved in the enquiry conducted by the sub committee that the plaintiff has paid higher wages to his workers. The plaintiff wantonly evaded to reply the notice given by the Association. Before passing an order of expulsion, necessary opportunity was given to the plaintiff. There was no violation of natural justice in the enquiry conducted by the sub Committee. The committee has followed all procedures and there is no gross violation of rules as alleged by the plaintiff. The expulsion of the plaintiff is valid one and cannot be questioned. The suit filed by the plaintiff is liable for dismissal.

7. Based on the abovesaid pleadings, the learned Principal District Munsif, Salem, framed necessary issues and tried the suit. On the side of the plaintiff, the plaintiff himself examined as PW1 and marked fifteen documents, as Ex.A1 to Ex.A15. On the side of the defendants, one Mr.M.Rajendran, Secretary of the 1st defendant Association was examined as DW1 and marked twelve documents as Ex.B1 to Ex.B12.

8. Having considered the materials placed before him, the learned Principal District Munsif, Salem, vide judgment and decree dated 21.07.2006, dismissed the suit filed by the plaintiff.

9. Aggrieved over the same, the plaintiff preferred an appeal in AS No.162 of 2006. By judgment and decree dated 26.03.2007, the learned Additional Subordinate Judge, Salem, reversed the findings arrived at by the trial Court and decreed the suit, as prayed for.

10. Aggrieved over the said findings of the Court below, the 1st defendant Association is before this Court with the present Second Appeal. When the Second Appeal came up for admission, this Court formulated the following substantial questions of law.

"a. Whether the lower appellate Court misdirected itself in conducting that the suit is maintainable and the non joinder of Executive Committee is not fatal to the suit in the face of the rules under



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Chapter 10 in particular rule 4 and 5 and rule 3(c) under Chapter XIV of the bye laws marked as Ex.B7?

b. Whether the lower appellate Court misdirected itself in coming to the conclusion that there was violation of principles of natural justice in the face of clear admission in the plaint that explanation was called for from the plaintiff regarding the complaint against him under Ex.B1 on the basis of report of the enquiry under Ex.B3 conducted by the sub committee appointed for enquiry into the said complaint and in the face of plaint averments that the plaintiff was permitted to inspect the documents required by the plaintiff for submitting explanation?

c. Whether the lower appellate Court was right in holding that there was no violation of the procedure contemplated under order 18 Rules 4 and 5 of the amended CPC when the witness PW1 did not get into the box and affirm the contents of the proof affidavit?"

11. Admittedly, the plaintiff Mohan Rajes is the member of the 1st defendant Association. The 2nd defendant (now deceased) in the suit, is the father of the plaintiff. Previous to present litigations, both the plaintiff and the 2nd defendant are having family dispute and thereby, plaintiff is separated from the family of the 2nd defendant. Further, it is also admitted that after the receipt of complaint against the plaintiff's estate, the 1st defendant herein appointed a sub committee and thereafter, upon the report given by the sub committee, the plaintiff was expelled from the 1st defendant Association.

12. The first appellate Court, while at the time of deciding the appeal had concluded that for deciding the issue raised in the suit, impleading the executive committee as a party to the suit, is unnecessary and not fatal to the proceedings.

13. In this regard, the learned counsel appearing for the appellant/1st defendant would contend that in view of Rules 4 and 5 of Chapter X and Rule 3 (c) of Chapter XIV of Bye-law of the 1st defendant Association, only the executive committee has the power to decide the allegation levelled against the members of the Association. In this case, only the executive committee appointed a sub committee and concluded the trial proceedings. Therefore, the said executive committee is a necessary party to decide the issue raised in the suit. But the first appellate Court concluded that non impleading of executive committee in the suit, is not fatal to the proceedings. Therefore, on that score alone, the appeal filed by the appellant/1st defendant is maintainable.



14. Per contra, the learned counsel appearing for the respondent/plaintiff would contend that the 1st defendant Association is a registered Association under the Societies Registration Act. Therefore, impleading the said Association amounts to impleading all other activities of the committees. Hence, non impleading of the executive committee alone, is not fatal to the proceedings. In this context, the learned Additional Subordinate Judge, Salem, has correctly concluded and decided the issue. Further in view of Chapter 20 of the Bye law, impleading the Association through its Secretary amounts to impleading the executive committee and therefore, there is no substantial question of law raised in this regard.

15. Now, on considering the said submission with the relevant records, it is relevant to see the Rules 4 and 5 of Chapter X and Rule 3 (c) of Chapter XIV of Bye-law of the 1st defendant Association, which is as follows:

Chapter X:

Rule 4: Any member of any class may be suspended or expelled from membership at any time by a resolution of the Committee for conduct which is prejudicial to the interests of the Association.

Rule 5: If it should appear to the committee that any Member has not conformed to the Rules of the Association or that he has been guilty of any conduct which is prejudicial to the interests of the Association, they shall call upon him for an explanation, and failing a satisfactory reply shall have power to suspend all his privileges as a Member of the Association and the privileges of such Members shall remain suspend until the next General Meeting of the Association, which shall determine whether such suspension shall continue, and if so, for what period, and shall have power by a majority of votes to order the expulsion of such member from the Association; and upon such order being made, such Member shall cease to be a Member of the Association.

Chapter XIV Rule 3(c): to institute, conduct, defend, compound or abandon any legal proceedings by or against the Association or of its officers and servants or otherwise concerning the affairs of the Association and also to compound and allow time for payment or satisfaction of any debts due and of any claim or demand by or against the Association;"



held that the plaintiff had not been provided with sufficient opportunity and therefore, the expulsion order passed by the Association is bad in law. Here also, it is very clear that the findings arrived at by the trial Court is misdirected.

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20. In respect to the said submission, the learned counsel appearing for the respondent/plaintiff would contend that though the plaintiff was provided with the show cause notice, in order to defend his case, he has requested the Association to provide certain documents. But instead of providing the necessary documents, which are required for defending the plaintiff's case, the Association gave opportunity only for perusing the documents. Further, in the presence of delinquent none of the complainant has been examined and therefore, the said procedure followed by the Association is nothing but violative of natural justice. On that score alone, the first appellate Court has held that the respondent/plaintiff was not provided with sufficient opportunity and therefore, in this area also, the submission made by the learned counsel appearing for the appellant/1st defendant cannot be accepted.

21. Now, on considering the said submission with relevant records, it appears that it is the case of the respondent/plaintiff that he was not served with the copy of the complaint and also the copy of the report of the sub committee, without which, he was unable to give proper reply about this allegation. The further case of the respondent/plaintiff is that inspite of his request, the Association failed to give the copy of the document. On the other hand, the respondent/plaintiff has been asked to verify the records in the office and thereafter, he was immediately expelled from the Association.

22. Now, on going to the defendant's case, the said aspect now narrated by the respondent/plaintiff is not disputed. In general, for conducting proper enquiry, after the receipt of the alleged complaint, the Association ought to have given a show cause notice to the delinquent about the allegations and after the receipt of the reply only, if it is found that the contents of the reply is not satisfactory in nature, the Association has to form an enquiry committee. But, here it is a case, without giving any due notice, they immediately formed the committee without the knowledge of the plaintiff. Therefore, the said act committed by the Association is nothing but atrocious. Further, the same amounts to violation of principles of natural justice. It is the admitted case of the appellant/1st defendant that before enquiry, the documents required by the plaintiff were also not furnished to him. More than that, in order to substantiate his contentions, opportunity was not given to respondent for cross examining the complainant. So, this Court is of the opinion that nothing is found incorrect in the



findings arrived at by the first appellate Court in respect to the violation of natural justice.

23. In fact, Natural Justice implies fairness, reasonableness, equity and equality. Natural Justice is a concept of Common Law and it is a Common Law world counterpart of the American concept of 'procedural due process'. Natural Justice represents higher procedural principles developed by judges which every administrative agency must follow in taking any decision adversely affecting the rights of the private individual. Natural Justice meant many things to many writers, Lawyers and systems of law.

24. Here, it is a case, the father of the respondent/plaintiff, who is the Chairman of the Association with personal bias, expelled the respondent/plaintiff. On perusal of Ex.P3, after the receipt of the complaint, a sub committee was formed and as per the committee's report, it was concluded by the Executive Committee as the allegation levelled against the plaintiff is having material. Thereafter, the Chairman gave a notice to the plaintiff as per Ex.A7, calling for explanation from the plaintiff about the complaint as well as the report of the committee, giving 14 days time on 19.09.1994. Immediately, the plaintiff sent a reply to the committee on 30.09.1994 asking them to give a copy of the complaint as well as the report of the sub committee and the same was replied by the Association on 05.10.1994 wherein, he is permitted only to peruse the records in the office itself. Thereafter, on 17.10.1994, as per Ex.A9, he was expelled from the Association.

25. Now, applying the dates and events of the enquiry conducted by the 1st defendant Association, it is very clear that the respondent/plaintiff has not been provided with sufficient opportunity to defend the allegation levelled against him. One another surprising thing in this case is that none of the members have given any complaint against the plaintiff. Only the workers of the Chairman's estate have given the complaint and raised allegations, that too, the plaintiff paid more wages to the workers, who are all worked in the estate. Thus, it is very clear that only due to personal bias, the entire proceedings are initiated by the Chairman of the Association.

26. In respect to the third substantial question of law, the learned counsel appearing for the appellant/1st defendant would contend that before the trial Court, after filing the proof affidavit, PW1 did not enter into the witness box and confirm the contents of the proof affidavit. In this regard, the trial Court has correctly concluded that the procedure followed as above, amounts to violation of Order XVIII Rules 4 and 5 of the



Code of Civil Procedure and accordingly, held that the suit filed by the plaintiff is not maintainable. On the other hand, the first appellate Court opposed the same as that the objection has to be raised only during the time of trial and not in the subsequent stages. The said finding is also against the procedure in Order 8 Rules 4 and 5 of CPC and therefore, the suit filed by the plaintiff is not maintainable.

27. Per contra, the learned counsel appearing for the plaintiff would contend that the procedure adopted by the trial Court may be a procedural lapse, due to which it cannot be stated that the suit itself is not maintainable.

28. Now, on considering the said submissions with the relevant records, it is true, after filing the proof affidavit, the plaintiff has not entered into the witness box and affirmed the contents of proof affidavit. On the other hand, after the receipt of the copy of the affidavit filed by the plaintiff, before the trial Court, plaintiff was examined in chief and marked certain documents as Ex.A12 to A15. After marking those documents, on the side of the plaintiff, cross examination has also been completed. During such time, before making his cross examination, on the side the defendant, objection has not been raised. It shows that after admitting the procedure adopted by the trial Court in respect to the receipt of proof affidavit, now in the subsequent stage, arguing as above, is unreasonable. Even assuming that the trial Court has not followed the said rule, it is only a procedural lapse and due to which this Court cannot come to the conclusion that the suit itself is not maintainable. Further, the 1st defendant Association is estopped from raising such objections in the second appeal stage.

29. Therefore, in the light of the above discussions, the substantial questions of law raised in this appeal are all answered, as above and the Judgment and decree dated 26.03.2007 passed in A.S.No.162 of 2006 on the file of the Additional Subordinate Court, Salem reversing the judgment and decree dated 21.07.2006 passed in O.S.No.165 of 2004 on the file of the Principal District Munsif Court, Salem, is hereby confirmed. The Second Appeal is dismissed. No Costs. Consequently, the connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CO)

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Sub Assistant Registrar



1.The Additional Subordinate Judge,
Salem.

2.The Principal District Munsif,
Salem.

Copy to

The Section Officer,
VR Section, High Court,
Madras-104.

S.A.No.1189 of 2007

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