



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.10.2021

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CORAM:

THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

Second Appeal No.14 of 2014

The Kupbandampalayam Panchayat,
Rep. by its President,
Bhavani Taluk. ... Appellant/Respondent/Plaintiff

Vs.

Selleeswaran
Former President of Kupbandampalayam Panchayat,
Kupbandampalayam Village,
Bhavani Taluk,
Erode District. ... Respondent/Appellant/Defendant

PRAYER: The Second Appeal filed under Section 100 of the Civil Procedure Code against the judgment and decree dated 16.07.2010 passed in A.S.No.12 of 2009 on the file of the Sub-Court, Bhavani, reversing the judgment and decree dated 30.04.2009 passed in O.S.No.245 of 2007 on the file of the Principal District Munsif Court, Bhavani.

For Appellant : M/s.B.Anand

For Respondent : M/s.P.M.Duraisamy

J U D G M E N T

The appellant filed a suit for recovery of a sum of Rs.48,472/- by virtue of the power conferred under Section 234 of the Tamil Nadu Panchayat Act, 1994. According to the appellant, by proceedings of the Assistant Director of Rural Development, dated 24.01.2006, surcharge proceedings were issued to the defendant/respondent, against which, he preferred an appeal to the District Collector, which was dismissed on 29.01.2007 and the defendant was directed to deposit the money within 30 days. Thereafter, the appellant filed the suit for recovery of money.



2. The trial Court framed appropriate issues and held that the appellant/plaintiff is entitled to the relief as per Section 234 and decreed the suit. On appeal, the First Appellate Court reversed the finding and set aside the decree and judgment of the trial Court on the ground that the appellant/ plaintiff has availed a remedy available under other provisions of the Tamil Nadu Panchayat Act and an appeal was filed. In that event, for liquidating amount of compensation, the appellant should have invoked provisions of Revenue Recovery Act and the suit itself is not maintainable. Aggrieved over the said finding, the appellant has preferred the above Second Appeal.

3. The Second Appeal was admitted on the following substantial questions of law:-

a) Whether the first appellate Court erred in dismissing the suit by holding that the plaintiff has no right to recover the suit amount, based on the surcharge certificate issued against the respondent/defendant?

b) Whether the first appellant court erred in holding that the property course of remedy for recovery is to invoke the provisions of Revenue Recovery Act?

c) Whether the first appellant court was right in holding that the civil court's jurisdiction is ousted?

4. Heard the learned counsel appearing on either side.

5. The admitted fact remains that the respondent/defendant was a former President and an allegation was made that he has caused a loss to the Panchayat to the tune of Rs.48,742/- under various heads. It is also not in dispute that as per Section 234 of the Tamil Nadu Panchayat Act, 1994, the Panchayat is empowered to file a suit for compensation for the losses caused. However, the First Appellate Court has given a categorical finding that Section 234 will not apply to the surcharge proceedings.

6. The Tamil Nadu Panchayat (Surcharge, Disallowance and Charge) Rules, 2000, issued G.O.Ms.No.32, Rural Development (C-4), dated 11.02.2000, shows that under Rule 3, the Government prescribes the list of officers to exercise the powers under the



Rules, according to which, the Assistant Director of Rural Development (Audit) is the officer concerned in case of Village Panchayats (General Funds).

7. In the instant case, the Village Panchayat is the plaintiff and the officer concerned to take action is the Assistant Director of Rural Development (Audit). As per the power conferred under the Rules, it appears that the Assistant Director of Rural Development (Audit) issued Surcharge Certificate against the respondent/ defendant, against which, he preferred an appeal under Rule 3, 4 and 5 of the said Rules to the District Collector, which was also dismissed.

8. Rule 6 specifies recovery of money. As per the Rule, the Inspector of Panchayats viz., the District Collector shall recover the amount in the same way as an amount decreed by a Court by filing execution petition. As per Rule 7, the interest shall be fixed not less than fifteen per cent. Rule 8 specifies waiving of amount of disallowance, surcharge or charge.

9. A reading of scheme of the Rules clearly shows that the appellant has adopted the procedure laid down under the Tamil Nadu Panchayat (Surcharge, Disallowance and Charge) Rules, 2000. It clearly shows that the order passed by the Inspector of Panchayats shall be treated as decree and it shall be executed through a competent Court by filing execution petition. In that event, as found by the First Appellate Court, the suit itself is unnecessary and the order of the Inspector of Panchayats should have been treated as decree and an Execution Petition should have been filed.

10. As per Rule 7, a separate order shall be passed with regard to interest towards charge and it shall be specified in Certificate in terms of Section 34 of Civil Procedure Code. But, the appellant has not filed any Execution Petition claiming interest before the Execution Court. On the other hand, initiated proceedings afresh from the beginning. Such a procedure as found by the First Appellate Court is futile

11. As contended by the learned counsel for the respondent that whenever an amount is due, it is open to the Government, more particularly, the Inspector of Panchayats to invoke the provisions of Revenue Recovery Act and recover the money from the defaulter. But, the said procedure was not adopted.



12. On the other hand, if the appellant is not invoking the power under Section 234, they have another course of following the procedures laid down under Tamil Nadu Panchayat (Surcharge, Disallowance and Charge) Rules, 2000. The appellant has chosen to follow the procedures laid down and determined the amount payable at Rs.48,742/-. In that event, after quantifying the amount, filing a suit for compensation is a futile exercise. As per the Rules, they should have treated the order of the appellate authority as decree and filed an execution petition for the same or they could have invoked the provisions of the Revenue Recovery Act. Therefore, the questions of law raised by the appellant that his right to recover the suit amount is rejected by the First Appellate Court is not sustainable. At no point of time, such recovery was refused to the appellant. On the other hand, the amount was determined by the Authority specified under the Tamil Nadu Panchayat (Surcharge, Disallowance and Charge) Rules, 2000. Therefore, the finding that the suit is unnecessary does not suffer from any discrepancy. Insofar as the second question of law is concerned, the finding of the First Appellate Court is correct to the extent that remedy is available for recovering the money by invoking provisions of Revenue Recovery Act. In addition to that, the appellant is entitled to file an execution petition before the Competent Court for recovering the money also.

13. Therefore, the finding of the First Appellate Court that jurisdiction of the Civil Court in respect of compensation is ousted with respect to surcharge proceedings is correct and legal. The suit is not maintainable against the surcharge order, but, it is maintainable only with regard to claim of compensation for the loss caused by the Predecessor in office.

14. It is also imperative to note that no specific order was issued by the authorities of the appellant specifying the interest amount as laid down by Rule 7 of the above-said Rules. When the matter was taken up for hearing, the respondent has come forward to deposit the amount quantified by the appellant in the suit to the tune of Rs.48,742/- on 21.10.2021 and filed a receipt for proof of payment. In that event, in the considered opinion of the Court, the suit claim has been granted to the petitioner and nothing survives for further adjudication.



Therefore, the Second Appeal is disposed of as infructuous.
There shall be no order as to costs.

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SD/-
ASSISTANT REGISTRAR

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SUB ASSISTANT REGISTRAR

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To

- 1.The Subordinate Judge,
The Subordinate Court, Bhavani.
- 2.The Principal District Munsif ,
The Principal District Munsif Court,
Bhavani.

Copy to

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

+1cc to Mr.B.Anand, Advocate Sr.54534
+1cc to M/s.P.M.Duraiswamy, Advocate Sr.54474

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srg 30/05/2022