



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 15.03.2021

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THE HONOURABLE MR. JUSTICE R.SUBRAMANIAN

SA(MD)No.68 of 2021

and C.M.P(MD)No.871 of 2021

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V.Durairaj

...Appellant/Appellant/Plaintiff

Vs.

1.State of Tamil Nadu,
Represented by Director of School Education,
School Road,Chennai.

2.The Government Higher Secondary School,
Represented by its Head Master,
Tharagampatti,
Krishnarayanapuram Taluk,
Karur District.

3.The Registrar of Co-operative Societies,
Chennai - 10.

4.The Deputy Registrar of Co-operative Societies,
Karur District.

5.Y.K.160 Karur District Police Employees Thrift and Credit
Society Ltd.,
Represented by its Special Officer,
Thanthondri Malai,
Karur District.

6.Pappammal ...Respondents/Respondents/Respondents

PRAYER:- Second Appeal filed under Section 100 of Civil Procedure Code against the Judgment and Decree passed in A.S.No.60 of 2020 dated 16.10.2020 on the file of the Sub Court, Manapparai confirming the judgment and decree made in O.S.No.197 of 2009 dated 18.06.2015 on the file of the District Munsif Court, Manapparai.

For Appellant : Mr.S.Kumar
For R1 to R4 : Mr.V.R.Shanmuganathan
Special Government Pleader
For R5 : No appearance
R6- Died

JUDGMENT

The plaintiff in O.S.No.197 of 2009 is the appellant. Challenge in this appeal is to the judgment of the appellate court in A.S.No.60 of 2020 dated 16.10.2020 in and by which the appellate



court had confirmed the judgment and decree of the trial court in O.S.No.197 of 2009 dated 18.06.2015 dismissing the suit filed by the appellant for a declaration as to his correct date of birth and for mandatory injunction for correction of the date of birth in his service records and educational records.

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2. The suit was filed for the above reliefs claiming that though the plaintiff was actually born on 01.12.1964 and his birth was registered with the authority namely, the Registrar of Births and Deaths, Tharagampatti on 10.12.1964, an error had crept in at the time when he joined school. The date of birth was given as 07.02.1963 instead of the actual date of birth 01.12.1964. The plaintiff claimed that he came to know about the mistake only after obtaining a copy of the birth certificate from the Office of the Registrar of Births and Deaths, Tharagampatti on 28.06.2007. On the strength of the said certificate, the plaintiff had applied to his appointing authority seeking correction of his date of birth. Since the said request was rejected by the appointing authority on erroneous grounds, the plaintiff was forced to file the suit seeking the above said reliefs.

3. The suit was resisted by the defendants contending that the application is belated. Claiming that the plaintiff should have sought for correction of the date of birth within 5 years from entering into service as per Rule 49(A)(1) of Tamilnadu State and Subordinate Service Rules, the defendants would submit that since the plaintiff had joined the service even on 22.05.1992 in another Co-operative Society, the application made for correction beyond the period of 5 years cannot be entertained. The validity and genuineness of the certificate namely Ex.A.4 was not doubted in the written statement.

4. At trial, the plaintiff examined himself as P.W.1 and Exs.A1 to A10 were marked. There was neither oral nor documentary evidence on the side of the defendants.

5. The trial court, upon appreciation of the evidence on record, doubted the correctness of the certificate on the basis of certain discrepancies in the names of the parents of the plaintiff. It also concluded that the certificate relating to a birth in the year 1964 has been issued in the year 2007. The trial court further concluded that the plaintiff should be deemed to have entered into service only on 22.05.1992 in the date on which he joined Karur Mills Employees Co-operative Society. On the above conclusion, the learned trial Judge dismissed the suit.

6. Aggrieved, the plaintiff preferred an appeal in A.S.No.60 of 2020. The learned Subordinate Judge, Manapparai, who heard the appeal, on a re-consideration of the evidence on record, agreed with the findings of the trial court and dismissed the appeal. Hence,



this Second Appeal.

7. The following questions of law have been framed at the time of admission by this Court:

i) Whether the courts below are right in dismissing the suit without due weightage to the Ex.A.4 (Birth Certificate) of the appellant, which is made in terms of Section 35 of the Indian Evidence Act?

ii) Whether the courts below are right in deciding the issue of limitation for filing application to correct the date of birth in school and service records by counting the period from 22.05.1992 and applying Rule 49(A)(1) of Tamil Nadu State and Subordinate Service Rules?

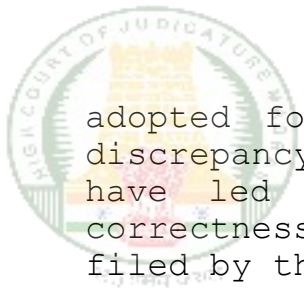
8. Considering the fact that the appellant would reach the age of superannuation early, I had directed the Registry to post this appeal for final hearing. Records have already been received. With the consent of the learned counsel on either side, the appeal itself is taken up for final hearing.

9. Heard Mr.S.Kumar, learned counsel appearing for the appellant and Mr.V.R.Shanmuganathan, learned Special Government Pleader appearing for the respondents 1 to 4.

10. Ex.A.4 is the birth certificate of the appellant/plaintiff. It is issued by the competent authority appointed for the said purpose under the Registration of Births and Deaths Act, 1969. From Ex.A.4, it could be seen that the appellant was born on 01.12.1964 and the birth was registered on 10.12.1964. A true copy of the registration has been issued on 28.06.2007.

11. As per Section 17(2) of the Registration of Births and Deaths Act, 1969, the extract of the register certified by the Officer concerned shall be admissible in evidence for the purpose of proving birth or death to which the entry relates. It is equivalent to a public document described under Section 76 of the Indian Evidence Act. Therefore, the birth extract is conclusive proof of the date of birth of a person referred to therein.

12. Both the courts below have doubted genuineness of Ex.A.4 based on certain minor discrepancies in the name of the parents. In Ex.A.4 the name of the father of the plaintiff has been given as 'Vellaiya Gounder' and the name of the mother is 'Pappammal'. In other documents, the name of the father of the plaintiff is shown as 'Vellaisamy' and the name of the mother is shown as 'Pappa'. This discrepancy is likely to occur wherever the name of the caste of the individual is suffixed to the name of the individual and it is common knowledge that while describing a woman 'Ammal' is added to the name of the woman in case of elderly women and the same is not



adopted for younger ladies. Therefore, in my opinion, the small discrepancy in the names of the parents of the appellant should not have led to the courts disbelieving Ex.A.4 more so when the correctness of Ex.A.4 was not challenged in the written statement filed by the defendants in the suit.

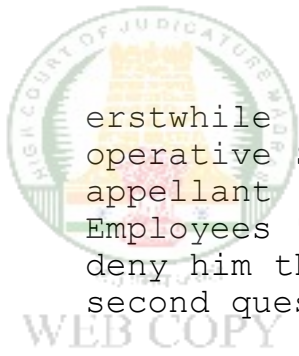
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13. The other ground on which Ex.A.4 has been rejected is that the extract of the birth register has been issued on 28.06.2007. As already adverted to, the appellant was born on 01.12.1964 and the same has been registered on 10.12.1964. It is only the copy of the register or the extract of the register that is issued on 28.06.2007. Therefore, the same cannot be a ground for rejection of Ex.A.4.

14. A reading of Section 17 of the Registration of Births and Deaths Act, 1969 along with Section 35 of the Indian Evidence Act would show that an entry in the register of births and deaths, made in discharge of the official duty made by the Registrar of Births and Deaths, is a document which operates as a conclusive proof of date of birth of an individual. Once the certificate is issued, it is not necessary to prove the same by producing other evidence as required by the courts below. I am, therefore, of the opinion that the courts below erred in rejecting Ex.A.4 as a proof of birth of the appellant in the light of the provisions, particularly Section 17(2) of the Registration of Births and Deaths Act and Section 35 of the Indian Evidence Act.

15. Section 17(2) states that a true copy issued by the Registrar of Births and Deaths Act is admissible in evidence in terms of Section 76 of Indian Evidence Act, which makes every copy of a public document issued by an Officer is a public document in its own force. Therefore, the conclusion of the courts below in rejecting Ex.A.4 is clearly erroneous. The first question of law is answered in favour of the appellant.

16. Adverting to the second question of law on the ground of limitation, Rule 49(A)(1) of Tamil Nadu State and Subordinate Service Rules is not applicable to the appellant, who is an employee of a Co-operative Society. Even otherwise, an application for correction of date of birth must be made within a reasonable time of entering into service. In the case on hand, the appellant has entered into service of the Karur Mills Employees Co-operative Society in the year 1992, but thereafter, since the said society was wound up, the appellant was re-employed in Karur District Police Employees Thrift and Credit Society Ltd., with effect from 05.07.2006. The order appointing the appellant as the Secretary of the Karur District Police Employees Thrift and Credit Society Ltd., itself makes it clear that the appointment of the appellant will be considered as a new appointment and the appellant will not be entitled to claim any benefit of the services rendered by him in the



erstwhile place of employment namely Karur Mills Employees Co-operative Society. In view of the above, it cannot be said that the appellant had entered into service of the Karur District Police Employees Thrift and Credit Society Ltd. in the year 1992 so as to deny him the relief on the ground of delay or laches. Therefore, the second question of law is also answered in favour of the appellant.

17. In view of the answers to the questions of law as above, the judgment and decree of the courts below are set aside. The suit in O.S.No.197 of 2009 on the file of the District Munsif Court, Manapparai, will stand decreed as prayed for.

18. In fine, this Second Appeal is allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS-III)

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Sub Assistant Registrar(CS)

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To:

- 1.The Sub Judge, Manapparai.
- 2.The District Munsif Court, Manapparai.
- 3.The Director of School Education, State of Tamil Nadu, School Road, Chennai.
- 4.The Head Master, Government Higher Secondary School, Tharagampatti, Krishnarayanapuram Taluk, Karur District.
- 5.The Registrar of Co-operative Societies, Chennai - 10.
- 6.The Deputy Registrar of Co-operative Societies, Karur District.
- 7.Y.K.160 Karur District Police Employees Thrift and Credit Society Ltd., Represented by its Special Officer, Thanthondri Malai, Karur District.



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The Section Officer,
VR Section, High Court of Madras
Madurai Bench(2 copies)

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+1 CC to M/s.S.KUMAR, Advocate (SR-11299[F] dated 16/03/2021)

Judgment in
SA(MD)No.68 of 2021
and C.M.P(MD)No.871 of 2021
15.03.2021

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TR(20.05.2021) 6P 11C