



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 09.12.2021

CORAM

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THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

S.A(MD)No.87 of 2020  
and  
C.M.P(MD) No.1319 of 2020

- 1.The Taluk Supply Officer,  
Vilavancode Taluk,  
at Kuzhithruai.
- 2.The District supply Officer,  
Kanyakumari District,  
Nagercoil.
- 3.State of Tamil Nadu,  
Rep. by the District Collector,  
Agestheeswaram Taluk,  
Kanyakumari District,  
at Nagercoil.

(Impleaded to file third appellant as per order  
in I.A.No.165 of 2016 dated 17.03.2019)

... Appellants/Appellants/Defendants

Vs.

Manickam ... Respondent/ Respondent/Plaintiff

Prayer: Second Appeal filed under Section 100 of the Code of Civil Procedure against the judgment and decree, dated 01.10.2019 passed in A.S.No.70 of 2014, on the file of the Subordinate Court, Kuzhithurai. confirming the judgment and decree dated 13.03.2014 passed in O.S. No.17 of 2012 on the file of the Principal District Munsif Court, Kuzhithurai.

For Appellants : Mr.G.Suriya Anand  
Additional Government Pleader

For Respondent : Mr.C.K.M.Appaji



**JUDGMENT**

The Second Appeal is directed against the Judgment and Decree passed in A.S.No.70 of 2014, by the learned Subordinate Court, Kuzhithurai, in confirming the Judgment and Decree in O.S.No.17 of 2012, passed by the learned Principal District Munsif Court, Kuzhithurai.

2. For the sake of convenience, the parties are referred to herein, as their own ranking as before the Trial Court.

3.The case of the plaintiff, as per the averments made in the plaint, in short, is as follows :

The plaintiff being a senior citizen and permanently residing in the plaint mentioned address with his family members. Land tax assessments, electricity connection, telephone connection stands in the name of the plaintiff to show that he is residing in the plaint address. The plaintiff is having a family card issued by the defendants bearing No.30/G/0063 and he obtained ration products from the PDS Shop. That apart, the plaintiff was always residing in the said place and never gone out. That being the case, the defendants without proper enquiry and without notice, had cancelled the family card issued to the plaintiff with effect from June 2010, based on the wrong reports of the Subordinate Officers. When the plaintiff has approached the defendants seeking for restoration of the family card by giving representations on 23.06.2010, 06.09.2010, 05.10.2010, 14.06.2011 and statutory notice was issued on 19.09.2011. Finally, a new family card was issued to the plaintiff on 31.12.2010. In between period from June 2010 to December 2010, the plaintiff was not able to get the ration products due to the wrong cancellation of the family card. Hence, the plaintiff has filed a suit for damages for the mental agony caused to him.

4.The second defendant adopted the written statement filed by the first defendant contending *inter alia* that the averments except those are specifically admitted are denied as false. The Officials who conducted the enquiry and visited the house of the plaintiff and on enquiry, found that the plaintiff was not residing there permanently and so the family card was cancelled. On application of the plaintiff, a new family card was issued bearing No.30/G/0623074 on 31.12.2010. The defendants have done their work in a legal manner after conducting proper enquiry and in accordance with the report of the Subordinate Officials. The defendants never refused to issue ration products to the plaintiff. The defendants are not liable to pay any costs to the plaintiff and hence, suit has to be dismissed with costs.

5. Before the trial Court, on the side of the plaintiff, the plaintiff examined himself as P.W.1 and Exs.A1 to A14 were marked.



On the side of the defendants, one S.Murugeswari, was examined as D.W.1 and Exs.B.1 and B.2 were marked.

6. On the basis of the rival pleadings made on either side, the trial Court, after framing necessary issues and after evaluating both the oral and documentary evidence, has decreed the suit in favour of the plaintiff and directed the defendants to pay a sum of Rs.10,000/- within a period of two months towards damages to the plaintiff.

7. Aggrieved by the Judgment and decree passed by the trial Court, the defendants, as appellants, had filed an Appeal Suit in A.S. No.70 of 2014 on the file of the learned Subordinate Court, Kuzhithurai. The first appellate Court, after hearing both sides and upon reappraising the evidence available on record, had dismissed the appeal and confirmed the Judgment and decree passed by the trial Court. Challenging the said concurrent Judgments and decrees passed by the Courts below, the present second appeal has been preferred at the instance of the defendants, as appellants.

8. Heard the learned Additional Government Pleader for the appellants and the learned counsel appearing for the respondent and perused the materials available on record.

9. The learned Additional Government Pleader appearing for the appellants / defendants would submit that the Courts below without considering the merits of the case, accepted the pleadings of the plaintiff and without applying its judicial mind, had rejected the plea of the defendants. The Trial Court ought to have found that the plaintiff who claims damages has not issued any notice under Section 80 of Code of Civil Procedure, prior to the filing of the suit and hence, prayed to allow the Second Appeal.

10. The learned counsel appearing for the respondent/ plaintiff would vehemently oppose the Second Appeal by contending that the well considered Judgments of the Courts below need not be interfered with, as there is no question of law involved in this Second Appeal for consideration and prayed for dismissal of the Second Appeal.

11. In the Memorandum of Second Appeal, the appellants sought to raise the following Substantial Questions of Law.

"1. Whether prior notice sent by the plaintiff under Section 80 of the Code of Civil Procedure ?

2. Whether the plaintiff is entitled to get the relief of damages ?

3. Whether the residential proof of the property is established by the plaintiff ?"

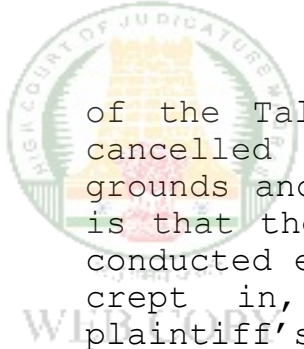


12.This Court paid its anxious consideration to the rival submissions made and also carefully perused the materials placed on record.

13.In the appeal, the Government has pleaded that there should be a notice issued under Section 80 of Code of Civil Procedure, sent by the plaintiff, that being the case filed against the Public Officer concerned and claiming for damages, the relief has to be given only, if they have informed the authorities in the said suit that they ought to have sent notice under section 80 of Code of Civil Procedure, but the said procedure has not been followed. It is further submitted that the Court has not considered these aspects that it is not a right on the plaintiff to seek for the ration card and further submitted that the Public Officers have to strictly consider the provisions and they have noted that the plaintiff has not complied with the provisions under Order 27 Rule 5A of Code of Civil Procedure and further submitted that the cancellation of a family card was done only based on the enquiry conducted, as he was not permanently residing at that place.

14.On the side of the plaintiff, it was contended that he is residing in the said address permanently and that is why ration card was issued to him. The plaintiff produced the documents to show that the land tax receipt, house tax receipt, land-line telephone bill and electricity bill stands in his name to prove that he was residing in that place permanently. Further, the defendants' side have not produced any evidence to show that the plaintiff is not residing in the said address and the defendants have not proved their case by producing appropriate documents to show that on what basis they have cancelled the family card and the enquiry report issued by the Authorities was also not submitted before the Court. This Court is of the view that no notice was issued to the plaintiff for conducting a proper enquiry and for cancellation of the said ration card. The defendants case was rejected. Though a new ration card was issued to him in the month of December 2010, the defendants have caused mental agony to the plaintiff, is the case of the plaintiff and based on the said submission the Courts below have come to a conclusion that the plaintiff even though not included the State Government as a party and no notice under Section 80 of the Code of the Civil Procedure, was given and also the Civil Court has no jurisdiction to try the suit and the plaintiff has to approach the consumer forum to redress his grievances, but the same was not accepted and the same was raised in the written statement. Further beyond the pleadings the defendants cannot pursue the case.

15. Regarding the issuance of notice under Section 80 of the Code of Civil Procedure, the Court also can sent a notice after filing of the suit and that point also cannot be argued before this Court. As it is not a fatal issue and the District Collector was not made as a party, but the Taluk Supply Officer, Vilavancode Taluk



of the Taluk level. Further, he submitted that defendants have cancelled 7626 family cards during that period based on various grounds and these are also considered, but the defendants statement is that there were only four Officers for the entire area, who had conducted everything and therefore, there may be some material error crept in, while passing the order for cancellation of the plaintiff's ration card.

16. The learned counsel for the respondent submitted that the second appeal is not maintainable as per Section 102 of the Code of Civil Procedure and prayed for dismissal the appeal.

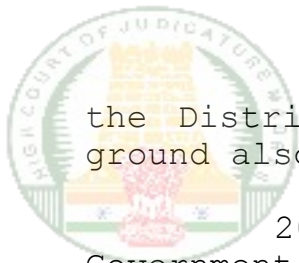
17. At this juncture, it is worthwhile to refer Section 102 of the Code of Civil Procedure, which reads as follows :

"102. No second appeal in certain cases.—No second appeal shall lie from any decree, when the subject matter of the original suit is for recovery of money not exceeding twenty-five thousand rupees."

Section 102 pertains to the suit filed for recovery of money, wherein, no second appeal shall lie from any decree, when the subject matter of the original suit for recovery of money is not exceeding Rs.25,000/-. It has been clearly established that no second appeal shall lie in money suits where the value of the subject matter of the suit does not exceed Rs.25,000/- and in respect of the Second Appeal filed under section 100 of the Code of Civil Procedure, it is made clear that nothing in this sub-section shall be deemed to take away or abridge the power of the Court to hear, for reasons to be recorded, the appeal or any other substantial question of law, not formulated by him, if it is satisfied that the case involves such question.

18. Here is the case, where the substantial question of law is raised regarding Section 80 of the Code of Civil Procedure. As per section 80 of the Code of Civil Procedure, no suit shall be save as otherwise provided in sub-section (2), no suit shall be instituted against the Government or against a public officer in respect of any any act purporting to be done by such officer in his official capacity, until the expiration of two months next after notice in writing has been delivered to, or left at the office of. In the case of a suit against any other State Government, a Secretary to that Government or the Collector of the said District.

19. Here is the case, where the Government or the Collector has not been made as a party and only the Taluk Public Distribution Officer has been made as a party. The plaintiff has not sent any notice to the defendants. The Court shall not grant any relief in the suit, whether interim or otherwise, except after giving to the Government or public officer, as the case may be, a reasonable opportunity of showing cause in respect of the relief prayed for in the suit. That being the case, the Collector has not been made as a party, and the District head and this Court is of the view that



the District Collector has not been made as a party and on this ground also, the Second Appeal is to be considered.

20.It is seen that the plaintiff's ration card is based on Government policy decision of providing supply of food materials to the general public and it is seen from the memo filed by the appellants/defendants that the following ration goods were issued for the family card holders for the past six months, which reads as follows :

| S1. No.                                                   | Ration Goods | Quantity | Price    | Period of Months | Total Amount      |
|-----------------------------------------------------------|--------------|----------|----------|------------------|-------------------|
| 1.                                                        | Rice         | 20 Kg.   | Rs.1     | 6 months         | 20*6 = 120        |
| 2.                                                        | Palmoil      | 1 Ltr.   | Rs.25    | 6 months         | 25*6 = 150        |
| 3.                                                        | Sugar        | 2 Kg.    | Rs.13.50 | 6 months         | 27*6 = 162        |
| 4.                                                        | Gram Dall    | 1 Kg.    | Rs.30    | 6 months         | 30*6 = 180        |
| 5.                                                        | Urad Dall    | 1 Kg.    | Rs.30    | 6 months         | 30*6 = 180        |
| 6.                                                        | Kerosene     | 5 Ltr.   | Rs.7.10  | 6 months         | 35.5*6 = 213      |
| <b>The total amount for six months for ration goods =</b> |              |          |          |                  | <b>Rs.1,005/-</b> |

After conducting spot inspection, some of the family cards were cancelled. One among them is the plaintiff namely, Manickam. As per the same, the total value of ration goods issued for six months is Rs.1,005/- only. The plaintiff would have purchased only this much of material and the Government has provided free rice, palmoil, sugar, gram dall, urad dall and kerosene for the general public / family card holders.

21.That being the case, the value of the said material is only Rs.1,005/-. When the Courts below had held that when there is no proof filed before the Court to show that the plaintiff had mental agony, which has not been proved by him by producing appropriate evidence and this Court come to the conclusion that due to the cancellation, the plaintiff would have approached the appropriate authorities now and then and only after efforts put in finally, he got the ration card within a period of six months.

22. This Court is of the view that awarding of Rs.10,000/- towards damages is on the higher side and this Court is inclined to reduce the same to Rs.5,000/- as costs and allow the claim made by the plaintiff only on the basis that this should be a lesson to the Government Officials who had conducted an oral survey, without really conducting a proper survey, when the Government schemes are introduced. The duty is cast upon the State Government employees to implement the schemes, which has been introduced by the Government, should be acted upon by the employees on behalf of the Government, who should be in a position to conduct survey with minute details with utmost care and conscience.



23. With the above modifications, the Second Appeal is partly allowed by reducing the damages from Rs.10,000/- to Rs.5,000/-. This amount is awarded only as a costs as the Government Officials were not vigilant. Time for payment of this cost is four months from the date of receipt of a copy of this judgment. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-I)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

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Note : In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

- 1.The Subordinate Judge,  
Kuzhithurai.
- 2.The Principal District Munsif,  
Kuzhithurai.
- 3.The Record Keeper,  
V.R. Section,  
Madurai Bench of Madras High Court,  
Madurai.

+1 CC to M/s.SPL GP ( SR-38107[F] dated 10/12/2021 )

S.A(MD)No.87 of 2020  
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**RK(04/01/2022) 7P/6C**