



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.03.2022

CORAM

THE HONOURABLE MRS. JUSTICE R.HEMALATHA

S.A.No.301 of 2007

and

M.P.No.1 of 2007

J.P.Durai

Secretary,

Bargur Education and Welfare Trust

High School, Bargur,

Bhavani Taluk, Erode District.

...Appellant / Appellant / Plaintiff

Vs.

M.Sundaresan

... Respondent / Respondent/ Defendant

Prayer : Second Appeal filed under Section 100 CPC, 1908 against the decree and judgment dated 29.03.2006 passed in A.S. No.51 of 2003, on the file of the Additional District Court/Fast Track Court No.IV, Bhavani, upholding the decree and judgment dated 18.09.2002 passed in O.S. No.5 of 1997, on the file of the First Additional District Munsif Court, Bhavani.

For Appellant : Mr.N.Manokaran

For Respondent : Mr.S.D.S.Phillip

JUDGMENT

The unsuccessful plaintiff before both the courts below has filed the present second appeal.

2. For the sake of convenience, the parties are referred to as per their ranking in the trial court and in appropriate places, their rank in the present appeal would also be indicated.



3. The plaintiff filed the suit in O.S.No.5 of 1997 before the First Additional District Munsif Court, Bhavani, for a relief of a permanent injunction restraining the defendant M.Sundaresan his men and agents from interfering with the administration and management of a High School at Bargur by the plaintiff.

4. The case of the plaintiff is that he was a member of Youth Social Service Union (YSSU), a voluntary service organisation, having its head office at Perundhurai and that the said organisation appointed a committee for running a school. According to the plaintiff, he is the secretary of the said committee and is presently taking care of the management of the school and that the defendant, who is a rank outsider, is attempting to interfere with the administration and management of the school by the plaintiff. It is further contended that the teachers were also threatened with dire consequences on 11.10.1996. He, therefore, filed a suit for a bare injunction.

5. The suit was resisted by the defendant on the following grounds :

- i. The school was not run by the plaintiff as alleged by him.
- ii. Since the plaintiff was constantly interfering with the smooth administration of the school, he was removed from the primary membership of the Youth Social Service Union (YSSU) by a resolution passed on 14.06.1990.
- iii. The plaintiff who was employed in the post office at Kalasalingapalayam was dismissed from service as he misappropriated public money.
- iv. The plaintiff withdrew a sum of Rs.42,475/- from the endowment funds of the trust created by Youth Social Service Union (YSSU) by misrepresenting himself as secretary of the trust.
- v. The plaintiff was meddling with the funds meant for poor tribal students and therefore a resolution was passed by Parent Teacher Association of the school to the effect that the plaintiff should not interfere with the affairs of the school.
- vi. It is false to contend that the teachers were threatened by the defendant with dire consequences on 11.06.1990.

The defendant therefore prayed for dismissal of the suit.



6. The trial Court on the basis of the above pleadings framed the following issues :

i. Whether the plaintiff is entitled for a permanent injunction as prayed for by him?

ii. Whether there is cause of action for filing the suit?

iii. To what relief the plaintiff is entitled ?

7. After full contest, the trial court dismissed the suit filed by the plaintiff vide its decree and judgment dated 18.09.2002. The trial court after extracting Rules 12 & 13 of Tamil Nadu Recognised Private Schools (Regulation) Act, 1973, had observed that as per the rules a committee has to be formed in every private school and that the term of office of the committee is only for three years. It is further observed that the plaintiff was elected as a secretary on 09.07.1994 as is seen from the Minutes of the school which was marked as Ex.A19 and his tenure in the office ended on 08.07.1997. The trial court further observed that the plaintiff did not adduce any evidence to show that he continued to hold the post of secretary in the committee. The suit was filed on 02.01.1997 and his tenure ended during the pendency of the suit and therefore he could not proceed with the case in his capacity as secretary of the committee. It is also observed that the plaintiff did not adduce any acceptable evidence to show that he was taking care of the management and administration of the school.

8. The plaintiff filed an appeal in A.S.No.51 of 2003 before the Additional District Court/Fast Track Court No.IV, Bhavani, Erode District and the defendant filed a cross objection. The plaintiff filed Minutes of Youth Social Service Union (YSSU) as additional evidence before the first appellate Court but failed to mark the same.

9. The learned first appellate court after analyzing the oral and documentary evidence adduced on both sides upheld the findings recorded by the trial Court and also dismissed the cross objections filed by the defendant.

10. Now the present second appeal is filed by the plaintiff on the following substantial questions of law:

i. Whether the findings of the trial court is correct in law in dismissing the suit on the sole ground that P.W.1 has not proved his capacity as the secretary of the plaintiff school, even after 08.07.1997, particularly when there is no pleadings and evidence to that effect by the defendant ?



WEB COPY

ii. Whether the reasonings of the first appellate court is borne out of records, if not, whether the plaintiff is entitled to succeed on the basis of the additional documents filed in I.A.No.43 of 2003, which has not been taken into consideration as per Order 41 Rule 27 and 28 CPC?

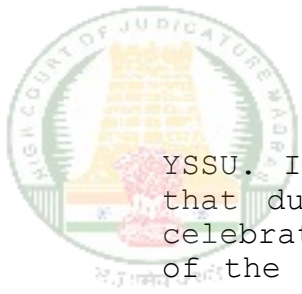
iii. Whether the courts below are correct in law in holding that the plaintiff is not entitled to maintain the suit especially when there is no dispute about functioning of the school under the Secretary ship of P.W.1, which has been duly approved by the Educational Agency (YSSU) in the light of the provisions of the Tamil Nadu Recognised Private School (Regulation) Act, 1973?

11. Heard Mr.N.Manokaran, learned counsel appearing for the appellant and Mr.S.D.S.Phillip, learned counsel appearing for the respondent.

12. Mr.N.Manokaran, learned counsel appearing for the appellant contended that the first appellate Court did not mark the Minutes of the Youth Social Service Union (YSSU) filed by the plaintiff though a petition to receive the said book was allowed in I.A.No.43 of 2003 in A.S.No.51 of 2003. He would further contend that both the courts below dismissed the suit filed by the plaintiff only on the ground that the plaintiff is not the secretary of Bargur Education and Welfare Trust High School during the pendency of the suit.

13. Per contra, Mr.S.D.S.Phillip, learned counsel appearing for the respondent contended that both the courts below after appreciating oral and documentary evidence adduced on both sides dismissed the suit filed by the plaintiff and that no substantial questions of law is involved as far as the present case is concerned.

14. The High School at Bargur is a Government aided School and a committee was constituted as per Provisions of Tamil Nadu Recognised Private School (Regulation) Act, 1973. This is evidenced by the Minutes of school which was marked as Ex.A29. The plaintiff had filed the suit in his individual name and also added that he is the secretary of Bargur Education and Welfare Trust High School, Bargur. When his case is that he is the secretary of the committee constituted by Youth Social Service Union (YSSU), he did not file any permission obtained from Youth Social Service Union (YSSU) which created Bargur Education and Welfare Trust, to file the present suit. He cannot also file the suit in his individual name. Moreover, the plaintiff during the course of cross examination could not state as to who is financing the school. He also feigned ignorance that school was being run by Bargur Education and Welfare Trust constituted by



YSSU. It is also seen from the resolution passed on 25.08.1996 that due to high-handed behaviour of the plaintiff during the celebration of Independence Day on 15.08.1996, he was sent out of the school with the help of the police. As per the plaintiff's averments, the cause of action for the suit arose on 11.10.1996 when the defendant threatened the teachers of the school with dire consequences. No evidence was adduced by the plaintiff to prove the cause of action. Apart from that, the plaintiff was removed from primary membership of YSSU on 03.06.1990 as is seen from the Minutes book Ex.A35. The admitted case is that the trust was created by YSSU and the committee was constituted only by YSSU. Therefore, it is not known as to how the plaintiff was elected as a secretary in the committee after 03.06.1990 since he was not even a member in YSSU. Though the counsel for the appellant contended that he filed a Minutes Book before the first appellate court, it was not marked by the court, even though the interlocutory application to receive the said document was allowed by the Court. The first appellate Court in para 22 of the judgment has clearly stated that the plaintiff did not take steps to mark the document. The contention of the defendant was that the said Minutes was prepared by the plaintiff for the purpose of the present suit. Thus both the courts below had concurrently held that the plaintiff did not adduce any acceptable evidence that he continued to hold the office of the secretary of the school and that he did not also adduce any document to show that he was taking care of the management and administration of the school.

15. It is also pertinent to mention that this is a second appeal under Section 100 of the Code of Civil Procedure where the jurisdiction of the High Court is confined to a substantial question of law. A full Bench of the Supreme Court in *Bholaram Vs. Ameerchand* reported in AIR 1981 SC 1209 has held that the High Court cannot interfere with the concurrent factual findings of court below in a second appeal. In the instant case, there is no substantial question of law and hence, the second appeal deserves to be dismissed.

16. In the result,

- i. the second appeal is dismissed. No costs. Consequently, connected miscellaneous petition is closed.
- ii. the decree and judgment dated 29.03.2006 passed in A.S. No.51 of 2003, on the file of the Additional District Court/Fast Track Court No.IV, Bhavani and



WEB COPY

iii.the decree and judgment dated 18.09.2002 passed in O.S. No.5 of 1997, on the file of the First Additional District Munsif Court, Bhavani, are upheld.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

mtl

To

1. The Additional District Judge,
The Additional District Court/Fast Track Court No.IV,
Bhavani.
2. The First Additional District Munsif,
Bhavani.

Copy to

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

+1cc to Mr.N.Manokaran , Advocate, S.R.No.17135
+1cc to Mr.S.D.S.Phillip, Advocate, S.R.No.16583

S.A.No .301 of 2007
and
M.P.No.1 of 2007

SSN[co]
NSK 05/04/2022