IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 26.10.2021

PRONOUNCED ON: 28.01.2022

CORAM

THE HONOURABLE MR. JUSTICE A.A.NAKKIRAN

A.S.No.529 of 2017

The Madras Seva Sadan
Rep. by its Honorary General Secretary,
Mrs. Krithika Kumar Quintal
The Madras Seva Sadan
New No.13/ Old No.7, Harrington Road,
Chetpet, Chennai - 600 031. ... Appellant/Plaintiff

Vs

C. Chitra ... Respondent/defendant

PRAYER: This Appeal Suit is filed under Order 41 Rule 1 of the Civil Procedure Code, against the Judgment and Decree dated 20.01.2016 made in O.S.No.164 of 2011 on the file of the learned Principal District Judge, Kancheepuram, Chengalpattu.

For Appellant : Mr.K.Venkatesan

For Respondent : No appearance

JUDGMENT

This Appeal Suit is filed, challenging the Judgment and Decree in O.S.No.164 of 2011, dated 20.01.2016 passed by the learned Principal District Judge, Kancheepuram, Chengalpattu.

2. The appellant/plaintiff had filed the suit before the learned Principal District Judge, Kancheepuram, Chengalpattu, to direct the respondent to pay a sum of Rs.12,58,649.60/- together with interest at 18% p.a on the sum of Rs.8,25,344/- from the date of the plaint till the date of realization in full and for costs. The learned Principal District Judge, Kancheepuram, Chengalpattu, by the Judgment dated 20.01.2016, had dismissed the said suit. Aggrieved by the same, the appellant/plaintiff had filed this appeal.

3. For the sake of convenience, the parties herein after are referred to as they were described before the Trial Court.

4. The averments made in the plaint are, in brief, as follows:-

The plaintiff is a registered Society, which runs a primary school in the name of Madras Seva Sadan Nursery and Primary School at Tambaram. The fees and other charges were collected by the accountant from the parents and receipts were issued. The policy of the school was to collect the school fees in a single payment at the beginning of the Academic year. Late payment is allowed at the discretion of the defendant, who was employed as the

Headmistress of the said School. It was noticed that the defendant has received tuition fees, other charges and contributions from the students and has not deposited the same with the school. On suspicion, a firm of Chartered Accountants was engaged to assess the shortage. After a thorough investigation of records, it was found that a sum of Rs.8,25,344/- was the short fall during the period from 2005 to 2008. At that time of auditing, the defendant went on continuous leave and abandoned her service and sent a resignation letter on 15.12.2008. A criminal complaint was lodged on 07.11.2008, against the defendant, for which she obtained an anticipatory bail. Hence, the plaintiff was constrained to file the suit for recovery of the short fall amount with interest.

5. The averments made in the written statement are in brief as follows:

The defendant was employed as the Headmistress and she was not authorized to receive the fees, since there was a separate staff in the office for receiving the fees, etc. She is contesting the criminal case. She replied suitably to the notice, dated 09.12.2010. The alleged report of the Chartered Accountant is dated 19.09.2008. The delay in the complaint itself would go to show that the defendant had been falsely implicated in the case. Her image has been spoiled due to the civil and criminal cases against her and she is facing unnecessary litigation. Hence, she prays to dismiss the appeal.

6. Based on the aforesaid pleadings, the learned Principal District Judge, Kancheepuram, Chengalpattu, had framed issues and tried the suit. During Trial, on the side of the plaintiff, the members of the plaintiff Society were examined as P.W.1 to P.W.3 and it marked Ex.A1 to Ex.A10 as exhibits. On the side of the defendant, the defendant was examined as D.W.1 and no exhibit was marked.

7. The learned Principal District Judge, Kancheepuram, Chengalpattu, after considering the materials placed before him found that the evidence of PW3 was proved to be false and the yearly audit report admittedly does not disclose any short fall in collection of fees. Simply because the defendant resigned her job, decree cannot be passed against her. Moreover, the plaintiff is burdened to prove the case against the defendant and it failed to prove the same. Accordingly, he dismissed the suit. Aggrieved by the same, the plaintiff had filed the present Appeal.

8. Heard Mr.K.Venkatesan, the learned counsel for the appellant.

9. The learned counsel for the appellant has raised several grounds, challenging the Judgment and decree, passed by the Trial Judge, stating that there is sufficient evidence to prove that the defendant has committed misappropriation of school fees by unauthorizedly collecting the fees from the parents of nearly 120 students and that the delay in fixing the responsibility on the defendant was properly explained. The learned Judge without considering Ex.A2 the complaint given by the appellant against the respondent before Commissioner of Police, St.Thomas Mount, Chennai, has passed this order. It is stated that Anburaj was examined as PW3. Authors of the complaint filed as Ex.A9 were not examined for the reason that they are afraid of litigations and don't want to spend time to visit the court. In other words, the parents were not examined because they are apprehending of giving evidence out of litigation fear. Ex. A1 clearly established that there is a short fall of amount during the years 2005-2006, 2006-2007 and 2007-2008 during which tenure the defendant was working as the Headmistress. The appellant/Management, who are running group of educational institutions,

are unable to concentrate on each and every institution. Belated investigation and finding of the fact cannot be said to be the lapse on the part of the appellant in the absence of direct supervision by the appellant Management.

10. This court considered the submissions of the learned counsel appearing for the appellant and perused the materials on record.

11. From a perusal of the evidence, it is seen that the delay is not properly explained. Author of Ex.A1 was not examined. Mere filing of criminal case is not sufficient for holding that the defendant committed such misappropriation. The Criminal Case has nothing to do with the Civil Case.

12. It is evident that the complaints were given by four persons viz., Senthil Kumar, Karunakaran, Siva Lakshmi and Moorthy and they were not examined. So this is fatal to the appellant's case. The suit was filed in the year 2008. Certainly during the financial years viz., 2005-2006 and 2006-2007, the said incident happened and it is barred by limitation. PW2 Rathinavelu joined in service on 02.05.2008. Whereas in Ex.A6, it has been alleged that he had paid Rs.4,250/- on 18.07.2007. If it is so, he would have informed

non-issuance of receipts within a week from the date of payment to PW2. PW2 was not at all in service on 18.07.2007. This itself would go to show the falsity of the evidence adduced by PW2 and his legal notice. The date of year ending had not been specifically pleaded. In this case, for the years 2005-2006, 2006-2007, the suit is clearly barred by limitation.

13. The complaint given by Anburaj was not marked as a document. The regular audit report for the years 2005-2008 was not marked by the Institution. It is found that every year annual audit was done by the School Auditor. For the years 2005-2008, there was no shortfall in the account. So, the respondent is not responsible for the said shortfall. As per the audit report Ex.A1, the break-up details are as follows:

(i) 2005-2006 is Rs.2,51,850/-

(ii) 2006-2007 is Rs.2,54,725/-

(iii) 2007-2008 is Rs.2,18,725/-

How the figures were arrived by the Auditor is also not properly proved in this case. The author of Ex.A1 has not been examined. Admittedly, there was yearly audit in the school. At the time of yearly audit, the arrears of fees from the students could have been arrived at. Based upon the number of students studying and fees totally collected, the difference can be easily arrived at in the annual audit. The non-production of annual audit report is also not properly explained.

14. On 20.05.2009, Anburaj has sent a notice to the appellant complaining about the non-issuance of receipt for the amount misappropriated by the respondent. On 12.06.2009, the appellant has sent a letter to Y.Anburaj. On 09.12.2010, a legal notice was sent to the respondent. On 19.12.2010, reply notice was sent by the respondent. The audit report for the years 2005-2008 were not submitted to the Special Auditor who dealt with this case.

15. The contentions of the appellant that the affected parents will not come forward to give evidence due to litigation fear and lack of time, is not acceptable. Also, since the appellant is running a group of institutions, they cannot concentrate on each and every institution, is not acceptable. The evidence of PW3 was proved to be a false one. The author of Ex.A1 has not adduced any evidence before the lower court. The yearly audit report admittedly does not disclose any short fall in the collection of fees. The

burden of proof is on appellant to prove the case against the respondent, but it failed to prove the same and hence, this appeal is liable to be dismissed.

16. In view of the above discussions, this Court is of the opinion that the Judgement and decree granted by the Lower Court is in order and in accordance with law and does not require any interference of this court. Hence, this Appeal deserves to be dismissed.

17. In the result, the First Appeal is dismissed. No costs.

28.01.2022

Index : Yes/No
Internet: Yes
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To

1. The learned Principal District Judge,
   Kancheepuram, Chengalpattu.

A.A.NAKKIRAN.,J.

Gv

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