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S.A.No.1185 of 2007

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 11.12.2023	Delivered on : 13.12.2023
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CORAM

THE HONOURABLE Mr. JUSTICE C.KUMARAPPAN

S.A.No.1185 of 2007
and M.P.No.1 of 2007

1.Mumtaj,

2.Saidq Basha,

3.Farook Basha,

4.Mubarak Basha,

5.Akbar Basha.

... appellants

-Vs-

1.Kallakurichi Co-op Housing Society,
by its Secretary.

2.The Special Officer,
Kallakurichi Co-op Housing Society Ltd.

3.D.Kaliyaperumal,

S.A.Abdul Kareem (died)

4.G.Balakrishnan,

G.Chakrapani Naidu (died)



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5.R.Nallamuthu,

6.Y.Abdul Kareem,

7.D.Kesavalu.

... Respondents

Prayer:- Second Appeal filed under Section 100 of the Civil Procedure Code against the judgment and decree dated 17.01.2006 in A.S.No.30 of 2004, passed by the Subordinate Judge, Kallakurichi, confirming the judgment and decree dated 30.06.2003 in O.S.No.913 of 1987 passed by the Principal District Munsif, Kallakurichi.

For Appellants : Mr.Krishnakumar

For Respondents : No appearance

J U D G M E N T

The instant second appeal has been filed at the instance of the legal heirs of the sole plaintiff. The respondents herein are the defendants before the Trial Court.

2. For the sake of convenience, the parties will be referred to according to their litigative status as before the Trial Court.



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The brief facts, which give rise to the instant second appeal, are as follows:

3. The plaintiff was employed as a Secretary of the first defendant viz., Kallakurichi Co-operative Housing Society. On account of some misunderstanding between the plaintiff, and the then President of the society, the President addressed a letter dated 05.01.1980 to the Registrar, Co-operative societies (Housing), Madras, to order disciplinary proceedings against the plaintiff under Section 65 of Tamil Nadu Co-operative Societies Act, 1961 (in short, the Act). Pursuant to that, the Deputy Registrar, Co-operative Societies (Housing), Cuddalore, ordered for an enquiry under Section 65 of the Act and appointed one Mr.Amarnath Arya, Co-operative Sub Registrar (UHS) as an Enquiry Officer to conduct the said enquiry, vide his order dated 05.03.1980. As per the said order, the Enquiry Officer submitted his Preliminary report on 21.01.1981. In pursuance thereof, the plaintiff was placed under suspension vide the order of the Deputy Registrar, Co-operative Societies (Housing), dated 22.01.1981.

4. As per Section 65 of the Act, the Registrar, Co-operative



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Societies or a person authorized by him alone would be empowered to conduct an enquiry. Hence, according to the plaintiff, the order passed by the Deputy Registrar, Co-operative Societies (Housing) was not in accordance with law. Therefore, the plaintiff came forward with this suit seeking for a declaration in respect of the orders dated 05.03.1980 and 22.01.1981 as illegal and void and also for restraining the defendants by way of permanent injunction from taking any further action.

5. The said suit was resisted by the defendants by contending that the Registrar, Co-operative Societies (Housing), Madras has delegated his powers to the Deputy Registrar, Co-operative Societies (Housing), Cuddalore, to order an enquiry under Section 65 of the Act. The Deputy Registrar, Co-operative Societies (Housing), in his order dated 05.03.1980 ordered the enquiry under Section 65 of the Act, against the plaintiff and appointed the Enquiry Officer. According to the defendants, the orders dated 05.03.1980 and 22.01.1981 passed by the Deputy Registrar, Co-operative Societies (Housing) are legal, valid and within jurisdiction. The defendants submitted that in pursuance of the



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Enquiry Report, the plaintiff was placed under suspension and ordered domestic enquiry. The defendants contended that as per Section 100 of the Act, the Civil Court has no jurisdiction. Hence, they prayed to dismiss the suit.

Evidence and Documents:

6. Before the Trial Court, on behalf of the plaintiff, the plaintiff Mr.Noor Ahmed Basha himself was examined as P.W.1 and 30 documents were marked as Exs.A1 to A30. On behalf of the defendants, Mr.Ramupillai, Secretary, Kallakurichi Co-op Housing Society, was examined as D.W.1 and 6 documents were marked as Exs.B1 to B6. During the pendency of the suit, the plaintiff died and his legal heirs were brought on record.

Findings of both the Courts below:

7. After full fledged trial, the Trial Court found that the said suit was hit by Section 100 of the Act and dismissed the suit by judgment dated 30.06.2003. Aggrieved by the same, the legal heirs of the plaintiff had preferred an appeal in A.S.No.30 of 2004. The First Appellate Court



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by relying upon the judgment of this Court reported in **1997 MLJ 479** held that Section 100 of the Act, is not a bar to file a suit. It was also found that there was no proof that the suspension order was passed based upon the authorization as per the Act, and that the action taken by the Deputy Registrar could not be termed as a legal one. Therefore, it was found that, Section 100 of the Act, is not a bar to institute a civil suit. However, the First Appellate Court found that the suit was filed after a long time. Hence, the First Appellate Court held that the dismissal of the suit by the Trial Court is well merited and thereby dismissed the First Appeal. Challenging the same, the legal heirs of the plaintiff are now before this Court by way of this second appeal.

Substantial questions of law:

8. At the time of admission of this Second appeal, on 02.11.2007, this Court formulated the following substantial questions of law:

“1. Whether the Lower Appellate Court is correct in law in non-suiting the plaintiffs by holding that the suit had become infructuous on account of the fact that



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further proceedings pursuant to the orders dated 22.01.1981 had taken place totally overlooking the fact that Ex.A16 is the primordial proceedings and a declaration is sought to quash this proceedings?

2.Whether the Lower Appellate Court is correct in law in dismissing the suit filed by the plaintiffs after holding that the disciplinary action is vitiated by malafides on the apart of the 5th defendant totally overlooking the fact that the relief which is sought for in the above suit is one for a declaration that Ex.A16 initiated at the instance of the 5th defendant is invalid?

3.Whether the Lower Appellate Court is right in dismissing the suit after it rightly observed that the right to sue of the deceased 1st plaintiff would enure to the benefit of his legal heirs, the appellant?"

Submissions on behalf of the appellant:

9. The learned counsel for the appellants/plaintiffs would contend that the First Appellate Court ought to have held that the disciplinary proceedings, initiated against the plaintiff, are in violation of the principles of natural justice. The First Appellate Court ought to have held that the appellants are entitled for backwages, pension and



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appointment on the compassionate ground. Hence, he prayed to allow this second appeal.

10. There is no representation on behalf of the respondents.

11. This Court has given its anxious consideration on submissions made by the learned counsel for the appellant.

Analysis of the submissions:

12. It is the submission of the learned counsel for the appellants that, when the finding of the First Appellate Court is that the suit is not barred, the suit ought to have been decreed. However, in view of the long delay between the cause of action and the date of filing of the suit, the First Appellate Court dismissed the appeal by confirming the order of the Trial Court.

13. As per the decree, the plaint was presented on 02.11.1987



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almost after six years. In this regard, this Court would like to rely upon Article 58 of the Limitation Act where, if the party wants to have any declaration, they must approach the Court within 3 years from the date when the right to sue first accrues. On perusal of the plaint averments, it is clear that there is no pleading as to the receipt of the notice at a later point of time. Therefore, this Court must hold that the orders which were challenged by the plaintiff, would have been served immediately. On such issuance, as rightly held by the First Appellate Court, there was a long delay of more than six years to institute the suit for declaration. Therefore, this Court is of the view that under Article 58 of the Limitation Act, the suit is barred and liable to be dismissed.

14. Thus, in view of the above discussion, this Court is of the firm view that the finding of fact recorded by both the Courts below is well merited. Hence, the substantial questions of law are answered in favour of the respondents.

15. In the result, this second appeal is dismissed by confirming



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the judgments and decrees passed by both the Courts below.

Consequently, connected miscellaneous petition is closed. There shall be no order as to costs.

13.12.2023.

Internet : Yes

Index : Yes/No

Speaking order/Non-speaking order
apd

To

1. The Subordinate Judge, Kallakurichi,
2. The Principal District Munsif, Kallakurichi,
3. The Section Officer, V.R.Section, High Court, Madras.



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C.KUMARAPPAN,J.

apd

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