



S.A(MD).No.776 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 28.03.2023

CORAM:

THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

S.A.(MD)No.776 of 2022
and C.M.P(MD)No.11787 of 2022

Rev.Daniel G.Rajasekaran Appellant/Appellant/Defendant

Vs.

1.Dr.R.Selvarajan

2.S.Prabakaran ... Respondents/Respondents/Plaintiffs

Prayer : Second Appeal is filed under Section 100 of Code of Civil Procedure, against the judgment and decree dated 28.07.2022 passed in A.S.No.22 of 2021 on the file of the Additional Sub Court, Madurai, confirming the judgment and decree dated 29.01.2021 passed in O.S.No. 371 of 2016 on the file of the Principal District Munsif Court, Madurai.

For Appellant : Mr.J.Gunaseelan Muthiah

For Respondents : No appearance

J U D G M E N T

This Second Appeal has been filed challenging the concurrent findings of the courts below. The defendant in O.S.No.371 of 2016 on the file of the Principal District Munsif Court, Madurai is the appellant herein.



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2. In the forthcoming paragraphs, the parties are described as per their litigative status in the suit.

3. The suit was filed by the respondents/plaintiffs for recovery of a sum of Rs.21,234/- with interest at the rate of 18% per annum till the date of realization on account of non-payment of transfer fee by the appellant/defendant, who is a member of Parsn Glen Nestle Apartments Welfare Society. The appellant/defendant has purchased an apartment in the building known as Parsn Glen Nestle Apartments, which is managed by the aforesaid registered society as per the by-laws of the society. Every member shall pay transfer fee amounting to Rs.10,000/-. Since the appellant/defendant did not pay the transfer fee as per the by-laws of the society, the respondents/plaintiffs filed the suit for recovery of money against the appellant/defendant for the non-payment of the transfer fee together with interest.

4. The appellant/defendant in his written statement denied that he is liable to pay the transfer fee as claimed in the plaint and he has also stated that without proper authorization as per the by-laws, the suit has been filed and therefore the suit is not maintainable.



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5. Before the trial court, the plaintiffs produced 15 documents, which were marked as Ex.A.1 to Ex.A15. On the side of the defendant no document was produced. The issues were also framed by the trial court based on the pleadings of the respective parties.

6. Admittedly, as per clause-24(k) of the by-laws of the plaintiffs Society in case of every transfer of a flat by way of sale etc, a minimum transfer fee of Rs.10,000/- is payable by the member. Admittedly, the defendant has purchased a flat in the apartment complex but has not paid the transfer fee of Rs.10,000/- as per clause-24(k) of the by-laws. As seen from the documents which were marked as exhibits on the side of the plaintiffs, reminders were also sent to the defendant calling upon him to pay the transfer fee but despite the same, the defendant has failed to pay the said amount which has been claimed only based upon the by-laws. Only based on oral and documentary evidence available on record namely the by-laws and other exhibits marked on the side of the plaintiffs including the reminder letter, the trial court has rightly come to the conclusion that the suit will have to be decreed as prayed for in the plaint. No documentary evidence was also produced by the defendant to disprove the claim of the plaintiffs. The by-laws also makes it clear that the President of the Society



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has the overall charge and supervision in respect of administration of the plaintiffs society, its properties and finances, the same is found in clause-15(a) of the by-laws. The Secretary of the society shall be responsible for convening the meetings of the executive committee and general body of the society. As seen from clause-15(b)(vi), the Secretary will be the Officer to sue or to be sued on behalf of the plaintiff society.

7. The appellant/defendant has contended in his written statement that the President is not empowered under the by-laws to depose on behalf of the plaintiffs society and the Secretary alone has got the said power. Admittedly, the plaint was signed both by the Secretary as well as the President of the plaintiffs society and the President of the society deposed on behalf of the plaintiff society. The trial court has rightly held that there is no prohibition for the President of the society to depose on behalf of the society under the by-laws. Therefore, oral evidence let-in by the President of the society cannot be rejected. It is also to be noted that both the Secretary as well as the President have signed the plaint and the President is also having overall charge and supervision in respect of administration of the plaintiff society as per the by-laws. No evidence has been placed by the defendant before the trial court to disprove the claim of the plaintiff that the



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defendant is liable to pay the transfer fee as per the by-laws.

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8. The lower Appellate Court, namely, the I Additional Subordiante Court, Madurai, by its judgment and decree dated 28.07.2022 in A.S.N0.22 of 2021 has also rightly confirmed the findings of the trial court by dismissing the appeal filed by the defendant.

9. This Court on 02.12.2022 had admitted the Second Appeal and has framed the following substantial questions of law:

- i. The plaintiffs violate the bylaw of the association Rule 15 A and B the Secretary alone is empowered person to sue and to be sued in any matter concerning this association. That point failed to consider by Trial Court and First appellate Court.
- ii. This case concern the president of Association was filed Civil Suit and also deposed evidence instead of Secretary of the Association. That point failed to consider by Trial Court and First appellate Court.

10. The substantial questions of law formulated by this Court are



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answered against the appellant/defendant as they have been rightly considered by the courts below based on oral and documentary evidence available on record. There are no debatable issues of fact or law involved in this Second Appeal, which require any interference by this Court under Section 100 C.P.C.

9. For the foregoing reasons, there is no merit in this Second appeal and the same is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

28.03.2023

Index : Yes/No
Internet: Yes/No
CM

To

- 1.The Additional Sub Court, Madurai,
2. The Principal District Munsif Court, Madurai.
- 3.The Section Officer,

VR Section,

Madurai Bench of Madras High Court, Madurai.



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ABDUL QUDDHOSE, J.

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