



S.A.Nos.212 of 2002
and 955 of 2003

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 11.01.2024

CORAM

THE HON'BLE MR.JUSTICE MUMMINENI SUDHEER KUMAR

S.A.Nos.212 of 2002 and 955 of 2003

and

C.M.P.No.8684 of 2003

and

M.P.(MD) No.1 of 2008

S.A.No.212 of 2002:

Thilagavathy

.. Appellant/Appellant/
3rd Defendant

Vs.

1.Jill Rajesh

2.Lazer Nesamony (Died)

3.The Correspondent,
M.G.Polytechnic,
Vadasery, Agasteeswaram Taluk,
Kanyakumari District.

4.The Principal,
M.G.Polytechnic,



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Vadasery, Agasteeswaram Taluk,
Kanyakumari District.

.. Respondents/Respondents/
Plaintiffs & Defendants 1 & 2

[Memo dated 19.10.2023 filed on 19.10.2023 in USR No. 36848 is recorded as R2 died, Respondent No.1, who is already on record, is recorded as LR of the deceased R2 vide Court order dated 19.10.2023 made in S.A.No.212 of 2002]

Prayer: Appeal filed under Section 100 of Civil Procedure Code to set aside the judgment and decree dated 05.10.2001 made in A.S.No.30 of 2000 on the file of the I Additional Subordinate Court, Nagercoil, confirming the judgment and decree dated 30.10.1998 made in O.S.No.1177 of 1996 on the file of the Principal District Munsif Court, Nagercoil.

For Appellant : Mr.P.Thiagarajan
for Mr.T.R.Rajaraman

For RR3 & 4 : Mr.K.Sreekumaran Nair

For RR1 & 2 : No appearance

S.A.No.955 of 2003:

1. The Correspondent,
M.G.Polytechnic,
Vadasery,
Agasteeswaram Taluk,
Kanyakumari District.



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2.The Principal,
M.G.Polytechnic,
Vadasery,
Agasteeswaram Taluk,
Kanyakumari District.

.. Appellants/Respondents 3 & 4/
Defendants 1 & 2

Vs.

1.Thilagavathy

2.Jill Rajesh

3.Lazer Nesamony

.. Respondents/
Appellants & Respondents 1 & 2

Prayer: Appeal filed under Section100 of Civil Procedure Code to set aside the judgment and decree dated 05.10.2001 made in A.S.No.30 of 2000 on the file of the I Additional Subordinate Court, Nagercoil, pursuant to the judgment and decree dated 30.10.1998 made in O.S.No.1177 of 1996 on the file of the Principal District Munsif Court, Nagercoil.

For Appellants : Mr.K.Sreekumaran Nair

For R1 : Mr.P.Thiagarajan
for Mr.T.R.Rajaraman

For RR2 & 3 : No appearance



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COMMON JUDGMENT

1.1. These two second appeals are filed against a judgment and decree passed in A.S.No.30 of 2000, dated 05.10.2001 passed by the Court of the I-Additional Sub Judge, Nagercoil.

1.2. S.A.No.212 of 2002 is filed by the 3rd defendant in the suit, whereas S.A.No.955 of 2003 is filed by defendants 1 and 2 in the suit.

2. For the sake of convenience, the parties are referred to as they are arrayed in O.S.No.1177 of 1996.

3. The said suit was filed by plaintiffs 1 and 2 praying for a decree directing the defendants to issue Transfer Certificate of SSLC and Community Certificate to the 1st plaintiff and for award of damages to a tune of Rs.25,000/- and for costs of the suit. The 1st plaintiff was the student of defendants 1 and 2. The 2nd plaintiff is the father of the 1st plaintiff.



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4. It is the case of the plaintiffs that the 1st plaintiff was admitted in three year Diploma course styled as “Electronics and Communication Engineering” in the defendant-Polytechnic college in the year 1992 and in the year 1994, when he was supposed to appear for the examinations, though he was issued with a hall ticket and allowed to write the first examination on 05.04.1994, he was not allowed to write examination on 06.04.1994 and thereafter, the defendants also refused to issue the Transfer Certificate and Community Certificate to enable the 1st plaintiff to pursue his further studies in some other Institute. According to the plaintiffs, the 3rd defendant has intimated the 1st and 2nd defendants about the shortage of attendance of the 1st plaintiff and also refused to issue a no due certificate resulting in non-issuance of the Transfer Certificate and Community Certificate to the 1st plaintiff.

5. On the other hand, it is the case of the defendants that the shortage of attendance of the 1st plaintiff is not in dispute and the Transfer Certificate and Community Certificate were not issued for want of



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production of no due certificate from the Head of Department of Electronics and Communication Engineering Department.

6. The learned Trial Court, after having conducted full-fledged trial, dismissed the suit against defendants 1 and 2, but decreed the suit as against the 3rd defendant directing for payment of damages of Rs.25,000/-. Aggrieved by the said judgment and decree dated 30.10.1998, the 3rd defendant filed A.S.No.30 of 2000. Insofar as the dismissal of the suit against defendants 1 and 2 is concerned, the plaintiffs have not chosen to file any appeal and the said decree of dismissal of the suit as against defendants 1 and 2 has attained finality. The learned lower appellate Court, while dismissing the appeal filed by the 3rd defendant, apportioned the damages among the defendants and directed defendants 1 and 2 to pay a sum of Rs.10,000/- each and the 3rd defendant was directed to pay a sum of Rs.5,000/- as damages to the plaintiffs. Aggrieved by the said judgment and decree of the lower appellate Court, the present second appeals are filed.



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7. This Court, while admitting the second appeal filed by defendants 1 and 2 in S.A.No.955 of 2003, framed the following substantial question of law on 30.06.2003:

“In the absence of any appeal by the decree-holder, in not granting a decree for damages against the first and second defendants while dismissing the appeal filed by the third defendant against whom there is a decree for damages, had not the Lower Appellate Court acted in excess in law in modifying the decree of the Trial Court by making the first and second defendants also liable proportionately?”

8. So also, while admitting S.A.No.212 of 2002 filed by the 3rd defendant, this Court framed the following substantial question of law on 18.02.2022:

“When factually, the first plaintiff is lacking in attendance, which is an essential requirement to be fulfilled by any student, who intends to write the examination, would the conduct on the part of any of the defendants in not permitting the first plaintiff to



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write the examination in the above stated facts, give any cause of action at all for him for the reliefs prayed for in the plaint?”

9. Heard Sri P.T.Thiagarajan, learned counsel for Mr.T.R.Rajaraman, learned counsel for the appellant in S.A.No.212 of 2002 and for the 1st respondent in S.A.No.955 of 2003 and Mr.K.Sreekumarn Nair, learned counsel for the appellants in S.A.No.955 of 2003 and for respondents 1 and 2 in S.A.No.212 of 2002.

10. From the above narration of facts, it is an undisputed fact that the suit was originally dismissed as against defendants 1 and 2 by a judgment and decree dated 30th October, 1998. The plaintiffs have not chosen to file any appeal against the dismissal of the suit as against defendants 1 and 2. Thus, the said decree in between the plaintiffs and defendants 1 and 2 has become final. However, the learned lower appellate Court, in an appeal filed by the 3rd defendant, made the 1st and 2nd defendants liable for payment of damages at the rate of Rs.10,000/- each.



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The subject matter of the said appeal filed by the 3rd defendant is only to the extent of the liability fixed on the 3rd defendant for payment of damages of Rs.25,000/-. Once the plaintiffs accepted the decree passed by the lower Trial Court as against the 1st and 2nd defendants and the findings that were recorded by the learned trial Court as against the 1st and 2nd defendants have attained finality, the learned lower appellate Court has no jurisdiction to go into the aspect of the liability of the 1st and 2nd defendants either for payment of damages or otherwise. Hence, the judgment and decree under appeal insofar as fixing liability on defendants 1 and 2 to the extent of Rs.10,000/- each is concerned, the same is totally without jurisdiction. Further, from the perusal of the judgment and decree of the learned lower appellate Court also, there is no justification that was given by the learned lower appellate Court for making the 1st and 2nd defendants liable for the damages. There is nothing, that is, brought to the notice of this Court by the learned counsel for the plaintiff to sustain the judgment and decree of the learned lower appellate Court as against defendants 1 and 2. Accordingly, the substantial question of law framed by this Court in S.A.No.955 of 2003 is answered in



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the positive and the judgment and decree passed as against defendants 1 and 2 directing them to pay damages of Rs.10,000/- each is declared as the one passed in excess of jurisdiction and accordingly, S.A.No.955 of 2003 is allowed and the judgment and decree dated 05.10.2001 made in A.S.No.30 of 2000 on the file of the I Additional Subordinate Court, Nagercoil, as against defendants 1 and 2 is set aside.

11. Then coming to the appeal filed by the 3rd defendant viz., S.A.No.212 of 2002, in the considered view of this Court, the following substantial question of law, in addition to the substantial question of law already framed, would arise for consideration in this second appeal:

“Whether the Courts below are justified in law in making the 3rd defendant liable for payment of damages in favour of the plaintiffs, without there being an allegation in person against the 3rd defendant of failure to discharge any of her obligations or acting in excess of her official capacity especially in the absence of any allegation of mala fide attributed against the 3rd defendant.”



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12. A perusal of the averments in the plaint does not show any allegation of *mala fide* or omission or commission on the part of the 3rd defendant, except stating that the note circulated by defendants 1 and 2 was not approved by the 3rd defendant without any reason. Except in Paragraphs No.8 and 9 of the plaint, rest of the plaint, there is no allegation of whatsoever nature against the 3rd defendant. Paragraph Nos.8 and 9 of the plaint read as under:

“8. Left without remedy the 1st plaintiff applied for the issue of his Transfer Certificate so as to take effort to join some other course or institution. The defendants directed 1st plaintiff to remit Rs.10.50 for the same and 1st plaintiff complied with their direction. After remitting Rs. 10.50 he was asked to obtain no objection Certificate from all the department heads. A note circulated was approved by all except the 3rd defendant. The then Head of the Department Electronics and Communication without any reason. The said note was produced before the principal 2nd defendant. He insisted that the first plaintiff should return the Hall ticket course Certificate



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and an undertaking that he would not institute legal proceedings against the defendants. Since the first plaintiff did not oblige, the issue Transfer Certificate was negatived. Till this date the Defendants have not issued the Transfer Certificate. Besides they are illegally retaining the S.S.L.C. Certificate and community Certificate of the 1st plaintiff also. They have no manner of right to retain those valuable documents.

9. The action of the defendants in collecting donation violating the Rules from plaintiffs on 16-7-1991 refusing the 1st plaintiff to write examination from the 2nd date of examination collection of Rs.1000/- for excusing shortage of attendance, collection of fees for conduct of coaching claims to make up the attendance refusal to issue Transfer Certificate on false pretext retention of S.S.L.C. Certificate of the 1st plaintiff are some of very serious illegalities committed by the Defendants. As a result of the serious irregularities committed by the 1st plaintiff could not get admission to any other course. The irregularities cost him loss of 3 years. The refusal to permit 1st plaintiff to sit for the examination inflicted a blur in his carier. The plaintiffs incurred incalculable mental pain and financial loss because of the illegal acts



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of the defendants. They have every right to claim damages from the defendants.”

13. From the perusal of the above paragraphs, there is nothing to indicate that the 3rd defendant in any way acted in excess of her power or omitted to do any act, which is expected of her. Admittedly, the 3rd defendant is nothing to do with issuance of hall ticket, allowing or not allowing the 1st plaintiff to sit for the examination or to issue the Transfer Certificate and Community Certificate to the 1st plaintiff. It is also not stated in the plaint as to why the 3rd defendant is being sued either for payment of damages or for issuance of certificates. Further, there is nothing alleged against the 3rd defendant that she is not right in informing the 1st and 2nd defendants about the shortage of attendance or in not issuing no due certificate. In the absence of any such allegation against the 3rd defendant, it is not known as to how the 3rd defendant can be made liable for the relief sought in the suit. The 3rd defendant having suffered a decree before the learned Trial Court, filed an appeal before the learned lower appellate Court. The learned lower appellate Court, having examined the matter in detail, in



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Paragraph No.11 of the judgment, held that the 3rd defendant is only incharge of the Department of Electronics and Communication Engineering at the relevant point of time and it is only the Principal, who can take action against the student, but not the Head of the Department and it is the duty of the Head of the Department to give details of the student when the same is asked by the Administration and the 3rd defendant is no way connected with the students otherwise. The learned lower appellate Court also observed that the 1st plaintiff has not produced any evidence to substantiate that the 3rd defendant is responsible for not permitting the 1st plaintiff to appear for the examinations and also observed that it is not correct to state that the 3rd defendant is responsible for the non-issuance of certificates and for not allowing him to write the examination.

14. Having observed as above, the learned lower appellate Court erroneously came to the conclusion that the 3rd defendant is not fully responsible and held that defendants 1 to 3 are jointly liable for not permitting the 1st plaintiff for the examinations on the ground that the 3rd



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defendant has not denied the allegation of the plaintiffs that the 3rd defendant only informed about the shortage of attendance of the 1st plaintiff to the Principal. Such a conclusion arrived at by the learned lower appellate Court is totally perverse. There is no dispute that it is the 3rd defendant, who furnished the information about the shortage of attendance of the 1st plaintiff to the 2nd defendant. When the same is an admitted fact, the question of denying the same by the 3rd defendant does not arise. Non-denial of the averment of the plaintiff in this context is of no significance. But, surprisingly, the learned lower appellate Court took that as the basis for making the 3rd defendant liable for the damages. From the above, it is evident that the conclusions arrived at by the learned lower appellate Court are contrary to the findings recorded by it on evidence and the result portion of the judgment of the learned lower appellate Court is contrary to its own findings recorded in Paragraph No.11 of the judgment. Further, as already noted above, there is no specific allegation of commission or omission on the part of the 3rd defendant, resulting in not allowing the 1st plaintiff to appear for the examinations or in non-issuance of the certificates. In the



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absence of any allegation or foundation in the plaint to claim relief against the 3rd defendant, there is no cause of action for filing the suit against the 3rd defendant.

15. In the result, the substantial questions of law framed are answered and it is declared that the Courts below are not right in making the 3rd defendant liable for the relief sought in the suit in any manner.

16. Even otherwise, the 3rd defendant is only an employee of defendants 1 and 2 and she cannot be made liable personally for the relief sought in the suit and even if there is any omission or commission on the part of the 3rd defendant, it is only defendants 1 and 2, who can be made liable vicariously, but not the 3rd defendant in her individual capacity. As already noted above, the suit was dismissed as against defendants 1 and 2 and the same has become final. Therefore, the plaintiffs are not entitled to continue the suit against the 3rd defendant as well.



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17. In the light of the above, the judgment and decree passed by the learned lower appellate Court in A.S.No.30 of 2000 dated 05.10.2001 as against the 3rd defendant is also wholly unsustainable and the same is liable to be set aside and accordingly, the same is set aside. S.A.No.212 of 2002 is allowed.

18. In the result, both the second appeals are allowed. No costs. Consequently, connected miscellaneous petitions are closed.

11.01.2024

NCC : Yes/No
Index : Yes/No
Internet : Yes

abr

To

1.The I Additional Subordinate Judge,
Nagercoil.

2.The Principal District Munsif,
Nagercoil.



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