



S.A.No.351 of 2003

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 03.04.2024

CORAM:

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

S.A.No.351 of 2003

1.M.Athikani

2.S.Muthukrishnan

... Appellants

Vs.

1.P.Andi Rediar

2.The Secretary,
E.E.459, Primary Agricultural
Co-operative Bank,
Meelavittan.

3.KSelvaraj

4.Nagalingam

5.M.Kani Nadar

... Respondents

PRAYER: Second Appeal is filed under Section 100 of the Civil Procedure Code, against the decree and judgment of the learned Sub Judge, Tuticorin dated 07.11.2002 in A.S.No.205 of 1996 confirming the judgment and decree of the Principal District Munsif, Tuticorin dated 24.06.1996 in O.S.No.198 of 1995.



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S.A.No.351 of 2003

For Appellants : Mr.P.Jeyapaul
For R1, R2 & R5 : No appearance
For R3 & R4 : Mr.J.Alaguramjothy

J U D G M E N T

The plaintiffs in the suit are the appellants. The suit was filed for a declaration that loan document maintained by the second respondent Society under which loan amount was allegedly paid to the appellants and the respondents 3 to 5 was forged document and for consequential injunction restraining the second respondent Society from recovering alleged outstanding loan amount from the appellants and the respondents 3 to 5. The suit was dismissed by the trial Court and the finding of the trial Court was confirmed by the first appellate Court. Aggrieved by the concurrent finding, the plaintiffs are before this Court.

2. According to the appellants, they made an application before the Secretary of the second respondent Society for availing agricultural loan and they were informed that loan amount would be disbursed to them only after getting sanction from the higher authority. Since there was a delay in disbursement of the loan amount, the appellants dropped the idea of availing loan from the second



S.A.No.351 of 2003

WEB COPY

respondent Society. However, during the month of March 1994, to the shock of the appellants, they received a notice from the second respondent Society as if the appellants availed loan from the said Society and failed to repay the same. When the appellants approached the then Secretary of the second respondent Society, they were informed that the appellants were paid the loan amount and he had also shown the loan document allegedly signed by the appellants. Asserting that the appellants have not signed any loan document in favour of the second respondent Society, the present suit was laid for the above said relief.

3. The second respondent Society filed a written statement and resisted the suit on the ground that the appellants and respondents 3 to 5 executed a loan document and received the loan amount from the second respondent Society. The plea of forgery raised by the appellants was specifically denied in the written statement filed by the second respondent Society. It was further pleaded by the second respondent Society that in order to avoid repayment of the loan amount, the appellants have come up with these false averments. The second respondent Society also raised a legal plea that the suit is barred by the provisions of the Tamil Nadu Co-operative Societies Act.



S.A.No.351 of 2003

WEB COPY

4. Before the trial Court, the second appellant was examined as P.W.1 and two other witnesses were examined as P.Ws.2 and 3. On behalf of the appellants, nine documents were marked as Exs.A1 to A9. On the side of the respondents, the first respondent was examined as D.W.1 and an agent of the second respondent society was examined as D.W.2 . On behalf of the respondents, 15 documents were remained marked a Exs.B1 to B15. The signature of P.W.3 was marked as Ex.C1.

5. The trial Court came to the conclusion that the suit claim was barred by Section 90 r/w. 156 of Co-operative Societies Act and hence, dismissed the suit. Aggrieved by the same, the appellants preferred the first appeal in A.S.No. 205 of 1996 on the file of Sub Court, Tuticorin. The first appellate Court affirmed the finding of the trial Court. Aggrieved by the same, the appellants are before this Court.



S.A.No.351 of 2003

WEB COPY

6. The learned counsel appearing for the appellants submitted that the appellants are not Members of the second respondent Society. Therefore, dispute between the appellants and the second respondent Society will not come within the purview of Section 90 of the Tamil Nadu Co-operative Societies Act. The learned counsel for the appellants further submitted that the second respondent Society submitted to jurisdiction of the civil Court and hence, the Courts below ought not have non-suited the appellants on the basis of the bar under Tamil Nadu Co-operative Societies Act.

7. Both the Courts below on appreciation of oral evidence of P.Ws.1 and 2 came to the conclusion that the appellants were Members of the Second respondent Society. A perusal of evidence of P.Ws.1 and 2 would indicate that both of them admitted that they were Members of the second respondent Society. Therefore, the said factual finding reached by the Courts below is based on proper appreciation of evidence available on record. Therefore, the same requires no interference from this Court.



S.A.No.351 of 2003

WEB COPY

8. Once this Court comes to the conclusion that the appellants are Members of the second respondent Society, by virtue of Section 90 of the Tamil Nadu Co-operative Societies Act, any dispute between the Society and its Members touching the business of the Society shall be referred to Registrar of Co-operative Societies for decision. Now, the appellants are raising a plea that loan documents maintained by the second respondent Society under which loan amount was allegedly paid to the appellants were forged documents. Therefore, the dispute raised by the appellants is the one between the Members of the second respondent Society and the Society itself touching its business. Therefore, both the Courts below rightly came to the conclusion that by virtue of Section 90 of the Tamil Nadu Co-operative Societies Act r/w. Section 156, the jurisdiction of the civil Court to entertain the suit claim was ousted. I do not find any error in the said conclusion reached by the Courts below. Finding no substantial question of law to enable this Court to interfere with the judgment and decree passed by the Courts below, the Second Appeal stands dismissed. No costs.

03.04.2024

NCC : Yes
Index : Yes
Internet : Yes
akv



S.A.No.351 of 2003

WEB COPY

To

- 1.The Secretary,
E.E.459, Primary Agricultural
Co-operative Bank,
Meelavittan.
- 2.The Principal District Munsif,
Tuticorin.
- 3.The Record Keeper,
V.R.Section,
Madurai Bench of Madras High Court,
Madurai.



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S.A.No.351 of 2003

S.SOUNTHAR,J.

akv

S.A.(MD).No.351 of 2003

03.04.2024