



C.R.P.(MD) Nos.2290 and 2291 of 2022

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**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

|                                  |                                    |
|----------------------------------|------------------------------------|
| Orders Reserved On<br>28.02.2025 | Orders Pronounced On<br>30.04.2025 |
|----------------------------------|------------------------------------|

**CORAM**

**THE HON'BLE MR.JUSTICE MUMMINENI SUDHEER KUMAR**

C.R.P.(MD) Nos.2290 and 2291 of 2022  
and  
C.M.P.(MD) Nos.10949 and 10950 of 2022

C.R.P.(MD) No.2290 of 2022:

- 1.E.Seethalakshmiammal
- 2.Esaikumaran
- 3.Marimuthu
- 4.Ayyappan
- 5.Somasundari
- 5.Rajasri @ Rajeswari

... Petitioners/  
Appellants/Respondents

Vs.

- 1.The Deputy Registrar of Cooperative Societies,  
Deputy Registrar of Cooperative Societies Office,  
Tenkasi, Tirunelveli District.

... 1st Respondent/  
1st Respondent/Plaintiff

- 2.O. 919 Tenkasi Shencottai Taluk Agriculture  
Producer Cooperative Marketing Society,



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Tenkasi, Tirunelveli District,  
Through its President.

... 2nd Respondent/  
2nd Respondent/Rank not known

3.Gangadharan

... 3rd Respondent/  
3rd Respondent/7th Defendant

Prayer: Petition filed under Article 227 of the Constitution of India against the fair and decretal order dated 25.07.2022 made in C.M.A.(CS) No.7 of 2018 on the file of the Special Cooperative Tribunal/Principal District Judge, Tirunelveli, confirming the order made in S.C.No.18/1999-2000 in Sa.pa. dated 04.10.2017 on the file of the Deputy Registrar of Cooperative Societies, Tenkasi.

C.R.P.(MD) No.2291 of 2022:

1.E.Seethalakshmiammal

2.Esaikumaran

3.Marimuthu

4.Ayyappan

5.Somasundari

5.Rajasri @ Rajeswari

... Petitioners/  
Appellants/Respondents

Vs.

1.The Deputy Registrar of Cooperative Societies,  
Deputy Registrar of Cooperative Societies Office,



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Tenkasi,  
Tirunelveli District.

... 1st Respondent/  
1st Respondent/Plaintiff

2.O. 919 Tenkasi Shencottai Taluk Agriculture  
Producer Cooperative Marketing Society,  
Tenkasi, Tirunelveli District,  
Through its President.

... 2nd Respondent/  
2nd Respondent/Rank not known

3.Gangadharan

... 3rd Respondent/  
3rd Respondent/7th Defendant

4.Elango

... 4th Respondent/  
4th Respondent/8th Defendant

Prayer: Petition filed under Article 227 of the Constitution of India against the fair and decretal order dated 25.07.2022 made in C.M.A.(CS) No.8 of 2018 on the file of the Special Cooperative Tribunal/Principal District Judge, Tirunelveli, confirming the order made in S.C.No.19/1999-2000 in Sa.pa dated 04.10.2017 on the file of the Deputy Registrar of Cooperative Societies, Tenkasi.

In both Cases:

|                 |   |                                                                           |
|-----------------|---|---------------------------------------------------------------------------|
| For Petitioners | : | Mr.M.Sricharan Rangarajan<br>Senior Counsel<br>assisted by Mr.P.Mahendran |
| For Respondents | : | Mr.F.Deepak<br>Special Govt. Pleader - for R1                             |
|                 | : | Mr.S.Kumar - for R2                                                       |



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### COMMON ORDER

These two civil revision petitions are directed against the orders passed by the learned Special Co-operative Tribunal-cum-Principal District Judge, Tirunelveli in C.M.A.(CS) Nos.7 and 8 of 2018, dated 25<sup>th</sup> July, 2022. The petitioners are six in number, who are all the legal heirs of one late Essakkimuthu Pandian.

2.1. The brief background facts that are relevant for the disposal of these civil revision petitions are as under:

2.2. One Mr.Essakkimuthu Pandian worked as President of Respondent No.2-Society prior to the year 1998 and in connection with certain allegations levelled against Mr.Essakkimuthu Pandian, an enquiry under Section 81 of the Tamil Nadu Co-operative Societies Act, 1983 (hereinafter referred to as “the Act, 1983”) was ordered on 18.02.1998. The report under Section 81 of the Act, 1983 was submitted on 10.07.1998. It was thereafter, the said Esakkimuthu Pandian passed away on 09.02.1999.



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After the demise of the said Essakkimuthu Pandian (hereinafter referred to as “the deceased”) and after a lapse of seven months, proceedings under Section 87 of the Act, 1983 were initiated against the petitioners herein who are the legal heirs of the deceased. After conducting an enquiry, orders were passed against the petitioners herein and the Respondent No.3 by orders dated 30.08.2000 in S.C.No.18/1999-2000 and S.C.No.19/1999-2000 fixing the liability of Rs.2,76,152/- and Rs.34,40,327.10 paise respectively together with 19% interest against the petitioners herein. Aggrieved by the said orders passed under Section 87 of the Act, 1983, the Respondent No.3 herein filed C.M.A.(CS) Nos.48 and 50 of 2001 before the Co-operative Tribunal-cum-Principal District Judge, Tirunelveli. The said appeals were allowed by the learned Co-operative Tribunal by orders dated 28.01.2003 and the matter was remanded back to the Respondent No.1 under Section 87 of the Act, 1983 for fresh consideration.

2.3. At this stage, it is relevant to note that the petitioners herein, who are also aggrieved by the orders passed under Section 87 of the Act, 1983 have not preferred any appeal. However, on remand, in terms of the



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order dated 28.01.2003, the petitioners herein were allowed to participate in the enquiry conducted by the Respondent No.1 and thereafter, once again the Respondent No.1 passed orders dated 31.12.2004 in both the proceedings making the petitioners as well as the Respondent No.3 liable for the very same amounts. Aggrieved by the said orders dated 31.12.2004, the petitioners herein filed appeals before the Co-operative Tribunal in C.M.A.(CS) Nos.58 and 59 of 2005 specifically contending that the petitioners herein have not inherited any property from the deceased. However, the learned Co-operative Tribunal dismissed the said appeals by orders dated 10.03.2006. It was thereafter the petitioners filed revision petitions before this Court *vide* C.R.P.(MD) Nos.1011 and 1012 of 2006 against the orders dated 10.03.2006 passed by the learned Co-operative Tribunal. A Co-ordinate Bench of this Court having examined the matter, by orders dated 11.04.2007, came to the conclusion that neither the first respondent, nor the Appellate Tribunal have gone into the aspect as to whether the petitioners herein have inherited to the estate of the deceased or not and thus, remanded the matter back to the Respondent No.1 by orders dated 11.04.2007. It was pursuant to the said order, the Respondent No.1



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passed orders on 04.10.2017 once again fixing the liability on the petitioners for the very same amounts. After the civil revision petitions were disposed of by this Court by order dated 11.04.2007, the Respondent No.2 initiated proceedings on remand by issue of notice dated 27.03.2017 and concluded the proceedings by passing orders dated 04.10.2017, that is almost after lapse of a decade. Aggrieved by the said orders dated 04.10.2017, the petitioners herein have filed appeals in C.M.A.(CS) Nos.7 and 8 of 2018 before the Co-operative Tribunal-cum-Principal District Judge, Tirunelveli and the said appeals were also dismissed by the learned Appellate Tribunal by orders dated 25.07.2024. It is aggrieved by the said orders, the petitioners herein once again approached this Court by filing the present revision petitions.

3.1. Mr.M.Sricharan Rangarajan, learned Senior Counsel appearing for the petitioners argued the matter at length primarily contending that the petitioners herein cannot be made liable under Section 87 of the Act, 1983, as they have not inherited any estate of the deceased and also further contended that in spite of the specific direction issued by



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this Court in the previous round of litigation to verify the question as to whether the petitioners being the legal heirs of the deceased can be held liable under Section 87 of the Act, 1983, neither the Respondent No.1, nor the Appellate Tribunal have gone into the said aspect and without rendering any finding on the said factual aspect, made the petitioners herein liable.

3.2. He also further contended that there is abnormal delay in passing the orders under Section 87 of the Act, 1983 pursuant to the order of remand passed by this Court. Besides the said contention, the learned Senior Counsel also made submissions on the merits of the case and factual matrix of the case as well.

4. On the other hand, Mr.S.Kumar, learned counsel appearing for the Respondent No.2-Society contended that one of the petitioners herein having appeared before the Respondent No.1, agreed to pay the amounts towards the loss suffered by the Respondent No.2-Society and they also paid part of the amount and therefore, they cannot come round and question the orders passed by the Respondent No.1 as well as the appellate authority.



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In other words, it is the contention of the learned counsel for the Respondent No.2 that the legal heirs of the deceased having agreed to repay the loss suffered by the Respondent No.2-Society are estopped from filing the present civil revision petitions.

5. This Court has carefully considered the submissions and also perused the entire material on record.

6. As already noted above, the proceedings that were initiated against the petitioners herein is under Section 87 of the Act, 1983. Sub-section (1) of Section 87 as it stood then, reads as under:

*"87. Surcharge.\_\_(1) Where in the course of an audit under section 80 or an inquiry under section 81 or an inspection or investigation under section 82 or inspection of books under section 83 or the winding up of a society, it appears that any person who is or was entrusted with the organisation or management of the society or any past or present officer or servant of the society has misappropriated or fraudulently retained any money or other property*



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*or been guilty of breach of trust in relation to the society or has caused any deficiency in the assets of the society by breach of trust or willful negligence or has made any payment which is not in accordance with this Act, the rules or the by – laws, the Registrar himself or any person specially authorised by him in this behalf, of his own motion or on the application of the board, Liquidator or any creditor or contributory may frame charges against such person or officer or servant and after giving a reasonable opportunity to the person concerned and in the case of a deceased person, to his representative who inherits his estate, to answer the charges, make an order requiring him to repay or restore the money or property or any part thereof with interest at such rate as the Registrar or the person authorised as aforesaid thinks just or to contribute such sum to the assets of the society by way of compensation in respect to the assets of the society by way of compensation in respect of the misappropriation, misapplication of funds, fraudulent retainer, breach of trust or willful negligence or payments which are not in accordance with this Act, the rules or the by-laws as the Registrar or the*



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*person authorised as aforesaid thinks just:" (emphasis supplied)*

7. The petitioners herein do not fall in any of the categories against whom primarily the proceedings under Section 87 of the Act, 1983 can be initiated. However, Section 87 of the Act, 1983 enables the Respondent No.1 herein to initiate proceedings against the representatives of the deceased person, who fall under the categories covered by Section 87 only in the event of the representatives inheriting the estate of the deceased to answer the charges and further empowers the Respondent No.1 to order for payment of the money or to restore the property or any part thereof with interest at such rate, as the Registrar or the person authorised thinks just and proper. Thus, from the perusal of sub-section (1) of Section 87, it is evident that it is not the legal heirs who are made liable, but it is the representatives, who inherit the estate of the deceased, who can be proceeded against under Section 87 of the Act, 1983 in the event the person falling under primary categories falling under Section 87 is no more.



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8. As already noted above, this Court, in the previous round of litigation while disposing of the civil revision petitions by orders dated 11.04.2007, taken note of the fact that neither the Respondent No.1, nor the Appellate Tribunal have considered the crucial aspect as to whether the petitioners herein have inherited the estate of the deceased or not and further, directed the Respondent No.1 to look into that question specifically.

The relevant portion from the said order dated 11.04.2007 reads as under:

*"4.On going through the order of the respondent and also the order passed by the learned Appellate Tribunal, the learned Govt. Advocate has fairly conceded that the question whether the petitioner and other legal heirs have inherited asset of the deceased or not has not been specifically gone into by both the forums. He would further fairly concede that the orders have been passed by both forums against the petitioner and the Legal heirs simply because they happened to be the legal heirs of the deceased Esakkimuthu Pandian.*

*5.In the backdrop of the said facts, this Court is of the considered view that the order of the both forums are liable to be set aside. However, the*



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*question whether the petitioner and other legal heirs of the deceased have inherited the assets of deceased has to be decided only on evidence after affording sufficient opportunities to both parties. In these circumstances, the matter requires to be remanded back to the file of the respondent for fresh disposal after affording sufficient opportunities.*

*6.In the result, the order of the respondent made in r.g. 19 of 1999-2000 dated 31.12.2004 and confirmed in C.M.A.(C.S.) 58 of 2005 on the file of the learned Cooperative Tribunal (Principal District Judge), Tirunelveli is set aside. r.g. 182 of 1999-2000 is remaded back to the file of the respondent with a direction to the respondent to consider the question as indicated above in detail after affording sufficient opportunities to both parties and to give a finding in the light of the same."*

9. In spite of such a specific direction issued by this Court, the Respondent No.1 failed to look into the said question, nor recorded any finding on the said aspect. In spite of filing an appeal before the Co-operative Tribunal, the learned Co-operative Tribunal-cum-Principal



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District Judge, Tirunelveli also failed to record any finding on the said aspect. A perusal of the order passed by the Respondent No.1, dated 04.10.2017, or the orders passed by the Co-operative Tribunal dated 25.07.2022 does not show any such finding being recorded. On the other hand, the learned counsel appearing for the respondent-Society also fairly conceded that neither the Respondent No.1, nor the Co-operative Tribunal recorded any finding to that effect.

10. The Respondent No.1 can assume jurisdiction against the representatives of the deceased only in the event of such representatives inheriting the estate of the deceased. It is only on finding that the representatives or any representative of the deceased inherited the estate of the deceased, the Respondent No.1 gains jurisdiction to initiate proceedings under Section 87 of the Act, 1983. Admittedly, the proceedings under Section 87 of the Act, 1983 were initiated against the petitioners herein after the demise of the deceased Essakkimuthu Pandian. Admittedly, no proceedings were initiated during the lifetime of the deceased under Section 87 of the Act, 1983. In spite of directing the Respondent No.1 to address



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the question in this regard, by orders dated 11.04.2007, the Respondent No. 1 nor the Co-operative Tribunal looked into that aspect and no factual finding was recorded. In the absence of any such factual conclusion arrived at by the Respondent No.1, he lacks jurisdiction or power to initiate proceedings against the petitioners herein, who are the legal heirs of the deceased.

11. In the circumstances, admittedly, there is no finding recorded by the Respondent No.1, nor the appellate Tribunal and hence, the impugned orders are liable to be quashed as the one passed without any jurisdiction. As the issue goes to the root of the matter and the factual position is admitted, this Court is unhesitant to conclude that the impugned orders are wholly unsustainable and are liable to be quashed.

12. Be that as it may, this Court by orders dated 11.04.2007 remanded the matter back to address the question of the liability of the petitioners in the context of the stand taken by them contending that they have not inherited any properties or estate of the deceased. Though the said



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order was passed on 11.04.2007, it was only on 27.03.2017, that is almost after the lapse of a decade, the Respondent No.1 issued notice requiring the petitioners to appear and thereafter, passed orders dated 04.10.2017. Thus, there is a delay of about decade. No doubt, such delay is sought to be explained by contending that the records of this Court after the disposal of the first round of litigation by orders dated 11.04.2007 were received only on 09.04.2013. Even assuming that the records were received by the Respondent No.1 only on 09.04.2013, the Respondent No.1 took about three years to conclude the proceedings and reinitiated the proceedings only on 27.03.2017. If the Respondent No.1 is serious enough in pursuing the matter, the Respondent No.2 ought to have taken all necessary steps immediately after the matter was remanded by this Court on 11.04.2007. This itself shows that the Respondent No.1 is not serious enough in pursuing the matter.

13. The second proviso to sub-section (1) of Section 87 of the Act, 1983 prescribes a time period within which the proceedings commenced under Section 87 have to be concluded. The said second proviso reads as



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under:  
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*"Provided further that the action commenced under this sub section shall be completed within a period of six months from the date of such commencement or such further period or periods as the next higher authority may permit but such extended period or periods shall not exceed six months in the aggregate."*

14. In terms of the said proviso, the proceedings commenced under Section 87 of the Act, 1983 are required to be completed within a period of six months or such further period or periods not exceeding six months in the aggregate. But in the instant case, the proceedings that were commenced as early as on 04.10.1999 were continued till the year 2017 thereby rendering the said provision otiose. The very purpose of prescribing the time limit is to see that no prejudice is caused to the persons against whom such enquiry was initiated and also with a view to protect the interest of the Society. But in the instant case, the proceedings that were initiated in the year 1999 were continued till the year 2017 that is almost for



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a period of 18 years and out of the said 18 years, about 10 years is the delay directly attributable to the Respondents No.1 and 2. If at all there are any properties inherited by the petitioners herein from the deceased, the Respondent No.2 would have placed such material before the Respondent No.1 at least during the course of second round of litigation. But no such material is placed before the Respondent No.1. Thus, the delay in concluding the proceedings also caused prejudice to the petitioners herein.

15. Coming to the contention raised on behalf of the respondent-Society contending that one of the petitioners herein has agreed to pay the loss suffered by the Society and also paid part of the same, that does not estop the petitioners from contesting the orders on legal grounds and in the light of the conclusion arrived at by this Court, holding that the Respondent No.1 lacks jurisdiction, mere offer made by one of the petitioners to repay the money does not confer any additional right on the respondent-Society, nor the same would come in the way of the petitioners in agitating their rights.



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16. This Court also considered whether these matters are required to be remanded to the Respondent No.1 to ascertain as to whether the petitioners herein inherited any of the properties or estate of the deceased. But considering the long lapse of time and failure on the part of the Respondent No.1 on two occasions in recording any finding in that regard, this Court does not deem it appropriate to remand the matter back to the Respondent No.1 that too at this lengthier time.

17. In the light of the above, this Court is of the considered view that the Respondent No.1 lacks jurisdiction to initiate proceedings under Section 87 of the Act, 1983 against the petitioners herein for want of establishing that the petitioners herein being the representatives of the deceased Essakkimuthu Pandian inherited any estate or properties of the deceased. Thus, here is a case of Respondent No.1 lacking jurisdiction and the Co-operative Tribunal-cum-Principal District Judge, Tirunelveli also failed to appreciate this aspect of the matter, which goes into the root and thereby, subjected its order to illegality.



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18. As this Court has come to the conclusion that the Respondent No.1 lacks jurisdiction to initiate proceedings under Section 87 against the petitioners herein, this Court is of the considered view that it is a fit case where interference of this Court is warranted under Article 227 of the Constitution of India. Accordingly, the impugned orders passed in C.M.A. (CS) No.7 of 2018 and C.M.A.(CS) No.8 of 2018, dated 25.07.2022 are hereby quashed and both the Civil Revision Petitions are allowed. No costs.

**30.04.2025**

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

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To

- 1.The Deputy Registrar of Cooperative Societies,  
Deputy Registrar of Cooperative Societies Office,  
Tenkasi,  
Tirunelveli District.
- 2.The Special Cooperative Tribunal/  
Principal District Judge, Tirunelveli.



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**MUMMINENI SUDHEER KUMAR, J.**

ABR

**Pre-delivery Order made in**  
**C.R.P.(MD) Nos.2290 and 2291 of 2022**

**30.04.2025**