
(2017) 02 MAD CK 0075
In the Madras High Court
Case No : S.A.(MD)No. 403 of 2011

M. Subramonia Pillai

APPELLANT

Vs

Nagarajan

RESPONDENT

Date of Decision : 20-02-2017

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 100, Section 20

Citation : (2017) 3 LW 265 : (2017) 3 MLJ 670

Hon'ble Judges : Mr. M. Duraiswamy, J.

Bench : Single Bench

Advocate : Mr. C. Godwin, Advocate, for the Appellants; Mr. C.K.M. Appaji, Advocate, for the Respondent

Final Decision : Dismissed

Judgement

Mr. M. Duraiswamy, J.—Challenging the judgment and decree passed in A.S.No. 73 of 2008, on the file of Subordinate Court, Padmanabhapuram reversing the judgment and decree passed in O.S.No. 76 of 2005, on the file of the Additional District Munsif Court, Padmanabhapuram, the defendants have filed the above Second Appeal.

2. The plaintiff filed the suit in O.S.No. 76 of 2005 for mandatory injunction directing the defendants to admit the plaintiff as a member of the Samudayam on receipt of membership and other dues. The brief case of the plaintiff is as follows:

According to the plaintiff, he belongs to Chetty Samudayam of Padmanabhapuram and the first defendant is the President and the second defendant is the Secretary of the Chetty Samudayam of Padmanabhapuram. The parents of the plaintiff are the registered members of the Samudayam and they are paying all the subscription without any default. The plaintiff is not a registered member of the Samudayam and as per the custom of Samudayam, the membership registration is highly necessary. On 23.05.2003, the plaintiff

submitted an application for membership and it was agreed by the managing committee to accept the membership of the plaintiff. But the defendants are not willing to issue the membership to the plaintiff. In spite of repeated requests, the defendants evaded to make the plaintiff as the member. A notice sent to the second defendant was refused. In these circumstances the plaintiff filed the suit.

3. The brief case of the defendants is as follows:

According to the defendants, the plaintiff or his parents do not belong to Padmanabhapuram Chetti Samudayam and the address given for the defendants are not correct. The plaintiff's family never paid any subscription at any point of time. The Padmanabhapuram Chetti Samudayam is a hereditary trust and one among the ancient Ezhoor Chetti Sangam Ltd., is having headquarters at Eraniel. It exclusively belongs to Ezhoor Chetti caste people. There are some restrictions for issuance of membership. One among them is when a person belongs to Chetti community or being conducted his marriage with a person belonging to another community, his membership should be cancelled or refused at once. The request of the plaintiff for his membership was denied, as the plaintiff married another girl of another caste. The wife of the plaintiff does not belong to Ezhoor Chetti Samudayam. The plaintiff has violated the customary rights and the Samudhayam rules and regulations, hence he is not entitled for membership. In these circumstances, the defendants prayed for dismissal of the suit.

4. Before the trial Court, on the side of the plaintiff, three witnesses were examined and 5 documents viz., Exs.A.1 to A.5 were marked and on the side of the defendants, D.W.1 was examined and 13 documents viz., Exs.B.1 to B.13 were marked. The trial Court, after taking into consideration the oral and documentary evidences let in by the parties, dismissed the suit. Aggrieved over the same, the plaintiff preferred an appeal in A.S.No. 73 of 2008 and the lower Appellate Court reversed the judgment and decree of the trial Court and decreed the suit. Aggrieved over the judgment and decree of the lower Appellate Court, the defendants have filed the above Second Appeal.

5. Heard Mr. C. Godwin, learned Counsel appearing for the appellants and Mr. C.K.M. Appaji, learned Counsel appearing for the respondent.

6. The learned Counsel for the respondent in support of his contentions relied upon the following judgments:

(i) In Zoroastrian Cooperative Housing Society Ltd. and another v. District Registrar, Co-operative Societies (Urban) and others reported in AIR (2005) SC 2306, wherein the Honourable Apex Court held as follows:

"29. Section 23 of the Contract Act provides that where consideration and object are not lawful the contract would be void. But for Section 23 to apply it must be forbidden by law or it must of such a nature that it would defeat the provision of any law or it is fraudulent or it involves or implies injury to the person or property of another or the court regards it as immoral or opposed to public

policy. If we proceed on the basic premise that public policy in relation to a co-operative society is to be looked for within the four corners of the Act, the very enactment under which the very society is formed, a bye-law that does not militate against any of the provisions of the Act cannot be held to be opposed to public policy unless it is immoral or offends public order. It cannot be said that a person bargaining for membership in a Society or for coming together with those of his ilk to form a society with the objects as set out in the bye-laws subscribed to by him, can be considered to be doing anything immoral or against public order. An aspirant to membership in a co-operative society, is at arms length with the other members of the society with whom he enters into the compact or in which he joins, having expressed his willingness to subscribe to the aims and objects of that society. In the context of Section 23 of the Contract Act, something more than possible or plausible argument based on the constitutional scheme is necessary to nullify an agreement voluntarily entered into by a person. We have already quoted the relevant observations of Lord Sumner in *Rodriguez v. Speyer Bros.*, (1919) AC 59. Here, respondent No.2 became a member of the Society of his own volition acquiring the rights and incurring the obligations imposed by the approved bye-laws of the Society. It is not open to respondent No.2 to approach the authorities for relieving him of his obligations attaching to the acquisition of membership in the Society. It is also not open to the authorities under the Act to relieve him of his obligations in the guise of entering a finding that discrimination on the basis of the religion or sex is taboo under the Constitution in the context of Part III thereof. As has been held by this Court, he is precluded from challenging the validity of the bye-laws relating to membership."

(ii) In *Hari Ram v. Jyoti Prasad and another* reported in (2011)(3) CTC 769, wherein the Honourable Apex Court held as follows:

"22. In paragraph 14 of the said judgment, it was also held that any member of a community may successfully bring a suit to assert his right in the community property or for protecting such property by seeking removal of encroachment therefrom and that in such a suit he need not comply with the requirements of Order 1, Rule 8 C.P.C. It was further held in the said case that the suit against alleged trespass even if it was not a representative suit on behalf of the community could be a suit of this category."

(iii) In *Sambandam (died) 7 Others v. Nataraja Chettiar and Others* reported in (2012) 1 L.W. 530, this Court held as follows:

"25. A beneficiary ought to be always be made as a party when the executor is wholly uninterested in the case as he has fully administered an Estate in suits between the beneficiaries and the third person the trustees sufficiently represent the beneficiaries, though the beneficiaries are an un-ascertained and an unascertainable clause or persons. In the case before hand, though the First Respondent/Plaintiff in the plaint in O.S.No. 516 of 1980 has stated that he is the son of Rajammal, predeceased daughter of Bavaniathal and that he is the grand

son of Tiruvengada Chettiar, whose wife is Bavaniathal, who expired in 1966 and since he is the surviving person, he is entitled to be the trustee as per the terms of the agreement Ex.A.1 Settlement Deed dated 8/4/1935. Even though in the long cause title of the plaint, he has not shown himself as a trustee in respect of the suit property, but shown himself in his individual capacity. Since he has conceded that the suit property belongs to the Trust, the said omission is not fatal to the case and in as much as the First Respondent/Plaintiff, in paragraph 7 of the plaint, has averred that he has instituted the suit in his capacity as Trustee as per the Clauses of the Settlement Deed dated 8/4/1935 and further he has admitted that the suit property is a Trust property, this Court opines that Order 31, Rule 1 of the Code of Civil Procedure is only an enabling provision and it does not disentitle a person who happens to be a trustee from suing in his individual capacity at his option.

Although, he has not described himself as a trustee of the Trust in the long cause title of the plaint, yet, since he has instituted a suit in his capacity as a trustee and further conceded that the suit property is a Trust is non-filing of the suit in the name of Trust is not a material defect (since the said omission is only a matter of form and not of substance and the suit filed by him for recovery of possession in the long cause title of the plaint describing himself as an individual is maintainable in law and the substantial question of law No.1 is so answered in favour of the First Respondent/Plaintiff."

(iv) In Dr. A. Vassou v. Arul murugan reported in (2013) 1 L.W. 632, this Court has held as follows:

"12. Order 31, Rule 1 of the Code of Civil Procedure also could be extracted here under for ready reference:

"Order 31 Suits by or against trustees, executors and administrators (1) Representation of beneficiaries in suits concerning property vested in trustees, etc. - In all suits concerning property vested in a trustee, executor or administrator, where the contention is between the persons beneficially interested in such property and a third person, the trustee, executor or administrator shall represent the persons so interested, and it shall not ordinarily be necessary to make them parties to the suit. But the Court may, if it thinks fit, order them or any of them to be made parties."

Not to put too fine a point on it, a cue can be taken from Order 31, Rule 1 of the Code of Civil Procedure coupled with the clauses in Ex.A1 that the managing trustee could sue or be sued on behalf of the Trust. No doubt, in the short cause title of the plaint, there is no elaboration; but in the long cause title, it is found clearly spelt out that the defendant was sued only in his capacity as the Correspondent of the school and ultimately as the Managing Trustee of the Trust of which the school is a unit and in no way, the defendant can be made to face the decree in his individual capacity."

7. At the time of admission of the Second Appeal, the following Substantial

Questions of Law arose for consideration:

- (a) Whether the suit is maintainable against the association without impleading the association as a party in the suit?
- (b) Whether the Court below is justified in law in allowing the appeal since the plaintiff is not eligible to become the member of the association as per the byelaws?
- (c) Whether the District Munsif Court at Padmanabhapuram has got jurisdiction to try the suit since the office of the association is situated at Eraniel?
- (d) Whether the suit is bad for non obtaining leave under Order 1, Rule 8 C.P.C.,? and
- (e) Whether the Court below is justified in law in deciding the appeal without framing point for determination as provided under Order 41, Rule 31 C.P.C.,?"

8. It is needless to say that the scope and object of Samudhayam should be constitutional and should not infringe the right of any citizen. It is the privilege of the defendants and their community people to form an association, but it should not promote ex-communication. The Constitution of India was enacted to abolish the discrimination on the ground of religion race, caste or place of birth and also abolish untouch-ability under Article 14 to 18. At the same time right to form an association was guaranteed under Article 19 of the Constitution, but such association has to confine its activities with respect to Articles 14 to 18. It is not in dispute that the plaintiff belongs to Chetti Community. The only contention raised by the defendants is that the plaintiff got married to one Sheeba of a different community, therefore, he is not entitled to be a member of the Samudhayam as per bye-laws. When the Constitution of India was enacted to abolish the discrimination on the ground of religion race and caste, the Governments are taking all the efforts to prohibit the discrimination on the basis of caste, religion and also encouraging inter-caste marriage.

9. Though the defendants contended that the bye-law of the Samudhayam prohibits membership to a person who married a person of different community, the said bye-law was not produced before the Courts below. Even if there is a clause in the said bye-law of the Samudhayam, it can only be said that it was formulated against the principles of Constitution of India. Merely because the plaintiff got married to a girl of different community, that cannot be put against him for becoming a member in the Samudhayam. The very clause in the bye-law of the Samudhayam itself is against the provisions of all laws of this Country.

10. The plaintiff filed his requisition letter dated 23.05.2003 which is marked as Ex.A.1. The defendants Samudhayam passed a resolution on 23.05.2003 itself stating that the plaintiff is not entitled to be a member of Samudhayam as per the bye-law. Even in Ex.B.4 resolution passed by the Samudhayam, the specific clause in the byelaw has not been mentioned. Even without producing the bye-law of Samudhayam, the defendants relied upon Ex.B.4 resolution passed by the

Association declining to give membership to the plaintiff.

11. Before the trial Court, the plaintiff filed an application in I.A.No. 492 of 2008 seeking permission to sue the defendants as representative of the Chetti Samudhayam of Padmanabapuram. After contest, the trial Court dismissed the application. The said application was dismissed by the trial Court, misconstrued as though the plaintiff sought permission to file the suit on behalf of the Samudhayam. The trial Court in a wrong impression dismissed the application by holding that the suit is not filed in the capacity of representative and failed to understand that the plaintiff sought permission to sue the defendants as representative of the Chetti Samudhayam. Since, the lower Appellate Court has rightly held that the defendants are sued in the capacity of President and Secretary of the Samudhayam, there is no necessity to prosecute the Samudhayam as defendant. The dismissal of the suit by the trial Court is also on the ground that the head office of the Samudhayam is situated at Eraniel and the trial Court has no jurisdiction to entertain the suit. However, the lower Appellate Court rightly found that the defendants are residing at Padmanabhapuram and the plaintiff submitted his Ex.A.1 application only at Padmanabhapuram, therefore, the cause of action for filing the suit arose partly at Padmanabhapuram. Hence, under Section 20 of the Code of Civil Procedure, the trial Court has jurisdiction to try the suit. Taking into consideration all these aspects, the lower Appellate Court has rightly reversed the judgment and decree of the trial Court and decreed the suit. The ratio laid down in the judgments relied upon by the learned Counsel appearing for the respondent squarely applies to the facts and circumstances of the present case.

12. In these circumstances, I do not find any ground, much less any substantial question of law, to interfere with the judgment and decree of the lower Appellate Court. The Second Appeal is liable to be dismissed. Accordingly, the same is dismissed. There shall be no order as to costs.