

Madras High Court

Special Grade Town Panchayat vs Arasi on 8 February, 2008

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 08/02/2008

CORAM

THE HONOURABLE MR.JUSTICE G.RAJASURIA

Second Appeal No.933 of 2000

Special Grade Town Panchayat,
Valliyoore through its
Executive Officer

... Appellant

Vs

Arasi

... Respondent

Prayer

Second Appeal filed against the Judgment and Decree dated 13.12.1999 made in A.S. No.149 of 1997 on the file of the II Additional District Court, Tirunelveli, confirming the Judgment and Decree, dated 12.12.1995 made in O.S. 502 of 1993 on the file of the District Munsif Court, Valliyoore.

!For Appellant ... Mr.S.Meenakshisundaram

^For Respondent ... No appearance

: JUDGMENT

This second appeal is focussed as against the judgment and decree dated 13.12.1999 passed in A.S. No.149 of 1997 on the file of the II Additional District Court, Tirunelveli, confirming the Judgment and Decree, dated 12.12.1995 passed in O.S. 502 of 1993 on the file of the District Munsif Court, Valliyoore, in decreeing the suit.

2. Heard the learned counsel for the appellant.

3. The parties, for convenience sake, are referred to hereunder according to their litigative status before the trial Court.

4. Broadly but briefly, precisely but narratively, the case of the plaintiff as stood exposted from the plaint could be portrayed thus: On 03.07.1986 she was appointed as permanent sanitary worker in the Valliyoor Town Panchayat, the defendant herein. Subsequently, on 03.11.1986 she was terminated from service without adhering to the procedures. Thereupon she filed O.S.No.1156 of 1988 in the District Munsif Court, Valliyoor and got order of reinstatement. Thereupon appeal was filed in A.S.No.112 of 1991 in the Additional Sub Court, Tirunelveli, which Court confirmed the Judgment and Decree and thereupon she was reinstated in Service with effect from 19.02.1992 as per order dated 14.02.1992. However, no back wages were paid to her. Thereupon she filed the suit O.S.No.502 of 1993 in the District Munsif Court, Valliyoor for declaration that she was entitled to get salary from September, 1986.

5. The trial Court framed the relevant issues. During trial, on the side plaintiff, without oral evidence, Exs.A.1 to A.11 were marked and on the side of the defendant D.W.1 was examined and Exs.B.1 and B.2 were marked. Ultimately, the trial Court decreed the suit.

6. Challenging the said Judgment and decree of the trial Court, the defendant preferred appeal in A.S.No.149 of 1997, which was dismissed, by confirming the Judgment and Decree of the trial Court.

7. Being aggrieved by and dissatisfied with, the judgment and decree of both the Courts below, the present second appeal has been filed on the grounds inter alia thus:

The Civil Court had no jurisdiction to entertain the suit. In the earlier the suit O.S.No.1156 of 1988 the same plaintiff has not claimed back wages, even though it happened to be a consequential relief. Hence, the subsequent suit claiming wages would not arise. Both the Courts below have failed to note that she worked till 06.11.1986, despite the fact proved that she was terminated from service. No appropriate Court Fee was paid for claim. Accordingly, the defendant prays for setting aside the judgments and decrees of both the Courts below.

8. At the time of admission of the Second Appeal, my learned Predecessor framed the following question of law:

(1) Whether the Civil Court has got jurisdiction to decide the matter in dispute since the dispute is a labour dispute and hence the suit is not maintainable in law?

At the time of argument I found some more substantial questions of law could be framed as per proviso 100 of C.P.C. as under:

Additional Substantial Questions of Law:

(1) Whether both the Courts below are erroneous in not applying the law relating to

(a) Court fee.

(b) Framing of Suit.

(c) the embargo as embodied in Order 2 Rule 2 of C.P.C.

(ii) Whether the findings of both the Courts below are perverse?

Substantial Question of Law No:(1) and Additional Substantial Questions of Law Nos.(1) and (2):

9. All these points are taken together for discussion as they are interlinked and interconnected with one another.

10. At the outset I would like to point out that both the Courts below simply turned their attention away from the relevant provisions of the Court Fees Act. Following the Suit in O.S.No.1156 of 1988, the present suit O.S.No.502 of 1993 was filed for recovery of back wages. The Back wages are quantifiable as such an ad-valorem Court fee ought to have been paid. But without resorting to such a measure, the suit was filed simply for declaration, which cannot be countenanced as per law. I would like to cite here Section 34 of the Specific Relief Act, 1963.

34. Discretion of Court as to declaration of status of right. - Any person entitled to any legal character, or any right as to any property, may institute a suit against any person denying, or interested to deny, his title to such character or right, and the Court may in its discretion make therein a declaration that he is so entitled, and the plaintiff need not in such suit ask for any further relief:

Provided that no Court shall make any such declaration where the plaintiff, being able to seek further relief than a mere declaration of title, omits to do so."

(emphasis supplied) Even though consequential relief of recovery of back wages very much could be prayed, here only the suit for declaration was filed. Both the Courts below should have held that the suit instituted was prima-facie and ex-facie untenable. Order 2 Rule 2 is extracted hereunder for ready reference. "Order II Rule 2: Suit to include the whole claim. - (1) Every suit shall include the whole of the claim which the plaintiff is entitled to make in respect of the cause of action; but a plaintiff may relinquish any portion of his claim in order to bring the suit within the jurisdiction of any Court.

(2) Relinquishment of part of claim. - Where a plaintiff omits to sue in respect of, or intentionally relinquishes, any portion of his claim, he shall not afterwards sue in respect of the portion so omitted or relinquished. (3) Omission to sue one of several reliefs.- A person entitled to more than one relief in respect of the same cause of action may sue for all or any of such reliefs; but if he omits, except with the leave of the Court, to sue for all such reliefs, he shall not afterwards sue for any relief so omitted." As on the date of filing of the suit as well as during the pendency of the suit the plaintiff was very much aware that she was not given with salary, in such a case at the time of filing of the suit itself the plaintiff should have prayed for the additional relief of payment of wages or atleast before the disposal of the suit, necessary prayer should have been made. But it was not done so. Here a bare prayer for declaration that she is entitled to back wages by no stretch of imagination can be countenanced. As such the judgment and decree of both the Courts below are perverse and no

more elaboration in this regard is required.

11. For the purpose of comprehensively deciding the second appeal, I proceed to deal with the other points also. Both the Courts below wrongly relied on Ex.B.1 and B.2. Ex.B.1 is nothing but an application given by the plaintiff seeking reinstatement based on the earlier judgment of the Court as set out supra. In Ex.B.1 she never requested that she should be paid back wages. Ex.A.3 is the reinstatement order in that clearly and categorically the authority concerned stated that appointment should be treated as fresh appointment. Without any demur she got reappointed also. Ex.B.2 is the certified copy of the legal opinion given by the Government Pleader, consequent upon the Additional Sub Court, Tirunelveli having rendered judgment in A.S.No.112 of 2001 so to say in the earlier proceedings. The Government Pleader opined that no second appeal need be filed further, and back wages need not be paid also. An excerpt from it would run thus:

"There is no decree either by the lower Court or by the Appellate Court for the payment of Salary to the said Arasi. She herself has not claimed the salary in the said suit or in the appeal. Therefore is enough for the Panchayat to give employment to the said Arasi immediately without salary. If she goes to Court and get a decree for salary, thereafter it can be paid and not before it."

Both the Courts below misunderstood as though the Government Pleader's opinion was that she was entitled to back wages from the Court. The Government Pleader never expressed that the plaintiff was entitled to back wages, but he opined that back wages could be paid, if at all she could get a decree for back wages. The observation of the Sub Court in the previous A.S.No.112 of 1991 at paragraph 12 of its judgment is extracted hereunder:

"mt;tpjk; ePf;fk; bra;ag;gl;l cj;jut[rl;lg;go bry;yhjhhYk; thjp bjhlh;e;J mBj gq;rhaj;jpy; Jg;g[wt[bjhHpyhspahfBt gzpahw;wp te;Js;sghy; thjpf;F mth; Bfhhpago cWj;Jf;fl;lis ghpfhuk; fpilf;jj;fj;fJ vd;W fpHik ePjpkd;wk; Kot[fz;lppy; ve;j Fiwa[k; nUg;ghf bjhpapty;iy."

(emphasis supplied) Those words underlined above should not have been read in isolation by the Court. No where the said Court gave any finding that she had been working as a permanent servant on regular time scale of pay even after the termination from service with effect from 03.11.1986. It could be only taken as a passing remarks by the Court which should not be understood out of context. Had the Sub court in A.S.No.112 of 1991 felt that she worked during the pendency of the earlier proceedings it could have accordingly permitted her for amending relief or permitted her to seek for additional relief for back wages. In fact DW1, deposed that during the pendency of the earlier proceedings from may 1987 to April 1988 she worked on part time basis.

12. Instead of both the Courts below looking for independent evidence relating to the factum of she having allegedly worked, had assumed and presumed and simply ordered declaration that she is entitled for back wages. Ex-facie and prima-facie such a declaration is an un-executable one, and it is also against law. The facts remains that after termination, the plaintiff had filed the previous suit O.S.No.1156 of 1988 for setting aside such order of termination and it is not known as to how both the Courts below could arrive at the conclusion that she was an illiterate and she might not have known under what capacity she signed the wage register etc. Apart from all these legal flaws

involved in the proceedings initiated by the plaintiff, she has not established her right to claim wages. The recent decision of the Honourable Apex Court in U.P. SRTC v. Mithu Singh reported in (2006) 7 Supreme Court Cases 180 could fruitfully be cited. An excerpt from it would run thus: "12. Since limited notice was issued with regard to payment of back wages, we do not enter into the larger question whether the action of terminating the services of the respondent was legal, proper and in consonance with law. But we are fully satisfied that in the facts and circumstances of the case, back wages should not have been awarded to the respondent workman. In several cases, this Court has held that payment of back wages is a discretionary power which has to be exercised by a Court/tribunal keeping in view the facts in their entirety and neither straitjacket formula can be evolved nor a rule of universal application can be laid down in such cases."

13. Back wages is not a matter of course. In this case, the plaintiff has asked for back wages on the ground that even for the period for which she has not worked, she should be paid wages and it can not be countenanced. Between the termination of Service on 03.11.1986 and reinstatement on 14.02.1992, she claimed to have worked under the respondent and for that she wants back wages. I am of the considered view that no person could take such a plea and that too when the plaintiff and the defendant were fighting arms at length before the two Courts earlier. Hence, there is no merit in the suit filed by the plaintiff. The judgments and decrees of both the courts below, accordingly are liable to be set aside.

14. A plea has raised about the competence of the Civil Court to award back wage. I am of the opinion that it may not be correct. Section 9 of C.P.C. would enable any one to file suit claiming wages, if at all the plaintiff is entitled to it. Here the plaintiff is not entitle to claim back wages in view of the discussion supra.

15. Accordingly, the substantial question of law is decided to the effect that even though the Civil Court is having jurisdiction to entertain the suit for recovery of back wages, yet so far this O.S.No.502 of 1993 is concerned it ought not have been entertained by the trial Court as it was not properly framed for the reasons set out supra. The Additional Substantial Question of Law (1) is decided to the effect that the suit was not properly valued, and the framing of suit is bad in law in addition to correct Court fee having been not paid. The suit was not maintainable in view of order 2 Rule 2 of C.P.C. The Additional Substantial question of Law (ii) is decided to the effect that in view of Section 34 of the Specific Relief Act the Judgments and Decrees of both the Courts below are perverse.

16. Accordingly, the Second Appeal is allowed setting aside the judgments and decrees of the both the Courts below and ultimately the suit O.S.No.502 of 1993 on the file of the District Munsif Court, Valliyoor, is dismissed. In the facts and circumstances of the case, there is no order as to the costs.

sj To

1.The II Additional District Judge, Tirunelveli.

2.The District Munsif, Valliyoor.