

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.09.2017

CORAM :

THE HONOURABLE MR. JUSTICE R. SUBRAMANIAN

A.S.No. 305 of 2016

Against
I.A.No.315 of 2015

In
O.S.No. 49 of 2015

P.Periyasamy

... Appellant/Respondent/
Plaintiff

Vs.

1. K.Saravanan
S/o.Kuppusamy
No.24, Uthukuli Mani Road
Mannarai, Thirupur
Thirupur District

2. K.Kumaresan
S/o.N.A.Krishnan
No.220, Periyar Street
Erode - 638 001.

3. N.Mahendran
No.3/6, Poosappah Illam
Nallithottam
Erode - 600011

3. S.Gopinath
No.3/12, Valayakaranur PO
Sankagiri
Salem 638 183...

... Respondents/Petitioner
1st Defendants in
O.S. No. 49/2015

[R2 to R4 impleaded as party respondent
vide order of Court dt.13/04/2017 by NSKJ
made in CMP No.2894/2017 in A.S.No.305/2016.]

Prayer : Appeal filed under Section 96 read with Order 41 Rule 1
of Civil Procedure Code, to prefer the above Memorandum of first

appeal as against the Judgment and decree dated 06.02.2016 made in I.A.No.315/2015 in O.S. No. 49/2015 on the file of II Additional District Court, Erode.

For Appellant : Mr.G.K.Muthukumaar

For Respondents : Mr.P.C.Ragupathy (For R1)

O R D E R

This appeal is at the instance of the plaintiff in O.S.No.49 of 2015 challenging the order rejecting the plaint on the ground that it does not disclose the cause of action.

2.The suit in O.S.No. 49 of 2015 was filed by the appellant seeking the following relief:-

"for a permanent injunction restraining the defendants 1 to 4 their man, agents and servants or representatives or any person claiming through them from in any manner infringing, copying, reproducing, erecting, constructing, any structure similar to that of the plaintiff's copyrighted "A tube in trestle, precast concrete chimney [Constructional Details with Drawings]" license vide Registration No.L-58600/2014 dated 20.05.2014 by the copy right office Government of India."

3.According to the plaintiff, he had invented a design for the above chimney, which is of unique type and he has also obtained registration of the copyright in the Copy Right Office Government of India on 20.05.2014.

4.According to the plaintiff, the defendants were employees of the appellant /plaintiff at various point of time. The defendants are also signed in the "Employee Related Service Agreement", which provides for non-disclosure of information.

5.The plaintiff would claim that the defendants have started diverting the orders of the plaintiff and started constructing the chimneys by copying the copy righted design of the plaintiff. The plaintiff also alleges that he had lodged a criminal complaint against the defendants and an FIR was also registered on 17.12.2013 under Section 120(B) & 420 of IPC.

6.On the above pleadings, the plaintiff sought for a decree for permanent injunction as aforesaid. Along with the suit, an interlocutory application in I.A.No.169 of 2015 was filed under Order XXXIX Rule 1 and 2 seeking an interlocutory injunction. Pending the same, the first defendant alone filed an application in I.A.No.315 of 2015, seeking for rejection of the plaint, contending that the plaint does not disclose cause of action.

7.It is also contended that the copy right registration

shows that the work is undisclosed and unpublished as an exclusive right of the plaintiff. Therefore, the claim of the plaintiff that the details of the work for constructing pre-cast concrete chimneys was disclosed to the defendant cannot be accepted. On the said grounds, the first defendant sought for rejection of the plaint.

8.The learned Trial Judge upon consideration of the pleadings concluded that the plaint does not disclose cause of action and lodging of an FIR alone would not provide the cause of action for the plaintiff to claim infringement of the copy right. It is this order which is challenged in this appeal.

9.I have heard Mr.G.K.Muthukumar, learned counsel appearing for the plaintiff and Mr.P.C.N.Ragupathy, learned counsel appearing for the first defendant. The other defendants, though served, have not chosen to appear either in person or through their counsels.

10.Mr.G.K.Muthukumar, learned counsel appearing for the appellant would contend that the learned Trial Judge went wrong in concluding that the plaint does not disclose the cause of action. Apart from the FIR, the learned counsel also drew the attention of this Court to the "Non-disclosure of Agreement" signed by all the defendants as well as the copy right registration. Even in the affidavit filed in support of the application for rejection of plaint, the first defendant had in fact stated that he is now functioning as 'Independent Contractor' for constructing concrete chimneys for various industrial units, as per the specification and drawings given by the industrial units.

11.The learned counsel drew my attention to the averments in the affidavit filed in support of the application in I.A.No.319 of 2015, where the first defendant had stated that he was working as a marketing executive for six months in the plaintiff's company viz., Eco-Chimneys Private Limited at Erode. He had also stated that he was working as 'Independent Contractor' for constructing concrete chimneys for various industrial units as per the specification and drawings given by the industrial units. Since, he is a non-technical person, who was working as a marketing person, he is constructing chimneys copying the design of the plaintiff in violation of the non-disclosure agreement entered with the appellant.

12.Mr.Muthukumar, learned counsel appearing for the plaintiff would contend that if the entire plaint is read, it would show that all the four defendants are operating together and are infringing the copy right of the plaintiff.

13.Admittedly, defendants 2,3 and 4 were also working with the plaintiff and they have entered into a non-disclosure agreement with the plaintiff. That the first defendant has not

signed in the non-disclosure agreement, whether that would enable the first defendant to infringe the copy right of the plaintiff, is the question that is to be decided, only by adducing evidence in the suit.

14.Per contra Mr.P.C.N.Ragupathy, learned counsel appearing for the first respondent /defendant would contend that since he was only a marketing executive, in the absence of non-disclosure agreement, there cannot be any embargo against him from carrying on any trade.

15.The defendants 2 to 4 have not filed an application seeking rejection of the plaint, they have also filed counter in the application for interim injunction filed by the plaintiff viz., I.A.No.169 of 2015. The learned Trial Court had concluded that filing of FIR alone would not provide cause of action for the plaint.

16.The learned Trial Court had further found that absence of the names of the entities/industries for whom the defendants are constructing chimneys have not been stated in the plaint.

17.In the light of the above pleadings and the arguments advanced by the counsels on either side, the following points arise for determination for the appeal "whether the trial court was right in rejecting the plaint on the ground that it does not disclose the cause of action."

18.Cause of action is a bundle of facts. The cause of action alleged in the plaint is that the defendants are attempting to construct chimneys, infringing the registered copy right of the plaintiff. This is definitely a matter for evidence. The plaintiff cannot be expected to plead, what is required to be proved on evidence in the suit.

19.The Trial Court had concluded that FIR alone cannot give a cause of action. The plaintiff had, apart from filing an FIR averred in the plaint that the defendants were employees in the plaintiff's company at some point of time in the past and they have copied the design of the plaintiff, which has been copyrighted as exclusively belonging to the plaintiff, and are now, misusing the same to construct the chimneys, having the same design and the technical details, admittedly belonging to the plaintiff as per the registration of the copyright.

20.In my considered opinion, the said pleadings are sufficient to constitute a cause of action. The defendants have not denied that they were associated with the plaintiff as employees in some capacity or other, at some point of time.

21.Therefore, the learned Trial Court Judge was not justified in holding that the FIR cannot be accepted as a cause of action for the suit, particularly in a suit for infringement of a copy right. The plaintiff has to establish the factum of

infringement, by letting him sufficient evidence. Unless that opportunity is given to the plaintiff, he may not be in a position to establish infringement.

22. Therefore, in my considered opinion, the Trial Court was not right in rejecting the plaint at the threshold, holding that there is no cause of action of the suit. On the facts and circumstances and on the allegations in the plaint, I am convinced that the plaintiff had got cause of action to seek an injunction against the defendants. The order of the trial Court rejecting the plaint is set aside. The suit in O.S.No.49 of 2015 is restored to the file of the Trial Court viz., II Additional District Judge, Erode. The Trial Court shall proceed with the suit in accordance with law and dispose of the same on merits. However, I make no order as to costs.

23. The parties are directed to appear before the Trial Court on 23.10.2017. It is made clear that they will not be entitled to notice from the Trial Court for the first appearance.

24. The Registry is directed to send back the entire record forthwith.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

may

To

1. II Additional District Judge, Erode.

2. The Section Officer,

VR Section, High Court, Madras.

+1cc to Mr.GMS Law Associates, Advocate, S.R.No.66577

A. S. No. 305 of 2016

KJ(CO)
GN(20/10/2017)

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