

HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.10.2017

CORAM

THE HONOURABLE Mr.JUSTICE M.M.SUNDRESH

and

THE HONOURABLE Mr.JUSTICE M.SUNDAR

O.S.A.No.181 of 2017

Auroville Foundation
Represented by its Secretary,
Auroville Foundtion Bhawan,
Administrative Area,
Auroville-605 101. ... Appellant/Plaintiff

Vs.

Ramaniyam Real Estates Private Ltd.,
Rep., by its Managing Director,
No.17/35, 2nd Main Road, Gandhi Nagar,
Adyar, Chennai-600 020. ... Respondent/Defendant

Prayer: Original Side Appeal is filed under Order XXXVI Rule 1 of the Madras High Court Original Side Rules read with Clause 15 of Letters Patent against the judgment and decree dated 02.02.2017 made in C.S.No.723 of 2013 on the file of this Court.

For appellant :: Mr.Rohini Ravikumar
For Respondent :: Mr.P.Satheesh Kumar

JUDGMENT

(Judgment of the Court was made by M.M.Sundresh,J.)

This appeal has been filed by the plaintiff, being aggrieved over the rejection of the relief qua the damages alone by judgment dated 02.02.2017 in C.S.No.723 of 2013, which was filed seeking passing off and damages.

2. The learned single Judge, while dealing with the suit for passing off, declined the relief of damages on the ground that there was no material produced by the appellant to substantiate the same. A factual finding has been given that the respondent

was carrying on numerous projects and the name "Auroville" along with Ramaniyam was one among them. A further finding has been given that the respondent was doing business from 1986 onwards and the flats for which the suit has been filed have been sold.

3. The learned counsel appearing for the appellant would submit that after decreeing the suit for passing off, as a consequence, the damages ought to have been granted by the learned single Judge. Reliance has been made on the Division Bench judgment of Delhi High Court in Hindustan Unilever Limited Vs. Reckitt Benckiser India Limited (2014 (57) PTC 495 (Del)) to hold that in such a case, the learned single Judge ought to have granted a decree for punitive damages. The learned counsel further submits that despite notice having been issued prior to the filing of the suit, the name was not removed and the same situation continued even thereafter.

4. The learned counsel appearing for the respondent would submit that the project in question was started in the year 2010-2011 and flats have been sold in the year 2013. An Association has been formed by the flat owners in the year 2015. It is not, as if, only the name of the "Auroville" has been used. It has been used along with other name Ramaniyam. The respondent is also a reputed concern. It has been doing business for decades. Now, the respondent is not using the name. The name has been removed from the website from 2015 onwards. If at all the appellant has got grievance, it can only be against the Association, which is not a party. There is no material to substantiate the alleged damages. Therefore, the original side appeal has to be dismissed.

5. Insofar as the damages part is concerned, admittedly, this is one among the projects undertaken by the respondent. The respondent is merely suffixed the name "Auroville". It is not, as if, in the subsequent projects, the same name was used. There is no other material, as rightly observed by the learned single Judge, to substantiate the damages, if any. The evidence of the respondent is to the effect that the project in question was started in the year 2010-2011. There is no substantial material produced by the appellant to disprove the said evidence that the project was completed in the year 2013 by effecting the sale. The suit was filed on 30.09.2013 after exchange of notices. Therefore, we are of the view that on the date of filing of the suit, almost all the flats have been sold. The fact that for the subsequent projects as well as the prior projects, the name "Auroville" has not been used is also a factor to be borne in mind as rightly held by the learned single Judge. The question of damages though punitive or otherwise, has to be seen from case to case. It is not in dispute that the respondent is a reputed construction company.

6. In the present case, we are only dealing with the construction of the flats. There is no dispute on the reputation of the respondent, who is admittedly carrying on business and selling flats on various names. Therefore, looking from any perspective, the judgment and decree passed by the learned single Judge, which is sought to be challenged before us, cannot be termed as perverse.

7. The decision as relied upon by the learned counsel appearing for the appellant, in our considered view, cannot be made applicable to the case on hand. The facts as narrated would clearly show that it is one of the projects undertaken by the respondent, in which, the name of the appellant was also used along with the other name "Ramaniyam". We are also not dealing with the case of passing off being continued. Therefore, the ratio laid down in the judgment relied upon by the learned counsel appearing for the appellant cannot be pressed into service, more so, when there is no material to substantiate the damages. Even for punitive damages, the Division Bench took into consideration that it is not necessary that heavy damages is to be imposed in all cases. As stated above, the case on hand does not warrant any punitive damages, especially, in the light of specific stand taken by the respondent in the written statement itself that it has stopped using the name and in any case, such name will not be used in the future projects. We do not find any error in the decree passed by the learned single Judge. Accordingly, the Original Side Appeal stands dismissed. No costs.

-s/d-

Assistant Registrar (CS-IV)

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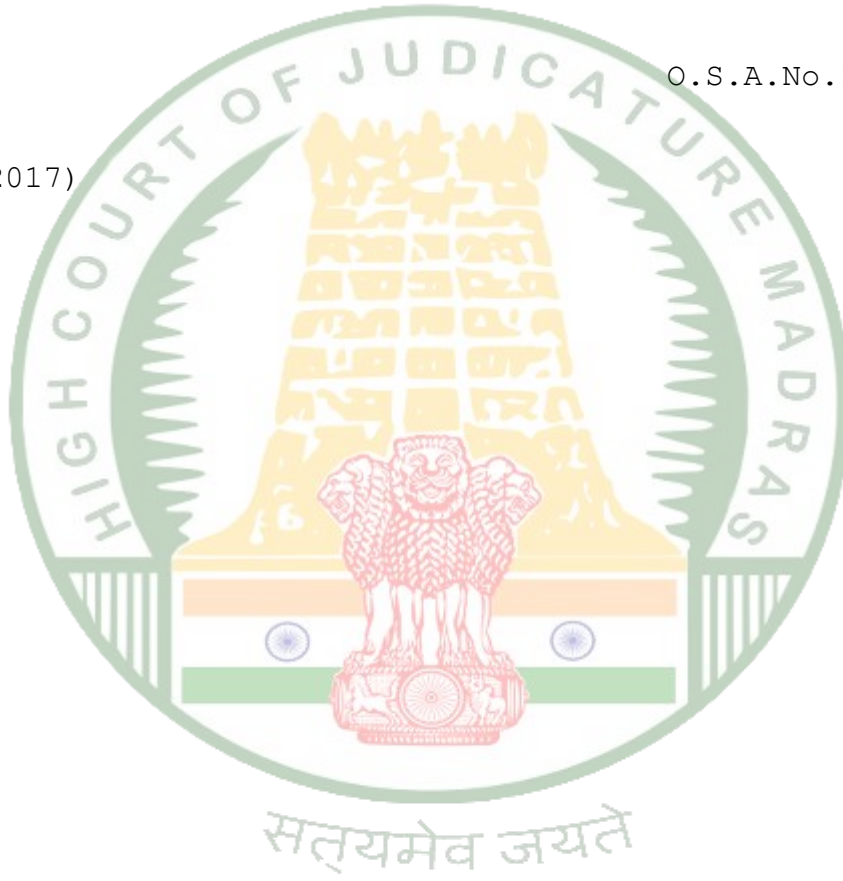
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O.S.A.No.181 of 2017

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