

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on 05.06.2018	Delivered on 08.06.2018
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CORAM:

The Honourable Mr.Justice M.M.SUNDRESH
and
The Honourable Mr.Justice N.ANAND VENKATESH

Original Side Appeal No.251 of 2017
against
Application No.5506 of 2016
in Application No.4209 of 2016
in C.S.No.609 of 2016

1.M/s.Adani Wilmar Ltd.,
Having Corporate Office at
Fortune House,
Navrangpura Railway Crossing,
Ahmedabad-380009, Gujarat.

2.M/s.Adani Wilmar Ltd.,
Having Regional Sales Office at
No.90, C Block, 2nd Street,
Shanthi Colony, Anna Nagar,
Chennai-600 040.

... Appellants/Defendants

Vs.

1.Mr.A.S.Hansraj,
Member of Lions Club,
No.L7, Rohini Garden,
Raja Annamalaipuram,
Chennai-600 028.

2.Mr.R.Ramamurthy

... Respondents/Plaintiffs

Original Side Appeal is filed under Order XXXVI Rule 1 of the O.S. Rules read with Clause 15 of the Letters Patent against the order dated 21.03.2017 passed in A.No.5506 of 2016 in A.No.4209 of 2016 made in C.S.No.609 of 2016.

For Appellants : Mr.P.R.Raman
Senior Counsel
for Mr.C.Seethapathy

For Respondents : Mr.J.Sivanandaraj
for Mr.N.Senthil Kumar

JUDGMENT

(Judgment of the Court delivered by N. ANAND VENKATESH, J)

The appellants in this Original Side Appeal are the defendants in the suit filed before this Court in C.S.No.609 of 2016 and this OSA has been directed against the order passed by the learned single Judge in Application No.5506 of 2016, dated 21.03.2017 wherein the appellants sought for revocation of leave granted to the respondents herein who are the plaintiffs in the said suit.

2.For the sake of convenience, the parties in the above appeal will be referred in accordance with their status in the above suit.

3. Brief Facts:

3.1. The plaintiffs filed the above suit for the relief of declaration and permanent injunction and for a direction against the defendants on a cause of action that the advertisement that was made in the newspaper and circulated in Chennai by the defendants has the effect of misleading the gullible general public and will induce innocent people/consumers into believing that the first defendant's product "Fortune VIVO - DIABETES - CARE OIL" can cure diabetes/high blood pressure levels and that such an advertisement made by the defendants will amount to a public nuisance and a wrongful act which will affect the public.

3.2. The plaintiffs laid their suit against the defendants with the aid of Section 91 CPC. Since there is a pre-requisite of getting the leave of the Court in order to institute a suit of this nature, the plaintiffs filed Application No.4209 of 2016 seeking the leave of the Court to institute the above suit. This Court by an order dated 26.08.2016 had granted leave to the plaintiffs to file the above suit.

3.3. The defendants after having been served notice in the above suit, being aggrieved by the leave granted by this Court, filed Application No.5506 of 2016 to revoke the leave granted to the plaintiffs. This Court after hearing both the sides and after considering the scope of Section 91 CPC and also the averments made in the plaint, dismissed the application to revoke the leave by an order dated 21.03.2017. Aggrieved by the same, the defendants have filed the present OSA.

4.We have heard the arguments put forth by Mr.P.R.Raman, learned Senior Counsel for Mr.C.Seepathy for the appellants, and Mr.J.Shivanandaraj, learned counsel for Mr.N.Senthil Kumar for the respondents.

5. Submissions of the Appellants:

5.1. The learned Senior Counsel appearing for the appellants/defendants would submit that the suit as filed by the plaintiffs does not fall within the scope of Section 91 CPC and at any rate a mere advertisement in a newspaper can never become a subject matter of challenge in a suit filed under Section 91 CPC. In support of his contention, the learned senior counsel brought to our notice the wordings employed under Section 91 CPC and urged that public nuisance is the only criteria that can be brought within the scope of Section 91 CPC and the words "other wrongful act" must be read ejusdem generis. In other words, the learned senior counsel argued that even the wrongful act provided under Section 91 CPC must specifically relate to or denote "public nuisance" and the words "other wrongful" act cannot be given any independent meaning.

5.2. The learned Senior Counsel on the above said premise, developed his argument by placing reliance upon Section 3(48) of the General Clauses Act, 1897 and Section 268 of the Indian Penal Code and urged this Court to understand the meaning of public nuisance in terms of the language employed under Section 268 of the IPC. To support his arguments on the scope of Section 91 and Order 1 Rule 8 CPC, principle of ejusdem generis and the meaning and scope of the word "public nuisance", the following judgments are relied upon.

- (i) Bhupendra Singh Babara and Another .Vs. Municipal Council Ambikapur and Another (MANU/SC/0051/2001);
- (ii) M/s. Grasim Industries Ltd., .Vs. Collector of Customs, Bombay (AIR 2002 SC 1706);
- (iii) Maharashtra University of Health Sciences and Ors. Vs. Satchikitsa Prasarak Mandal & Ors. (AIR 2010 SC 1325);
- (iv) Assistant Collector of Central Excise, Guntur .Vs. Ramdev Tobacco Company (MANU/SC/0531/1991);
- (v) T. Seeramamurthy .Vs. Emperor (MANU/TN/0536/1934);
- (vi) Achammagari Venkata Reddy .Vs. The State (MANU/TN/0145/1953);
- (vii) Santhosh and Ors .Vs. State of Kerala and Anr. (MANU/KE/0121/1985); and
- (viii) Kachrulal Bhagirath Agrawal and Ors. (MANU/SC/0786/2004).

6. Submissions of the Respondents:

6.1. The learned counsel representing the respondents/plaintiffs submits that the suit falls well within the scope of Section 91 CPC. He would further urge that Section 91 CPC would apply both in case of "public nuisance" and "other wrongful acts" affecting the public and the principle of

ejusdem generis will have no application in order to understand the words "other wrongful acts" since it is independent of the words public nuisance and the principle of ejusdem generis will only apply in a case where the statute employs particular words pertaining to a class, category or genus and the same is followed by general words. The learned counsel submits that a bare reading of Section 91 CPC will not fall within this category.

6.2. The learned counsel for the respondents further placed reliance upon the 54th Report of The Law Commission of India made in the year 1973 in order to substantiate his argument that prior to 1976 amendment, amending Section 91 CPC, the word "wrongful acts" was not found in the Section and it was added specifically in addition to the word "public nuisance" only pursuant to the recommendation of the Law Commission and therefore the words "other wrongful acts" will have to be given an independent meaning.

6.3. The learned counsel would submit that Section 91 CPC is an important tool for remedying the grievances of the public at large wherever a wrongful acts of a person/entity affects the public and the principle of ejusdem generis cannot be applied while interpreting Section 91 CPC and that the said principle cannot be invoked where its application will defeat the intention of the legislature in amending Section 91 CPC in the year 1976 wherein the words "other wrongful acts" was specifically added to the provision. To substantiate the above submissions, he relied upon the following judgments:

- (i) S.Vetrivel, President Bar Association .Vs. Tamil Nadu Advocates Association represented by its Secretary and Ors (ANU/TN/1394/2011);
- (ii) Mohinder singh .Vs. Surmukh Singh and Others (MANU/PH/1175/2012);
- (iii) Pallakku .Vs. J.M.M.M.Sulthan Ibrahim & Others (CDJ 2009 MHC 3563);
- (iv) Atul Krushna Roy .Vs. Raukishore Mohanty and Ors (MANU/OR/0021/1956);
- (v) Grasim Industries Ltd. .Vs. Collector of Customs, Bombay (2002 4 SCC 297); and
- (vi) Commissioner of Income-tax, Bombay (AIR 1938 Bombay 41).

7. DISCUSSION:

We have considered the rival submissions made by the learned counsel representing the plaintiffs and the defendants and the important points for consideration that would arise in this appeal are:

1. Whether the word "other wrongful act" must be read ejusdem generis to the word "public nuisance"?

2. In order to understand the words employed under Section 91 CPC, this Court has to take the aid of the definition provided under Section 268 of the IPC. and

3. The scope of a suit filed under Section 91 CPC.

8. Ejusdem generis:

8.1. The law relating to the principle of ejusdem generis is well settled and is no more res integra. The principle of ejusdem generis is applicable when particular words pertaining to a class, category or genus are followed by general words. In such a case the general words are construed as limited to things of the same kind as those specified. The rule reflects an attempt to reconcile incompatibility between the specific and general words in view of the other rules of interpretation that all words in a statute are given effect if possible, that a statute is to be construed as a whole and that no words in a statute are presumed to be superfluous. The rule applies only when (1) the statute enumerates the specific words, (2) the subjects of enumeration constitute a class or category, (3) that class or category is not exhausted by the enumeration, (4) the general terms follow the enumeration, and (5) there is no indication of a different legislative intent. If the subjects of enumeration belong to a broad-based genus, as also to a narrower genus there is no principle that the general words should be confined to the narrower genus. The rule cannot be applied unless there is genus constituted or a category disclosed. If the preceding words do not constitute mere specifications of a genus but constitute description of a complete genus, the rule has no application. The rule has to be applied with care and caution. This is not an inviolable rule of law, but it is only permissible inference, in the absence of any indication to the contrary. Where the context and the object and mischief of the enactment do not require restricted meaning to be attached to words of general import it becomes the duty of the courts to give those words their plain and ordinary meaning.

8.2. Useful reference can be made to the judgment of the Supreme Court made in M/s. Grasim Industries Ltd., Vs. Collector of Customs, Bombay (AIR 2002 SC 1706) and also the judgment of the Supreme Court in Maharashtra University of Health Sciences and Ors. Vs. Satchikitsa Prasarak Mandal & Ors (AIR 2010 SC 1325).

9. Section 91(1) of CPC :

9.1. The Law Commission in its 54th Report on the Code of Civil Procedure submitted in the year 1973 dealt with Section 91(1) in chapter 1-H through its recommendation.

"1-H.2. Section 91(1).-S. 91(1) authorises the filing of a suit in respect of a public nuisance

by the Advocate General, or by two or more persons who have obtained the written consent of the Advocate General. It appears to us that the Advocate General should not be troubled with such questions. It is enough if the leave of the court is obtained. In the coming years, problems of pollution of water and air and the emergence of new and unknown hazards to health are likely to require considerable attention. And, until a full-fledged environmental law takes shape, S.91 could serve a useful purpose in combating these kinds of nuisance.

1.H-3. It also appears to us that the procedure allowed under this section could be usefully extended to wrongful acts other than public nuisance which affect the public. As illustrations of such wrongful acts, we may refer to fraudulent practices of traders, which harm consumers in general."

"1-H.4. Recommendation - Accordingly, we recommend that S.91 should be revised as follows:

"(1) In the case of a public nuisance, or of any other wrongful act affecting the public, two or more persons, having obtained the leave of the court, may institute a suit, though no special damage has been caused, for a declaration and injunction or for such other relief as may be appropriate to the circumstances of the case".

It is pursuant to this recommendation an amendment was brought forth to Section 91(1) CPC.

9.2. Section 91(1) of CPC as it stood before 1976 amendment.

"(1) In the case of a public nuisance the Advocate-General, or two or more persons having obtained the consent in writing of the Advocate-General, may institute a suit though no special damage has been caused, for a declaration and injunction or for such other relief as may be appropriate to the circumstances of the case."

9.3. It is clear from the above that prior to the amendment, only "public nuisance" was covered under Section 91 (1) CPC and pursuant to the recommendation of the law commission and the consequent amendment made to Section 91(1) CPC, the words "wrongful acts" was added as an independent action apart from a public nuisance, which becomes a subject matter of a suit under Section 91 CPC. The principle of ejusdem generis will not apply while interpreting the words "wrongful acts"

since the words "public nuisance" and "wrongful acts" are independent to each other and the words "public nuisance" cannot be construed as a genus/class or category to which the words "wrongful acts" should be treated as a general word to be read in line with the words "public nuisance". Each one of those expressions is independent and will have to be understood accordingly. Therefore, the principle of ejusdem generis will not have any application while construing the provisions of Section 91 CPC.

10. The next point for consideration is as to whether in order to understand the words employed under Section 91 CPC, this Court has to take the aid of the definition 268 of the IPC. It is settled principle of interpretation that the intention of the legislature is to be gathered from the language used and the Courts must give effect to a provision according to its true meaning. If the words of a statute are in themselves precise and unambiguous, then no more can be necessary than to expound those words in their natural and ordinary sense. The external aid or a purposive interpretation can be made only where the words used, if given its natural meaning will produce an inconsistency or an absurdity or inconvenience so great as to convince the Court that the intention could not have been to use them in their ordinary significance.

11. We are of the considered view that the language as used under Section 91(1) of CPC is clear and unambiguous and the same can be understood in its natural and ordinary sense. There is no requirement to refer to the General Clauses Act or the Indian Penal Code in order to understand the meaning of the words employed under Section 91 (1) of CPC. The word wrongful acts has to be understood as any legal wrong that prejudicially affects a legal right of any person. The averments made in the plaint by the plaintiffs against the defendants sufficiently falls within the scope of the word "wrongful acts". Even for the purpose of understanding the word "public nuisance" it is not necessary to employ the meaning to it under Section 268 of IPC for the reason that it is a criminal statute where rules of strict interpretation is followed. The ordinary meaning of the "public nuisance" will encompass any act affecting the public at large which seriously interfere with the health, safety, comfort or convenience of the public generally by virtue of an act of any person or entity. The plaintiffs have made necessary averments in the plaint touching upon the aspect of the "public nuisance" also against the advertisement given by the defendants.

12. The scope of a suit filed under Section 91 CPC by the very language used in the provision gives a very wide amplitude. A plain reading of the Section would go to show that in case of a "public nuisance" or other "wrongful acts" affecting, or

likely to affect the public, falls within the scope of Section 91(1) CPC. The word "other" also assumes significance as it clearly drawn a distinction from the word "public nuisance". Similarly the words "likely to affect" taken within its sweep will include any possible act in future. Thus, the overwhelming factor is that of public interest. This is once again made clear by dispensing with the personnel injury termed "special damage". Two or more persons can file a suit on this nature with the leave of the Court even though no special damage has been caused to such persons by reason of such "public nuisance" or "other wrongful acts". In our considered opinion, even an advertisement which is likely to affect the public at large can fall within the scope of Section 91 CPC. Taking into consideration the intention of the legislature enabling the filing of a suit by any two persons, after getting the leave of the Court, whenever any act causes "public nuisance" or "other wrongful acts" affecting or likely to affect the public and also taking into consideration the wide amplitude of the language used under Section 91 CPC, this Court cannot give a restricted meaning as sought to be projected by the learned senior counsel for the appellants. The provisions of Section 91 CPC is an important tool for remedying the grievances of a large number of individuals who cannot file independent suits. Such an important right guaranteed under the said provision cannot be defeated by giving it a restrictive interpretation.

13. Conclusion:-

We do not find any ground to interfere with the order of the learned single Judge and as a result, the above OSA stands dismissed. We make it clear that we have not touched upon the merits of the case which are left open. The parties are at liberty to raise all issues as are available to them in law. In the facts and circumstances of the case there will be no order as to costs. Consequently, all connected applications are closed.

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Sd/-

Assistant Registrar (CS VI)

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Sub Assistant Registrar

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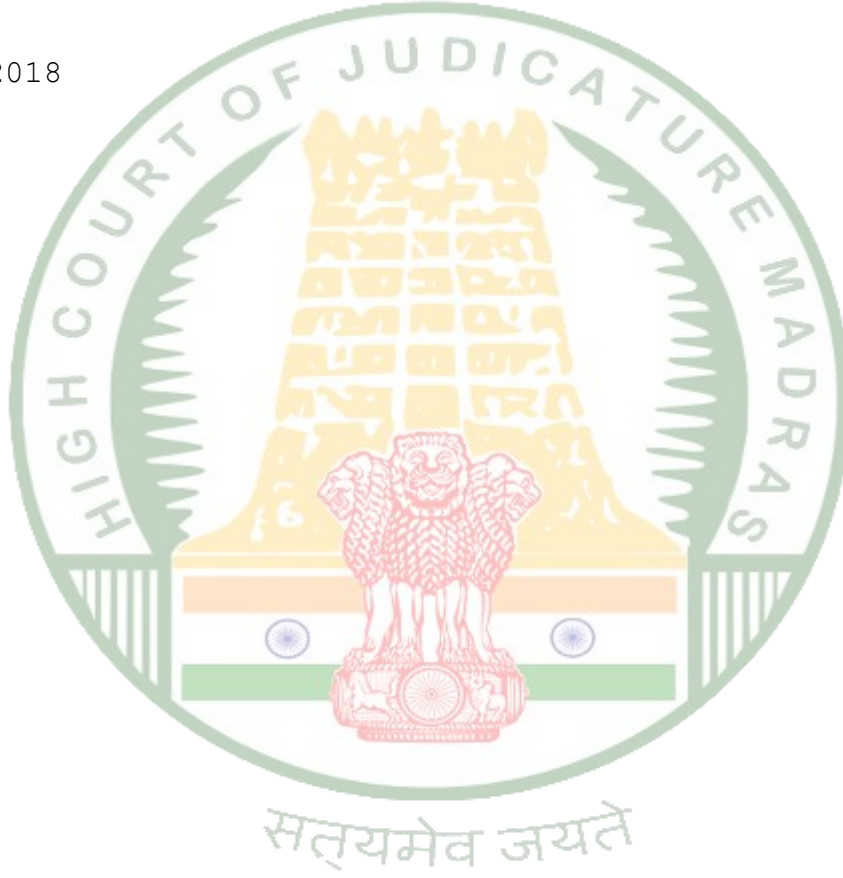
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