

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.02.2018

CORAM:

THE HONOURABLE MRS.JUSTICE PUSHPA SATHYANARAYANA

S.A.No.1039 of 2015

Santhosh Kumar

.. Appellant/Appellant/Defendant

Vs.

Friends Cable T.V.

By its Proprietor Nithiyakumar
S/o.Ravindar,
No.3/137, Katpadi Main Road,
Viruthampet, Katpadi,
Vellore.

.. Respondent/Respondent/Plaintiff

Prayer : Second Appeal filed under Section 100 of the Code of Civil Procedure, against the judgement and decree dated 19.12.2014 passed in A.S.No.35 of 2013 on the file of the I Additional Principal District and Sessions Judge, Vellore, confirming the judgement and decree dated 07.09.2012, in O.S.No.606 of 2009 on the file of the District Munsif, Katpadi.

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For Appellant : Mr.P.Chandrasekar

For Respondent : Mr.Lakshmi Narasimhan

J U D G E M E N T

The defendant is the appellant, challenging the concurrent findings of the Courts below.

2. The suit is filed by the plaintiff for permanent injunction restraining the defendant from interfering with the peaceful possession and conduct of business in the name and style of Friends Cable TV in the suit property and also collection of subscription from the plaintiff's customers.

3. The plaintiff claimed to be the sole and absolute proprietor of the business under the name and style of "Friends Cable T.V." The business is also registered and the plaintiff had obtained a certificate of registration dated 26.11.2002 and also registered with the Central Excise Department. The plaintiff also had about 350 customers paying the subscription to him for giving cable T.V. Connectoin. The defendant was

working with the plaintiff since 2002 and he was removed from service by the plaintiff, as he was acting detrimental to the interest of the business. While so, during 2005, the defendant, without any manner of right or interest in the property, claiming to be a partner of the said business, attempted to disconnect the cable network connection of his subscribers. He had also collected subscription from the customers without the knowledge of the plaintiff. Hence, the suit had been filed.

4. The defendant denied all the allegations and claimed that he is a partner in the plaintiff Cable T.V. network, based on an oral agreement with the plaintiff. It is also claimed that it is the defendant, who had developed the business of the plaintiff, and therefore, prayed for dismissal of the suit.

5. Before the Trial Court, the proprietor of the plaintiff cable T.V. Network examined himself as P.W.1 and marked Exs.A.1 to A.25. On side of the defendant, he examined himself as D.W.1 and marked Exs.B.1 to B.24.

6. Upon appreciating the oral and documentary evidence, the Courts below have concurrently held against the defendant and decreed the suit. Aggrieved by the same, the above second appeal is filed.

7. At the time of admission, the following substantial questions of law were formulated for consideration by this Court :

"(1). Whether the Courts below were right in decreeing the suit as prayed for ignoring the defendant's documents, more particularly, Ex.B.1 which shows that the business was started individually by the defendant in the year 2001 itself?

(2) Whether the judgements of the Courts below are liable to be interfered with on the ground of perversity ?"

8. Heard the learned counsel for the appellant and the learned counsel for the respondent and perused the material available on record.

9. The defendant had made is claim based on Ex.B.1, which is the registration certificate. The defendant had also filed documents Exs.B.2 to B.5 to substantiate his case that he was the one, who started the cable T.V. in the year 2001. However, a perusal of Ex.B.1 goes to show that it is standing in the name of the plaintiff. The electricity receipts under Ex.B.6 series were also not in the name of the defendant. In the

cross-examination of D.W.1, he has specifically admitted that as per Ex.B.1, the registration is only in the name of the plaintiff and that he was not even a member. Therefore, the defendant admitted that he is not the proprietor, though, he claims to be the partner of the Friends Cable T.V. Very clinchingly, the defendant had admitted that he had removed Exs.B.3 to B.16 documents, while he left the service without entrusting the same to the plaintiff. Further he deposed that the said documents were marked, after interpolating the same for the purpose of the suit. Even in the said admission, it is specifically mentioned that " while he was removed from service", which would go to show that he was only an employee with the plaintiff and not a partner, as claimed.

10. The lower Appellate Court also found that though the defendant had produced Exs.B.1 to B.16, he had not pleaded in the written statement about the same and therefore, any kind of evidence without pleadings will not be of any use. Exs.B.16 to B.23 are the documents which are subsequent to the suit and rightly no reliance was placed upon them by the courts below. When it is admitted that the defendant was only the employee of the plaintiff's Cable T.V. business, an wild attempt was made by him to claim as a partner of the same. Even otherwise, those averments, whatever has been pleaded by the defendant in his written statement, are not substantiated by any documentary evidence, as they were all only oral evidence. Therefore, the questions of law, as framed, are not substantiated by the appellant.

11. In the result, the second appeal is dismissed confirming the judgement and decree passed by the Courts below. There shall be no order as to costs. In view of the above findings, M.P.No.1 of 2015 shall stand closed.

Sd/-

Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

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To

1. The I Additional Principal District and Sessions Court,
Vellore.

2. The District Munsif, Katpadi.

3.The Section Officer, VR Section,
High Court, Madras (2 copies)

+1cc to Mr.P.Chandrasekar Advocate Sr.No.14395

+1cc to M/s.R.Lakshminarayanan, Advocate Sr.No.14394

RSK(CO)
sm:22.3.2018

Judgement in
S.A.No.1039 of 2015



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