

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04-12-2019

CORAM

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

A.S.No.462 of 2012

and

M.P.No.1 of 2012

Karthikayan

..Appellant/Defendant

vs.

Datchinamoorthy

..Respondent/Plaintiff

Appeal under Section 96 of the Civil Procedure Code, against the judgment and decree of District Court, Karaikal, dated 03.11.2011 made in OS.No.11 of 2008.

For Appellant : Mr.S.Sounthar

For Respondent : M/s.S.S.Jhothivani

J U D G M E N T

The First Appeal on hand is filed to set aside the judgment and decree of the District Court, Karaikal dated 03.11.2011 passed in OS.No.11 of 2008.

2. The defendant is the appellant before this Court. The respondent, who is the plaintiff before the Trial Court, filed the Suit in O.S.No.11 of 2008, claiming damages, stating that his residential house got damaged on account of explosives kept in the defendant's house, which was exploded.

3. It is contended that a criminal case was registered in this regard by the jurisdictional Police, which is marked as Ex.A1. At the outset, it is contended in the plaint that the plaintiff and the defendant are neighbours and the defendant kept certain explosive material in his house, which got

exploded, resulted causing of damages in the house of the plaintiff and therefore, the plaintiff was constrained to file a Civil Suit, claiming damages.

4. The defendant in his written statement, denied the entire averments by stating that the plaintiff himself was kept certain chemicals, which are highly flammable and there was no explosion in the house of the defendant and there is no proof to establish that there was an explosion in the house of the defendant.

5. It is contended that the plaintiff has to prove regarding the damages, if any occurred in his residence. It is not possible for the asbestos sheet to get damage in the fire. The contention of the plaintiff that the articles worth about Rs.4,24,100/- was damaged in the fire accident is false and frivolous. There was an explosion of gas cylinder in the house of one Mr.Gnanamani and in order to put blame on the defendant, the plaintiff has filed a vexatious suit against the defendant.

6. The Trial Court framed the following issues:

1. Whether the fire accident that took place on 06.05.2007 was due to explosion of stored explosives in the house of the defendant?
2. Whether the plaintiff has suffered monetary damages to tune of Rs.4,24,100/- and mental torture, which is calculated at Rs.80,000/- as alleged in the plaint?
3. Whether the plaintiff is entitled for damages for Rs.5,00,000/- as against the defendant by way of damages?
4. To what relief the plaintiff is entitled to?

7. The plaintiff examined himself as PW.1 and another witness as PW.2 and marked Exs.A1 to A4. The defendant examined himself as DW.1 and he has not chosen to mark any document on his behalf.

8. The learned counsel appearing on behalf of the appellant made a submission that the entire suit averments set out by the plaintiff are based on certain assumptions and presumptions and there is no proof to establish that the explosives, if any, kept in the house of the defendant got exploded and caused damages to the residential building of the plaintiff. In the absence of any proof, the Trial Court also erroneously arrived a conclusion that the plaintiff is entitled to receive compensation from the defendant. The findings of the Labour Court is directly in contradiction with the deposition made by the witnesses, more so, by the statement of the plaintiff himself. Thus, the Trial Court judgment is perverse and liable to be scrapped.

9. To substantiate the said contentions, the learned counsel for the appellant solicited the attention of this Court with reference to the deposition of the witnesses and more specifically, Ex.A1 document reveals that one Mr.Gnanamani has lodged a complaint on 07.05.2007 at about 01.30 hours with Karaikal Town Police Station regarding the fire accident, that has taken place in his house. The said Mr.Gnanamani is also residing adjacent to the residential building of the plaintiff and the defendant. It further reveals that a case has been registered under Section 436 of the Indian Penal Code in Crime No.139 of 2007. As there was no reference with reference to accused, the FIR has been registered against the unknown accused. The perusal of Ex.A2 reveals that the Fire Service Station, Government of Pondicherry had issued a certificate to the plaintiff certifying that on 06.05.2007, a fire accident has taken place in the house of the plaintiff. Thus, even the document filed in Ex.A2 is not in support of the plaintiff. Contrarily, it is in support of the defendant. The certificate issued by the Fire Services Department reveals that the fire accident took place in the house of the plaintiff. The criminal case registered, states that the fire accident occurred in the house of one Mr.Gnanamani, who is residing in adjacent house. However, the Trial Court made a finding based on the cross examination that DW.1 / defendant was arrested. However, perusal of the FIR reveals that the defendant is not an accused and the FIR itself had been registered against an unknown accused.

10. The learned counsel for the appellant also reiterates that at no point of time, the defendant was arrayed as an accused in the criminal case. Thus, the findings in this regard are contrary to the facts established before the Court through the evidences as well as the documents marked.

11. Perusal of the deposition of PW.1, he states that the residential house of the defendant was not admitted. There was no fire in the house of the defendant. PW.1 came out at about 12.00 in the night and one Mr.Gnanamani came out from his residence, but nowhere he has stated that the explosion occurred in the residential building of the defendant. Looking into the evidence of PW.2, he also has deposed that there was no fire accident in the residence of the defendant. However, he has specifically deposed that next day, he went to the residence of the defendant and found that there was no damage in the house of the defendant. When there is no damage was found by PW.2 in the residence of the defendant, then it is to be construed that the accident itself was not established as far as the residential building of the defendant is concerned. When the deposition of PW.1 and PW.2 reveals that there was no accident in the residential house of the defendant, there is no reason for the Trial Court to arrive a conclusion that the issues one and two

are to be decided in favour of the plaintiff.

12. Perusal of the entire judgment as well as the documents and evidences, this Court is of an opinion that there was an accident. However, it was not established that such an accident was took place in the house of the defendant. There are certain statements, which all are contradictory and more specifically, the deposition of PW.1 and PW.2 reveals that the house of the defendant was not damaged. When there is no damage was established in the house of the defendant, then there is no reason to arrive a conclusion that the defendant is responsible for the damage, if at all caused in the house of the plaintiff on account of the same fire accident, which would have been taken place on various other reasons. When the case of the plaintiff is not proved against the defendant, then the compensation cannot be awarded against the defendant. It is not the issue, whether the accident took place or not. However, in a Civil Suit, it is to be established that the plaintiff sustained some damages, resulted in financial loss, which alone must be the consideration for the purpose of granting damages in a Civil Suit.

13. In the present case, the deposition of PW.1 and PW.2 reveals that there was no damages in the house of the defendant. None had deposed that they have witnessed the fire accident in the house of the defendant.

14. This being the factum established through the witnesses and further, the document, more specifically, the FIR. It is stated that the accident took place in the house of one Mr.Gnanamani, there is no reason for the Trial Court to arrive a conclusion that the defendant is responsible for the accident, if at all occurred in the residence of the plaintiff and award damages against the defendant.

15. This being the facts established through the documents and the witnesses, this Court has no hesitation in arriving a conclusion that the findings of the Trial Court is not in consonance with the documents as well as the evidences placed before the Trial Court and accordingly, the judgment and decree passed in the suit is perverse and infirm. Thus, the judgment and decree dated 03.11.2011 passed in O.S.No.11 of 2008 is set aside and the First Appeal No.462 of 2012 stands allowed. No costs.

16. It is brought to the notice of this Court that at the time of granting interim stay in the First Appeal, the appellant had deposited a sum of Rs.15,000/- (Rupees Fifteen Thousand only) before the Trial Court. The appellant is permitted to withdraw the said amount with accrued interest by filing an appropriate

application before the Trial Court. In the event of filing any such application, the Trial Court is directed to repay the deposited amount with accrued interest within a period of four weeks from the date of filing of the application.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

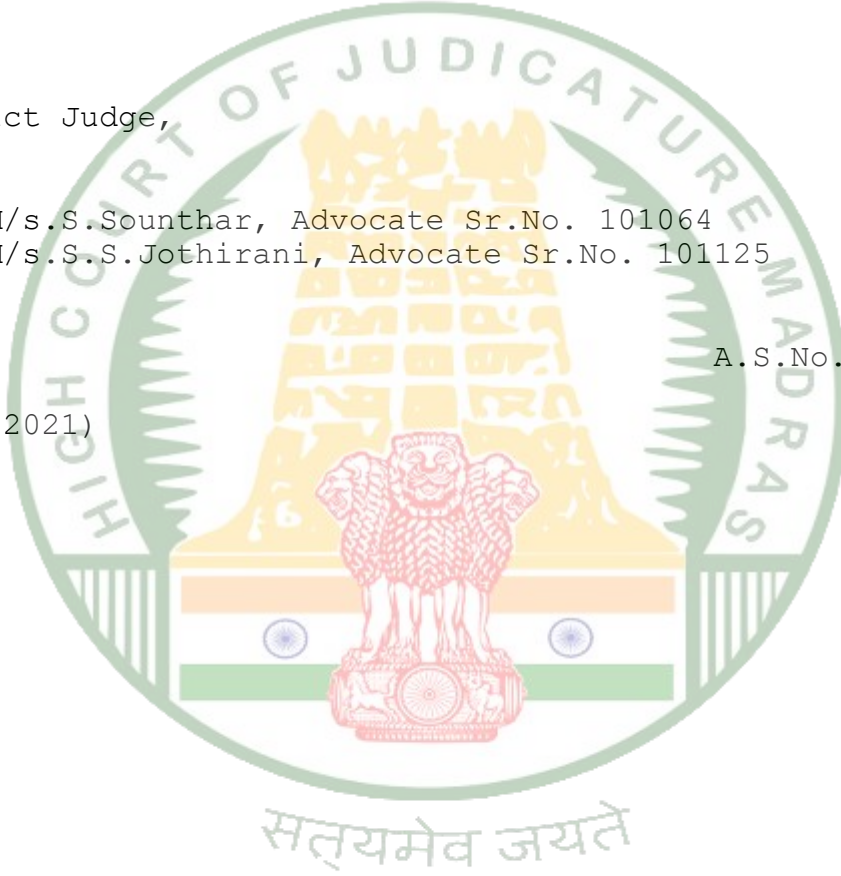
Kak

To
The District Judge,
Karaikal.

+1 cc to M/s.S.Sounthar, Advocate Sr.No. 101064
+1 cc to M/s.S.S.Jothirani, Advocate Sr.No. 101125

A.S.No.462 of 2012

PPA (CO)
RMP (18/01/2021)



WEB COPY