

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 08.04.2019

PRONOUNCED ON : 03.06.2019

CORAM

THE HONOURABLE MR.JUSTICE T.RAVINDRAN

S.A.No.1659 OF 2002

K.Venkatesan ...Appellant/Appellant/Appellant

Vs.

1. K.Ramamurthy

2. Junior Vikadan,
Rep.by its
Managing Director/Publishers,
S.Balasubramanian,
757, Anna Salai, Chennai-2.

... Respondents/Respondents/Respondents

Prayer:-

Second Appeal has been filed under Section 100 of the Civil Procedure Code against the Judgement and Decree dated 24.07.2001 passed in A.S.No.8 of 2000 on the file of the Additional District Court, Nagapattinam, confirming the judgement and decree dated 10.04.2000 passed in O.S.No.98 of 1998 on the file of the Additional Sub Court, Myladuthurai.

For Appellant : Ms.Swedha Subramaniam

For Respondent : No Representation/No appearance
No.1 set exparte vide order
dated 08.04.2019

For Respondent : Mr.R.Sunil Kumar
No.2

JUDGMENT

In this second appeal, challenge is made to the Judgement and Decree dated 24.07.2001 passed in A.S.No.8 of 2000 on the file of the Additional District Court, Nagapattinam, confirming the judgement and decree dated 10.04.2000 passed in O.S.No.98 of 1998 on the file of the Additional Subordinate Court, Myladuthurai.

2.The second appeal has been admitted on the following substantial question of law:

" Whether the Hon'ble Courts are right in coming to the conclusion that, in the case of defamation the plaintiff should prove that, the publication in dispute is wrong and baseless?"

3.Considering the scope of the issues involved between the parties as regards the subject matter lying in a narrow compass, it is unnecessary to dwell into the facts of the case in detail.

4.For the sake of convenience, the parties are referred to as per their rankings in the trial Court.

5.Suffice to state that the plaintiff has laid the suit against the defendants claiming compensation.

6.Briefly stated, according to the plaintiff, the first defendant had given information about him to the second defendant falsely and without any basis, knowing fully well that the said information is false to its knowledge and the abovesaid information having been published in the the second defendant's magazine, thereby, according to the plaintiff, his reputation had been grossly damaged and affected in the mind of the public and accordingly, he has been put to mental agony and shame and thereby, it is pleaded that the defendants are liable to compensate him and in all, praying for compensation in a sum of Rs.50,000/-, the suit has come to be laid by the plaintiff against the defendants.

7.The defendants put together resisted the plaintiff's suit contending that the plaintiff had misused his position in the Sub Registrar's Office and accordingly, the first defendant had been put to irreparable sufferings and loss, in not able to register the document presented at the plaintiff's office for registration and accordingly, the first defendant had expressed or ventilated his grievances to the reporter of the second defendant's magazine and the same had been published in the second defendant's magazine and therefore, according to the defendants, particularly, the first defendant, whatever he had communicated to the second defendant is nothing but truth and inasmuch as the plaintiff had refused to register the document presented by him for registration without proper cause and demanded illegal gratification for the same without any authority and inasmuch as several such complaints had been lodged against the plaintiff by others, in such view of the matter, it is put forth that whatever that had been communicated by the first defendant to the second defendant's magazine are

true and therefore, the case of the plaintiff that thereby, he had been put to mental agony and shame is false and accordingly, it is contended that there is no bona fides in the litigation preferred by the plaintiff and the same is liable to be thrown out and similarly, the second defendant has also pleaded that after the first defendant had narrated his grievances against the plaintiff and the concerned department, it is stated that its reporter had also conducted independent enquiry with reference to the same and only after collecting the reliable information pointing to the misdeeds of the plaintiff one way or the other and the difficulties experienced by the public in getting their documents registered at the office of the plaintiff without paying the illegal gratification demanded with reference to the same on the part of the plaintiff, accordingly, it is stated that the information had been published in the magazine and therefore, it is contended that by way of the same, no prejudice or damage has been caused to the plaintiff in any manner and therefore, it is pleaded that the plaintiff has no cause of action to institute the suit and the suit is liable to be dismissed.

8. On the basis of the materials placed on record, appreciating the same, the Courts below were pleased to dismiss the plaintiff's suit. Impugning the same, the second appeal has been preferred by the plaintiff.

9. In short, according to the plaintiff, by making the publication of the grievances projected by the first defendant in the second defendant's magazine and thereby, the defendants, in toto, had imputed various imputations and allegations against him without any basis with the intention of harming him knowing fully well that the information given by them or published by them are not true and by the publication of the said news, inasmuch as the reputation and fame of the plaintiff had been affected, according to the plaintiff, he has been necessitated to lay the suit against the defendants seeking for appropriate compensation.

10. The abovesaid facts put forth by the plaintiff for sustaining the plea of compensation are being stoutly repudiated by the defendants.

11. In such view of the matter, at the foremost, it is for the plaintiff to establish that the article published in the magazine of the second defendant concerning him is intended only to harm him exclusively and personally and that the said article has no basis whatsoever and the same had been published with the sole aim of damaging his reputation and thereby, the defendants are liable to pay the compensation to him.

12. Section 499 of the Indian Penal Code defines defamation as follows:

"499. Defamation.--Whoever, by words either spoken or intended to be read, or by signs or by visible representations, makes or publishes any imputation concerning any person intending to harm, or knowing or having reason to believe that such imputation will harm, the reputation of such person, is said, except in the cases hereinafter excepted, to defame that person.

Explanation 1.-It may amount to defamation to impute anything to a deceased person, if the imputation would harm the reputation of that person if living, and is intended to be hurtful to the feelings of his family or other near relatives.

Explanation 2.-It may amount to defamation to make an imputation concerning a company or an association or collection of persons as such.

Explanation 3.-An imputation in the form of an alternative or expressed ironically, may amount to defamation.

Explanation 4.-No imputation is said to harm a person's reputation, unless that imputation directly or indirectly, in the estimation of others, lowers the moral or intellectual character of that person, or lowers the character of that person in respect of his caste or of his calling, or lowers the credit of that person, or causes it to be believed that the body of that person is in a loathsome state, or in a state generally considered as disgraceful."

13. Therefore, the abovesaid definition is subjected to the exceptions appended to the abovesaid section and as per the first exception, it is seen that it is not defamation to impute anything which is true concerning any person, if it be for the public good that the imputation should be made or published and whether or not it is for the public good, is a question of fact.

Furthermore, as per the Second exception, it is not defamation to express in a good faith any opinion whatever respecting the conduct of a public servant in the discharge of his public functions, or respecting his character, so far as his character appears in that conduct, and no further.

14. On a reading of the article published in the second defendant's magazine, it is seen that it is only concerning the unpleasant experience of the first defendant in the registrar's office, where, the plaintiff was working, in getting the document registered and accordingly, the first defendant had complained that the plaintiff had been demanding illegal gratification with reference to the same for proceeding further in the matter. It is also the grievance of the first defendant that despite the sub-registrar's inclination to entertain the document one way or the other, the plaintiff had refused to process the said matter further by keeping the same pending, on his refusal to part with the illegal gratification demanded by him. The reporter to whom the abovesaid hardships have been narrated by the first defendant, is found to have even approached the plaintiff and accordingly, in the same article, even come forward to publish the views of the plaintiff and according to the plaintiff, the abovesaid news had been furnished by the first defendant only out of enmity and ill-will on the part of the first defendant and therefore, the same does not bear any truth and not only that, the reporter of the second defendant's magazine had questioned the sub-registrar concerned and also expressed the views offered by the Joint sub-registrar in connection with the same and therefore, it is found that the article seen, in toto, is only pointing to the trye difficulties and grief expressed by the public in getting the documents registered in the sub-registrar's office one way or the other, particularly, also pointing out that the plaintiff had been demanding the illegal gratification for processing the documents presented for registration. In such view of the matter, it is found that the article pertains to the conduct of the plaintiff as the public servant in the office of the sub-registrar, while discharging his public functions and in such view of the matter, when the first defendant had manifested and unveiled his grievances with reference to the experience, he had met in getting the document presented by him for registration at the hands of the plaintiff, in such view of the matter, it is found that the article viewed, in toto, would only point to the matters relating to the conduct qua the public functions of the plaintiff and the other officers of the registration department and not in particular, solely and singularly against the plaintiff.

15. Be that as it may, as far as the present case is concerned, it is found that the first defendant has examined

himself as DW1 and narrated his experience in getting the document registered at the office of the plaintiff and accordingly, put forth that the plaintiff had wantonly refused to register the document and kept the same pending, as he had refused to part with the illegal gratification demanded by the plaintiff. In this connection, as could be seen from the materials placed on record, it is found that the abovesaid matter had been brought to the knowledge of the higher officials and in turn, as a follow up action, the plaintiff is found to have been transferred to Chennai office and the said fact has not been disputed by the plaintiff. In fact, the transfer proceedings of the plaintiff has been marked as an exhibit in the present case, wherefrom, it is found that the plaintiff has been transferred to Chennai Office on purely administrative ground, as usually projected while effecting transfer, as rightly found by the trial Court as well as the first appellate Court, inasmuch as the grievances projected by the first defendant had the basis and truth one way or the other and the matter having come revealed to the public gaze by way of the publication marked as Ex.A1, accordingly, it is found that eventually, the plaintiff had been transferred to Chennai office from Mayiladurai Office.

16. Not only that, DW2 Kalyanaraman examined on behalf of the defendants had also tendered evidence qua the difficulties experienced by him in getting the document registered at the office of the plaintiff and accordingly, he had come forward with the case that the plaintiff had demanded and collected more amount from him what is required for registration and the same had come to his knowledge only after getting the registration copy of the document concerned and accordingly, it is his case that he had been pressing the plaintiff to return back the extra amount collected from him towards the registration. In this connection, it is found that the plaintiff is also found to have communicated with DW2 which letter has been marked as Ex.B1 and in Ex.B1, the plaintiff has claimed himself to be the sub-registrar and when the plaintiff is working only as a superintendent in the registrar's office, it does not stand to reason as to on what basis, the plaintiff has claimed himself to be the sub-registrar of the Mayiladurai Registration Office and the abovesaid fact would only go to show that the plaintiff is not discharging his official functions properly and studiously, furthermore, on a reading of Ex.B1 communication sent by the plaintiff, it is found that the plaintiff has not disputed the claim of DW2 that he had collected the extra amount in the registration of the document presented by DW2 for registration. On the other hand, Ex.B1 communication would only go to show that the plaintiff is endeavouring to placate and appease DW2 one way or the other to sort out issues pending between them and accordingly, had sent the said communication to DW2. Therefore,

by way of Ex.B1 communication and the evidence of DW2, the defendants have established that all is not well in the registration office whether the plaintiff was working and accordingly, it is found that the general public had been put to untold miseries and sufferings in the said office in getting their documents registered and it is also found that they are forced to part with extra amount for getting their documents registered one way or the other.

17.As abovenoted, the first defendant had reported to the reporter of the second defendant's magazine about the difficulties expressed by him in getting the document registered. Further, as seen above, after the said event, the plaintiff had been transferred to Chennai office. Thereafter, it is found that the document presented by the first defendant had been registered without any delay and in such view of the matter, it is found that only for an ulterior object, the document presented by the first defendant had not been registered by the plaintiff one way or the other and accordingly, the first defendant left with no other alternative has narrated his experience to the reporter of the second defendant's magazine and the same had come to be published by second defendant's magazine, and as abovenoted, therefore, the grievance projected by the first defendant against the plaintiff for not registering the document presented by him one way or the other cannot be said to be far from falsehood and on the other hand, inasmuch as the said document had been refused to be registered by the plaintiff one way or the other without any acceptable cause, in such view of the matter, it is found that the first defendant had been forced to approach the press media for ventilating his grievances.

18.It is also found from the materials placed on record that the plaintiff had been taking personal vengeance and revenges against the first defendant and others and in this connection, it has been admitted that the criminal case has been registered against the plaintiff and that, he had come out on bail. Furthermore, through the evidence of PW3, the inspector, who is working in the vigilance department, Nagapattinam, it is found that enquiry had been contemplated against the plaintiff by the Vigilance Department on the basis of the complaints received by them and accordingly, inasmuch as the plaintiff for one way and other had not been properly discharging his official functions and been demanding illegal gratification one way or the other for processing the documents presented for registration, in such view of the matter, it is found that the complaints had been preferred to the vigilance for appropriate action against the plaintiff. The evidence of PW3 cannot be easily ignored, merely, on the factor that no further follow up action had been initiated against the plaintiff with reference to the Vigilance

complaints lodged against him and his Department concerned.

19. In addition to that, it is also found that even prior to Ex.A1 publication, some news items have come to be published in the press against the plaintiff regarding his demand of bribe for registering the documents and the same could be gathered from the notice issued by the plaintiff to the Nakkiran Publication marked as Ex.B2. However, following Ex.B2, no material has been placed by the plaintiff to evidence he has taken any follow up action against the said magazine for causing the said publication.

20. In the light of the abovesaid factors, when it is seen that what had been published in the second defendant's magazine is only the difficulties experienced by the first defendant and others in getting their documents registered at the office of the Sub-Registrar at Mayiladurai and the said publication also contained the views of the plaintiff as reported and also the views of the higher official of the plaintiff, in such view of the matter, in my considered opinion, the article cannot be said to be attributing any motive or imputation as such, on the part of the plaintiff alone, intending to harm him and the same could only be construed as the narration of the turmoils and the difficulties and the experience faced by the public in getting their documents registered at the Sub-Registrar office, Mayiladurai. In such view of the matter, in general, when the said news item had carried the troubles and hardships expressed by the public at the hands of the plaintiff in getting their documents registered and accordingly, the first defendant had also narrated about his experience that the plaintiff had demanded illegal gratification for processing the document presented for registration, when such similar complaints are found to have been alleged against the plaintiff on earlier occasions as could be seen from the materials placed on record and when the plaintiff is also found to have been approaching the concerned persons one way or the other to satisfy them which is not expected on the part of the plaintiff and furthermore, when with reference to the said acts, the plaintiff has portrayed himself as the Sub-Registrar and when it is seen that the complaints had been lodged against the plaintiff in the vigilance department and the enquiry had been initiated following the same and furthermore, as a follow-up of these developments, the plaintiff is also found to have been transferred from the Mayiladurai office to Chennai Office, in such view of the matter, when the experience narrated by the first defendant to the second defendant's magazine is not found to be without any basis as such and not shown to be solely intending to harm the reputation of the plaintiff as projected by the plaintiff and on the other hand, it only with reference to the grim experience of the public at the office of the

plaintiff one way or the other and the abovesaid article narrates the acts of the plaintiff in the discharge of his public functions and in such view of the matter, the said article found to be falling within the second exception to Section 499 of the Indian Penal Code and when the said article contains only the experience faced by the first defendant in good faith as regards the troubles, which he had been put to, at the hands of the plaintiff one way or the other, in all, it is found that the Courts below had rightly assessed the materials placed on record and found that the publication of the article marked as Ex.A1 would not amount to or constitute defamation as defined under Section 499 of the Indian Penal Code and in such view of the matter, further rightly determined that the plaintiff is not entitled to obtain any compensation from the defendants. The abovesaid determination of the Courts below being arrived at, on a proper appreciation of the materials available on record, both factually and legally, in my considered opinion, hence, no interference is warranted to disturb the judgment and decree of the Courts below in any manner. In toto, it is found that no substantial question of law is involved in the second appeal. Be that as it may, the substantial question of law formulated in the second appeal is, accordingly, answered against the plaintiff and in favour of the defendants.

In conclusion, the second appeal fails and is, accordingly, dismissed with costs. Consequently, connected miscellaneous petition, if any, is closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

sms

To

1. The Additional District Court, Nagapattinam.
2. The Additional Sub Court, Myladuthurai.
3. The Section Officer,
V.R. Section, High Court, Madras.

+1cc to Mr.R.Prem Narayanan, Advocate, S.R.No.44963

+1cc to Mr.R.Sunil Kumar, Advocate, S.R.No.44850

S.A.No.1659 of 2002

VSNII(CO)
CS/16/12/2019