

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.11.2019

CORAM

THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

S.A. No.948 of 2007

and

MP No.1 of 2007

1. State of Tamil Nadu rep. By its
District Collector,
Cuddalore.
2. District Chief Medical Officer,
Government Hospital, Cuddalore. Appellants /1st
& 2nd Respondents/1 & 2 Defendants

versus

1. Amudha1st Respondent/Appellant/Plaintiff
- 2.Dr.Vatsala2nd Respondent/3rd Respondent/
3rd Defendants

Second Appeal filed under Section 100 of the Civil Procedure Code against the judgment and decree made in A.S. No.8 of 2005, dated 22.06.2005 on the file of Principal District Court, Cuddalore reversing the Judgment and Decree dated 01.07.2003 made in O.S. No.96 of 2000 on the file of Sub Court, Chidambaram.

For Appellants : Mr.A. Dev Narendiran
Additional Govt. Pleader

For Respondents: Mr.K.Gandhi Kumar for R1
Mr.Karthik Mukundan for R2 -
No appearance

JUDGMENT

This Second Appeal has been challenging the judgment and decree dated 22.06.2005 passed by the Principal District Court, Cuddalore in A.S. No.8 of 2005 reversing the Judgment and decree dated 01.07.2003 passed by the Sub Court, Chidambaram in O.S. No.96 of 2000.

Brief facts leading to the filing of the Second Appeal:

2.The Appellants are the defendants 1 & 2 in the suit O.S. No.96 of 2000 on the file of the Sub Court, Chidambaram and the 1st respondent is the plaintiff and the second respondent is the 3rd defendant.

3.For the purpose of convenience, the parties herein are referred to as per the ranking before the Trial Court.

4.The plaintiff filed the suit O.S. No.96 of 2000 before the Sub Court, Chidamabram against the defendants seeking a compensation of Rs.1,00,000/- together with interest at 12% from the date of plaint till the date of realisation for the failure of the Sterilization operation performed on her by the 3rd defendant, Dr.Vatsala, who acted on behalf of defendants 1 and 2 under a family planning scheme introduced by the defendants 1 and 2.

5.It is the case of the plaintiff that she is a permanent resident of Sozhatharam village, Kattumannarkoil Taluk and she belongs to a very poor family. According to the plaintiff, her husband is getting his livelihood only by doing agricultural labour work. According to the plaintiff, she already has fives issues out of the wedlock viz., four daughters and one son.

6.It is the case of the plaintiff that she was unable to maintain her big family. Therefore, the plaintiff decided to undergo family planning operation in order not to have any more child birth. Accordingly, the plaintiff underwent family planning operation i.e., for laproscopy Sterilization operation on 19.09.1989 at Government Kamaraj Hospital, Chennai. The said operation was performed by the 3rd defendant, Doctor. According to the plaintiff despite the Sterilization operation performed on her, she conceived again and delivered a male child on 05.09.1991. It is also stated by the plaintiff that because of her very bad health condition, she was also advised not to abort her pregnancy. It is also her case that a new born child born after the Sterilization operation was also not keeping in good health right from his birth. According to the plaintiff, only due to the medical negligence and carelessness of the Doctor, she once again conceived despite the Sterilization operation performed on her.

7.It is also the case of the plaintiff that prior to institution of the suit seeking damages, the plaintiff issued the statutory legal notice under Section 80 CPC to the defendants, which is dated 23.11.1998. According to the

plaintiffs, since there was no response to the legal notice, she was constrained to file the suit seeking damages of a sum of Rs.1,00,000/- together with interest from the defendants.

8.A written statement was filed by the 3rd defendant which was adopted by defendants 1 and 2. As seen from the written statement, the defendants have denied all the allegations contained in the plaint. They have stated that there is no carelessness, lapse and negligence on the part of the 3rd defendant, when she performed the Sterilization operation on the plaintiff.

9.It is the case of the defendants that there is a no deficiency in the procedure adopted by the defendants for performing the Sterilization operation on the plaintiff. According to the defendant, the scheme for Sterilization introduced by the defendants 1 and 2 is done only as a service to the society in order to reduce the birth rate at the national level. According to them, the Sterilization operations are done free of cost and the individuals were also paid amounts. Therefore, according to them, the operation done as a service motive does not give rise to any right of claim and there cannot be any binding and enforceable right in pursuance of the scheme.

10.The defendants also stated that the plaintiff was aware that there is every chance of failure of the Sterilization operation performed on her. The defendants further states that before performing any Sterilization operation, it was intimated to all the persons who underwent the operation that there are chances of failure of the operation for which the Government Hospital operating surgeon will not be held responsible. According to the defendant, the plaintiff also accepted the said condition for performance of the Sterilization operation on her. It is also stated by the defendants that there are number of technical reasons for the failure of the Sterilization operation like tissue formation at the juncture of the operation, metabolic error of the individual etc.

11.It is also the case of the defendants that the plaintiff never approached the hospital or any of the defendants as soon as she became pregnant as a follow up action. It is also their case that the plaintiff has not approached the hospital or any of the defendants for the medical treatment of her pregnancy. It is their case that there is negligence and carelessness on the part of the plaintiff also. On the other hand, according to the defendants, there was no negligence or carelessness or dereliction of duty on the part of the operating surgeon viz., the 3rd defendant. Therefore, according to the defendant, the

plaintiff is not entitled for any damages.

12.The Trial Court after framing issues and after trial and after considering the submissions of the respective parties dismissed the suit filed by the plaintiff on the ground that there is a chance of failure in Sterilization operation and therefore, there cannot be any medical negligence on the part of the third defendant, Doctor, while performing the Sterilization operation on the plaintiff.

13.Aggrieved by the dismissal of the suit by judgment and decree, dated 01.07.2003 passed in O.S.No.96 of 2000 by the Sub Court Chidambaram, the plaintiff filed an appeal before the Principal District Judge, Cuddalore in A.S. No.8 of 2005. The Lower Appellate Court after considering the materials and evidence available on record reversed the findings of the Trial Court and allowed the appeal filed by the plaintiff. The Lower Appellate Court held that the principle of Res ipsa loquitur would be applicable to the case on hand. The Lower Appellate Court followed the decision of the Hon'ble Supreme Court reported in 1989 SC 1570 and held that compensation should be paid for the negligence on the part of the 3rd defendant, Doctor. The Lower Appellate further held that the Trial Court has not applied the correct law point and simply expected the plaintiff to prove medical negligence.

14.Aggrieved by the judgment and decree dated 22.06.2005 passed by the learned Principal District Judge, Cuddalore in A.S. No. 8 of 2005, this Second Appeal has been filed by the defendants 1 and 2 in the suit.

15.At the time of the admission of the Second Appeal on 07.09.2007, the following Substantial question of law was framed by this Court :-

"Whether the lower Appellate Court has committed an error of law in not appreciating the principle of law laid down by the Apex Court in the decision reported 2005 (4) CTC 627 in (State of Punjab vs. Shiv Ram and others) wherein the Apex Court has clearly held that in cases of medical negligence, the burden of proof lies on the claimant to prove negligence?"

16.Heard Mr.M.Dev Narendiran, learned Additional Government Pleader (CS) appearing for the appellants and Mr.K.Gandhi Kumar, learned counsel appearing for the 1st respondent. Despite service of notice on the second respondent and his name having been printed in the cause list today, there

is no representation on his side.

Submission of the learned counsel

17. The learned counsel for the appellant drew the attention of this Court to a judgment of the Hon'ble Supreme Court in the case of State of Punjab versus Shiv Ram and others reported in 2005 (4) CTC 627 involving a similar case of medical negligence during the Sterilization Operation. He would point out referring to paragraph No.27 of the said judgment that any Sterilization operation is always not 100% safe and secure. According to him, the Hon'ble Supreme Court held in a similar case that failure of a Sterilization operation will not enable the patient to claim damages on account of medical negligence. According to him, there is no medical negligence on the part of the 3rd defendant, Doctor, while performing Sterilization operation on the plaintiff. Therefore, according to him, the Lower Appellate Court erred in reversing the findings of the Trial Court, which has duly considered the materials and evidence available on record and only thereafter has dismissed the suit.

18. Per contra, the learned counsel for the first respondent would submit that in the case on hand, the plaintiff conceived within a year from the date of performance of the Sterilization Operation. He would point out that the Sterilization Operation was performed on the plaintiff on 19.09.1989 and she delivered a male baby on 05.09.1991. He submitted that the judgment of the Hon'ble Supreme Court referred to by the learned counsel for the Appellant reported in 2005 (4) CTC 627 is not applicable to the case on hand since that was the case when the patient conceived after seven years from the date of the Sterilization operation. He would also further submit that in the case on hand, no documentary evidence were placed by the defendants to disprove the contention of the plaintiff that only due to the medical negligence, the plaintiff conceived despite the Sterilization operation.

19. The learned counsel for the 1st respondent also drew the attention to a single bench judgment of this Court in the case of Sumathi vs. Dr. Suganthi and others, judgment dated 30.10.2014 in S.A. No.683 of 2006 and in particular he referred to paragraph No.8 of the said judgment, wherein the learned single judge has observed that in cases of proving medical negligence in a Sterilization operation, the burden of proving the same is shifted to the defendants.

20. According to the learned counsel for the first respondent, in the case on hand, the fact that the Sterilization

operation was performed on the plaintiff on 19.09.1989 is not disputed and the fact that she delivered a male child on 05.09.1991 is also not disputed by the defendants. Further, he would submit that warning of failure of the Sterilization operation was also not given to the plaintiff prior to the operation. This being the case, according to him, the burden to disprove the contention of the plaintiff is entirely on the defendants that there was no medical negligence while performing the Sterilization operation on the plaintiff. Therefore, according to him, the Lower Appellate Court has rightly reversed the findings of the Trial Court and allowed the Appeal filed by the plaintiff.

Discussion :-

21.It is not in dispute that the plaintiff underwent the Sterilization operation at Government Kamaraj Hospital, Chidambaram on 19.09.1989 under a family planning scheme introduced by the Government. It is also not in dispute that despite the Sterilization operation performed on her by the 3rd defendant, Doctor on behalf of the defendants 1 and 2, she conceived and gave birth to a male baby on 05.09.1991. It is also not in dispute that she comes from a very poor family and she is already having four daughters and one son, out of her wedlock.

22.Before the Trial Court, the defendants have not filed any documentary evidence to disprove the contention of the plaintiff that only due to the medical negligence of the 3rd defendant Doctor, who acted on behalf of the defendants 1 and 2, the Sterilization operation became a failure. A patient does Sterilization operation only on the fond hope that she will not beget a child in the near future. In most of the cases, the patients who undergo sterilization come from impoverished families. The Government also introduces family planning schemes only to reduce population growth. It is the Government's responsibility to make the sterilization operation performed on the patients a success. They cannot shirk the responsibility if the sterilization operation becomes a failure that too when the operation was performed within a year from the date when the patient got conceived once again. As rightly contended by the learned counsel for the 1st respondent, the judgment of the Hon'ble Supreme Court relied upon by the learned counsel for the Appellant reported in 2005 (4) CTC 627 is not applicable to the case on hand, as that was the case, where the patient got conceived after seven years from the date of the performance of the Sterilization operation. But in the case on hand, the plaintiff has conceived within one year from the date of performance of the Sterilization Operation. The

Sterilization operation performed on the plaintiff on 19.09.1989 and she delivered a male baby on 05.09.1991. A sterilization operation can never become a failure within one year from the date of operation. No evidence has also been produced by the Appellant to prove that there was no medical negligence on the part of the 3rd defendant Doctor, who performed the operation. No evidence has also been produced by the Appellants to prove that sufficient precautions/safeguards are taken by them to prevent failure of the sterilization operation on the plaintiff.

23.A learned single judge of this Court has rightly held that the onus of proving that there was no medical negligence while performing the Sterilization operation is shifted to defendants in case of medical negligence involving Sterilization operations. In the case on hand, the medical negligence is obvious, since the Sterilization operation was performed on 19.09.1989 and immediately thereafter, the plaintiff got conceived within one year and delivered a male baby on 05.09.1991. When this being the case, the burden of proof to disprove the contention of the plaintiff that only due to the medical negligence of the defendants, she conceived is entirely shifted to the defendants.

24.Before the Trial Court excepting for the deposition of the 3rd defendant as DW1, no other documentary evidence has been filed by the defendants to disprove the contention of the plaintiff. It can be conclusively held that only due to the medical negligence committed by the 3rd defendant, Doctor, the plaintiff got conceived once again despite the Sterilization operation performed on her on 19.09.1989. The Lower Appellate Court has rightly considered all these aspects and has rightly reversed the findings of the Trial Court.

25.As observed earlier, the decision reported in 2005 (4) CTC 627 is not applicable to the case on hand since in that case, the victim got conceived after seven years from the date of Sterilization operation, whereas in the case on hand, the victim got conceived immediately within a year after the date of Sterilization operation. Therefore, the substantial question of law formulated by this Court on 07.09.2007 is answered against the Appellants and this Court holds that only due to the medical negligence of the Appellants and the 3rd defendant Doctor who performed the sterilization operation, the plaintiff got conceived once again. The Trial Court has erroneously dismissed the suit only based on the oral evidence of DW1 and without any documentary evidence in support of her deposition. The Lower Appellate Court has rightly considered all the relevant factors and reversed the findings of the Trial Court and the findings of

the Lower Appellate Court does not call for any interference.

26.In the result, the Second Appeal stands dismissed by confirming the judgment and decree dated 22.06.2005 passed by the Lower Appellate Court in A.S. No.8 of 2005. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CCC)

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Sub Assistant Registrar

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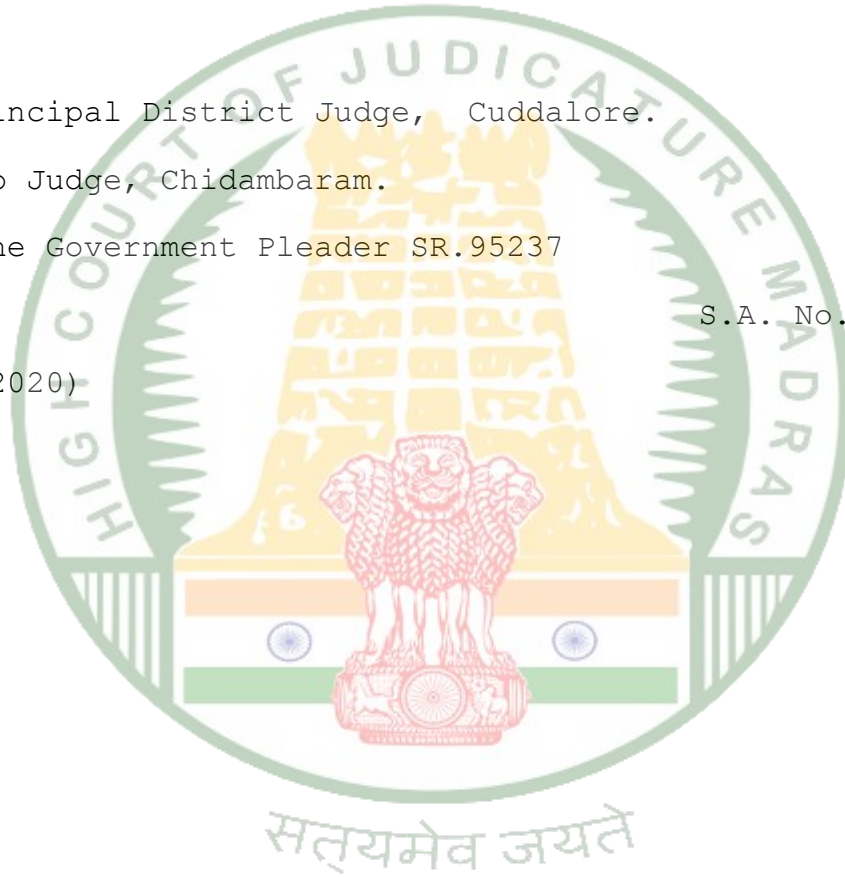
1. The Principal District Judge, Cuddalore.

2. The Sub Judge, Chidambaram.

+lcc to the Government Pleader SR.95237

S.A. No.948 of 2007

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