

IN THE HIGH COURT OF JUDICATURE AT MADRAS
RESERVED ON : 22.02.2019
PRONOUNCED ON:18.03.2019
CORAM:
THE HON'BLE MR.JUSTICE T.RAVINDRAN
S.A.No.1095 of 2005

1.The Secretary,
Board of Higher Secondary Education,
College Road,
Chennai - 600 006.

2.The Director of Government Examinations,
College Road,
Chennai - 600 006.

3. The Joint Director of Government Examinations,
College Road,
Chennai - 600 006.

4.The Head Master,
Government Higher Secondary School,
Allinagaram Post,
Theni Taluk,
Theni District.

5.The Secretary To Government,
Education Department,
Fort. St. George,
Chennai - 600 009.

सत्यमेव जयते

Appellants/Defendants

Vs.

1.R.Deepa

... 1st Respondent/Plaintiff

2.The Registrar,
Annamalai University,
Annamalai Nagar Post,
Chidambaram,
Cuddalore District.

... 2nd Respondents/Defendants

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Prayer:

Second Appeal filed under Section 100 of C.P.C., against the judgment and Decree dated 31.03.2004 made in A.S.No.156 of 2003 on the file of the 7th Additional Judge, City Civil Court, Chennai confirming the judgment and decree dated 08.08.2002 made in O.S.No.3831 of 2000 on the file of the 16th Assistant Judge, City Civil Judge, Chennai.

For Appellants : Mr.Sricharan Rangarajan
Spl.GP (CS)

For RR1 : Mr.C.Gurulingam

For RR2 : Mr.K.Sathish Kumar

J U D G M E N T

Challenge in this Second Appeal is made to the judgment and decree dated 31.03.2004 passed in A.S.No.156 of 2003 on the file of the VII Additional Judge, City Civil Court, Chennai confirming the judgment and decree dated 08.08.2002 passed in O.S.No.3831 of 2000 on the file of the 16th Assistant City Civil Judge, Chennai.

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

1.Whether the drawing of adverse inferences by the courts below in favour of the plaintiff on the basis of the missing pages in Ex.B4 is correct?

2.Whether the courts below are correct in passing a concurrent finding based on the Secretary's evidence alone when the primary evidence is available for the perusal and the same also disproves the case of the plaintiff?

3.Whether the courts below are correct in passing a finding which is in the nature of upholding the illegality performed by the plaintiff in preparing the fraudulent mark list and producing before the second respondent for admission into the college?

4.Whether the courts below have not committed error in decreeing the suit when the plaintiff is estopped from producing the certificate other than

the one received by her as per Ex.B3?

5. Whether the Courts below are correct in not considering Ex.B3 and holding that the plaintiff is estopped from relying upon any other mark list other than the one reflected in Ex.B3?

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 case in detail.

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

5. The suit has been laid by the plaintiff mainly for the relief of declaration that the higher secondary course certificate as described in the plaint issued to her by the first respondent, through the 4th defendant's school is a genuine document and for consequential mandatory injunction and other reliefs.

6. It is seen that the plaintiff based upon the mark certificate issued to her by the 4th defendant's school for the higher secondary course completed by her in the 4th defendant's school, joined B.Sc., Agriculture in the 5th defendant's University and while her curriculum was in progress in the abovesaid University, she had been issued with the memo informing that the certificate produced by her for securing admission in the University is a bogus one and accordingly directed her to give explanation for the same and when the plaintiff has presented her case that she had not produced any bogus certificate and the certificate produced by her is a valid and genuine certificate and the memo issued to her is without any basis, despite the same, according to the plaintiff, she has been dismissed from the college, where she had studied. Putting forth the case that without any basis, her certificate has been determined to be a bogus certificate by the defendants one way or the other on false allegations and accordingly, seeking appropriate reliefs, the plaintiff has come forward with the suit against the defendants.

7. The defendants have put forth the case that on a comparison of the original records available with them, noting that the certificate produced by the plaintiff for joining in the University is a bogus certificate and concocted by the plaintiff for securing admission in the University illegally and accordingly the plaintiff having failed to explain the same with reference to the memo issued qua the same, according to the defendants, they had taken proper action against the plaintiff,

which does not call for any interference and accordingly contended that the plaintiff is not entitled to seek and obtain the reliefs as prayed for and prayed for the dismissal of the plaintiff's suit.

8. Based on the materials placed on record by the respective parties, both oral and documentary, and on an analysis of the same, the Courts below were pleased to accept the plaintiff's case and rejecting the defence version, accordingly granted appropriate reliefs in favour of the plaintiff, as prayed for. Aggrieved over the same, the defendants 1 to 4 and 6 have come forward with the present second appeal.

9. When according to the defendants, the mark certificate produced by the plaintiff for securing admission in the University is a bogus one and when further according to the defendants 2 to 4 that the original records pertaining to the mark certificate of the plaintiff are only available with them, as rightly determined by the Courts below, only on a perusal and comparison of the mark certificate produced by the plaintiff with the original records available with the defendants 2 to 4, we could determine as to whether, as alleged by the defendants, the mark certificate produced by the plaintiff is a bogus one or a genuine one. Now, according to the defendants, the case has been projected by them that in the original Tabulated Mark Register [TMR] available with them, the concerned page No.4256 pertaining to the marks of the plaintiff is missing and accordingly, they had endeavored to produce the Tabulated Mark Register as Ex.B4 as if the same is the original record for sustaining their case. Thus, according to the defendants, on a comparison of the mark certificate produced by the plaintiff and the entries available in Ex.B4, it could be discerned that the mark certificate produced by the plaintiff is a bogus one and accordingly contended that the action initiated by them against the plaintiff is valid. When it is the specific case of the defendants 2 to 4 that as regards the marks obtained by the students, they are having the custody of all the main records pertaining to the same, i.e., Tabulated Mark Register retained by the defendants 2 to 4. The Tabulated Mark List sent to the concerned schools and ICM dispatched to the concerned students and accordingly, when the plaintiff's case is that only on the basis of the certificate issued to her by the School concerned, she has secured the admission in the University and thereafter, the defendants have come forward with the case that the certificate produced by the plaintiff is not a genuine one and a bogus certificate and the abovesaid case of the defendants is based upon the comparison of the certificate produced by the plaintiff with the original records available with them as above pointed out, as rightly determined by the Courts below, unless the original records in the custody of the defendants 2 to 4,

in particular, are produced, we cannot conclude that the mark certificate projected by the plaintiff is a bogus one as putforth by the defendants.

10. In this connection, the defendants mainly rely upon the Tabulated Mark Register projected in this case marked as Ex.B4 and B15. When as per the case of the defendants, the relevant page No.4256 of the original Tabulated Mark Register, which is in their custody, is missing and on the other hand, when the defendants have come forward with the case that the TMR produced by them and marked as Ex.B4 is the original TMR, it does not stand to reason as to how come the concerned page is available in Ex.B4. It is not the case of the defendants that Ex.B4 TMR produced by them has been prepared even prior to the missing of the concerned page in the original TMR. Materials placed on record go to show that the TMRs projected by the defendants marked as Ex.B4 and B15 are found to have been subsequently developed from the compact disc available with the defendants and in such view of the matter, when it is found that the original TMR is in the custody of the defendants 2 to 4 and the same had not been produced and when the defendants have come forward with copies of the TMRs marked as Exs.B4 and B15 and when they are stated to have been developed or taken from the compact disc in the custody of the defendants, as rightly put forth by the plaintiff unless and until the original TMR is produced, based on Exs.B4 and B15 alone, we cannot safely hold that the mark certificate produced by the plaintiff is a bogus one based on the entries found in Exs.B4 and B15.

11. Evidence placed in the matter go to show that when the plaintiff and her father had endeavored to peruse the original TMR and the other records available with the defendants 2 to 4, they had been deprived of the said opportunities by the defendants and with reference to the same, no explanation is forthcoming on the part of the defendants. The same has been spoken to by P.W.1. Furthermore, an Advocate Commissioner, who had been appointed in the matter to inspect the records concerned has also tender evidence that when he endeavoured to peruse the original records after the issuance of notice to the defendants, only thereafter they had endeavored to produce the documents marked as Exs.B4 and B15 from the Guindy Data Centre, and the same is also reflected in Ex.C5. Therefore the evidence adduced by the defendants or the case projected by the defendants that they had come to the conclusion that the mark certificate produced by the plaintiff is a bogus one based on the comparison of the same with the original records available with them, as such, cannot be accepted in any manner, without the defendants producing the original records available with them and they cannot be allowed to rest their case mainly upon

the copies of the alleged original records marked as Exs.B4 and B15 which are developed or taken from the compact disc in their custody and when it is found that Ex.B4 was claimed to be taken or developed in the year 1996 and thereafter Ex.B15 had been developed, and if they are taken or developed from the same compact disc in the custody of the defendants, it does not stand to reason as to how come various discrepancies are noted in the abovesaid documents marked as Exs.B4 and B15, particularly, when such discrepancies are admitted by the witness examined on behalf of the defendants. When the relevant page of the original TMR is found missing, it does not stand to reason as to how come the alleged original relevant page is found to be enclosed in Ex.B4 and furthermore, the defendants have not placed any material as to what further action had been taken by them as regards the missing page from the original TMR and against whom such action had been initiated by them and in connection with the same, there is no reliable material projected on the part of the defendants. As rightly determined by the Courts below, Exs.B4 and B15 had come to be developed at a belated stage on the part of the defendants and no explanation has been furnished by the defendants as to on whose instructions the same had been developed or taken from the compact disc and in connection with the same, no proof has been placed by the defendants.

12.As rightly contended by the plaintiff's counsel, when as per the defendants' case only from the compact disc, the documents marked as Exs.B4 to B15 had come to developed or taken by the defendants and when the defendants have not placed any material as to whether the concerned compact disc contained the true materials as available in the original records of the defendants and when there are various discrepancies found in Exs.B4 and B15 and when Exs.B4 and B15 are found to have been developed or taken by the defendants at a very belated stage and when there is no proof placed on the part of the defendants as to under whose direction the same had been taken or developed, in the absence of any proof pointing to the same, as rightly determined by the Courts below, the case projected by the defendants that the mark certificate produced by the plaintiff is a bogus one relying upon the entries contained in Exs.B4 to B15, as such, cannot at all be countenanced in any manner and the same had been rightly declined by the Courts below.

13. As rightly found by the Courts below, when according to the defendants, the relevant page No.4256 of the original TMR is missing, which according to the defendants reflects the marks of the plaintiff and when the copy of the TMR produced by them marked as Ex.B4 contains an entry that the mark certificate of the plaintiff is a bogus one and there is a reference about, a

file on the reverse side, no explanation is offered by the defendants as to, on what basis, such entry has come to be recorded in the relevant page on Ex.B4 and to further buttress their case, the defendants, for the reasons best known to them, had also not endeavored to produce the file referred to on the reverse side of the said page of Ex.B4 and if the relevant file has been produced, as rightly determined by the Courts below, it could have been assessed as to on what basis the defendants had proceeded to come to the conclusion that the mark certificate projected by the plaintiff is a bogus one.

14. It is contended by the defendants' counsel that the mark register maintained in the school would go to show that the mark certificate produced by the plaintiff is a bogus one. In this connection, the defendants seem to rely upon the consolidated mark register maintained in the school marked as Ex.B2. However, as rightly determined by the Courts below, when from the evidence of the Advocate Commissioner, it is seen that the Commissioner had noted that the mark register available in the school projected as Ex.B2 contained various corrections and at the time of the inspection of the same by Advocate Commissioner, they are found to be in loose sheets, as rightly held by the Courts below, the defendants have the purpose of sustaining their defence, are found to have even corrected the entries in the concerned school register maintained in the school and when with reference to the said corrections found in the said register by the Advocate Commissioner, no proper explanation is offered by the defendants, the case of the defendants that based on Ex.B2, the mark certificate produced by the plaintiff has to be declared as a bogus one, as such, cannot at all be accepted and the same has been rightly negated by the Courts below.

15. In addition to that, in this case, the defendants have endeavored to produce the report received from the Forensic Lab as Ex.B10 for establishing their case that the mark certificate produced by the plaintiff is a bogus one and on a perusal of Ex.B10, as rightly determined by the Courts below, the same had not been certified to be a true document by the competent authority. The same is only shown to be a true copy issued by the Sub Inspector of Police. When the entries contained in the abovesaid document are not shown to have been made by the concerned authority based on the comparison of the plaintiff's mark sheet with the original records as per law and when the concerned staff has not been examined on behalf of the defendants to sustain their defence, on the mere production of Ex.B10, we cannot accept the defence version of the defendants in any manner.

16. According to the defendants, as the plaintiff projected a false and bogus certificate for securing admission in the

University one way or the other, the case had been registered in connection with the same and the complaint copy is marked as Ex.B7 on the part of the defendants. FIR copy is marked as Ex.B8. Ex.B7 is not found to be the original complaint lodged with the police. The defendants have not endeavored to produce the original complaint for one reason or the other. Even, in Ex.B7, it is only mentioned that the defendants had developed a suspicion against certain staff of their involvement with reference to the production of the bogus certificate. However, there is no material placed on the part of the defendants as to what further action had been initiated by them against the concerned staff, either, through police machinery or through departmental action and thus it is seen that no concrete action has also been initiated by the defendants against the so called erring staff qua the alleged bogus certificate. Furthermore, according to the plaintiff, she has been acquitted in the criminal case and the same could be gathered from the copy of the judgment produced by her rendered in CC.No.3173 of 2002 marked as Ex.A12, which has not been controverted by the defendants.

17. In the light of the abovesaid discussions, when it is the specific case of the plaintiff that she had produced only the certificate issued by the school concerned for securing the admission in the University and when only the defendants had come forward with the case that the certificate issued by the plaintiff is a bogus one based on the entries available in the original records in their custody, however, when the defendants have not endeavored to produce the original records and also not endeavored to take necessary action as per law against the missing page of the original records one way or the other and also had failed to initiate necessary action against the erring staff and also not established that the TMR projected by them as Exs.B4 and B15 had been developed or taken from the genuine compact disc in their custody and when they are admittedly glaring discrepancies in Exs.B4 and B15, as admitted by the witness examined on behalf of the defendants, when the criminal case lodged by the defendants ended in the acquittal of the plaintiff and when the defendants had refused access to the plaintiff a perusal the original records available with them and in their custody as well as refused access to the Advocate Commissioner's appointed in the matter to their original records and on the other hand have produced only the copies of the original records as above discussed and when the records available in the school are found to be tampered with various corrections and with reference to the same, no explanation is forthcoming on the part of the defendants in any angle, in such view of the matter, the Courts below are found to be wholly justified in not placing reliance upon the abovesaid documents projected by the defendants for accepting their defence and right in holding that, inasmuch as, the certificate produced by

the plaintiff is not a bogus certificate as claimed by the defendants and on the other hand, the same is only a genuine certificate issued to the plaintiff by the school concerned, the defendants are unable to place any reliable and acceptable material pointing to their defence and resultantly the Courts below are found to have rightly granted the appropriate reliefs in favour of the plaintiff as prayed for and in my considered opinion, no interference at all is required in the abovesaid reasonings and conclusions of the Courts below for upholding the plaintiff's case.

18. In this connection, the learned counsel for the plaintiff placed reliance upon the decisions reported in

1. 1979 AIR (SC) 798 [Mahindra and Mahindra Ltd Vs. Union of India (UOI) and another.

2. 2009 WritLR 608 Madras High Court [S.R.Rajini Vs. Principal, Madurai Law College and Others]

3. 2009 (3) SCC 934 (SC) [Roop Singh Negi Vs. Punjab National Bank]

4. 1996 AIR SCW 3635 [Navaneethammal Vs. Arjuna Cheety]

5. 2016 AIR SCW [Raghavendra Swamy Mutt Vs. Uttaradi Mutt]

6. 2015 AIR (SCW) 1030 [Laxmidevamma Vs. Ranganath]

7. 2014 (10) SCC 473 [P.V.Anwar Vs. P.K.Basheer]

8. 2010 (4) SCC 491 [LIC Vs. Rampal Singh Bisan]

9. 2010 (5) MLJ 925 [M.Marimuthu Vs. General Manager (D&PB), SBI]

10. 2007 AIR (SCW) 2713 [J.yashoda Vs. K.Shobha Rani]

11. 1986 (3) SCC 454 [Sawai Singh Vs. State of Rajasthan]

12. 2011 (8) MLJ 225 [S.Rajamanickam Vs. The secretary to Government, Rural and Development and Panchayatraj Department, Chennai and two others]

The principles of law outlined the abovesaid decisions are taken into consideration and followed as applicable to the case at hand.

19. The defendants' counsel mainly contended that the Courts below have failed to take into consideration the Tabulated Mark List [TML] copy marked as Ex.B3. When the defendants' case is that they had determined that the certificate produced by the

plaintiff is a bogus one based upon the Tabulated Mark Register in their custody and when the corresponding records of the school marked as Ex.B2 are found to be tampered with and no explanation is offered by the defendants with reference to the same and when original Tabulated Mark Register has not been produced, and furthermore, when Ex.B3 is found to be not attested or certified to be a true copy and the original of the same has not been produced and no explanation is offered as to why the original of Ex.B3 has not been filed, in such view of the matter, no reliance at all could be placed upon the document marked as Ex.B3 for holding that the certificate produced by the plaintiff is a bogus one. The Courts below are found to have analysed all the documents in toto both projected by the plaintiff as well as the defendants and rightly come to the conclusion that the defendants have failed to sustain their case that the certificate produced by the plaintiff is a fabricated one.

20. In the light of the above discussions, the Courts below are found to be fully justified in drawing adverse inference against the defendants on their failure to produce the relevant original records for scrutiny one way or the other and right in holding that the defendants had produced only the copies of the original records without establishing that the same had been prepared and developed in any manner, as per law, from the genuine compact disc and when the records available with the defendants' school are also found to be tampered with various corrections and when no explanation is forthcoming on the part of the defendants with reference to the same and when other than the documents projected by the defendants, there is no other valid material on the part of the defendants to sustain their defence and when the documents projected by the defendants are found to be unreliable as above discussed, no interference is warranted to disturb the judgment and decree of the Courts below.

21. In conclusion, the substantial questions of law formulated in the second appeal are accordingly answered against the defendants and in favour of the plaintiff and accordingly, the second appeal fails and is dismissed with costs. Consequently, connected miscellaneous petition, if any, is closed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

To

1. The 7th Additional City Civil Judge,
7th Additional City Civil Court,
Chennai.
2. The 16th Assistant City Civil Judge,
16th Assistant City Civil Court,
Chennai.

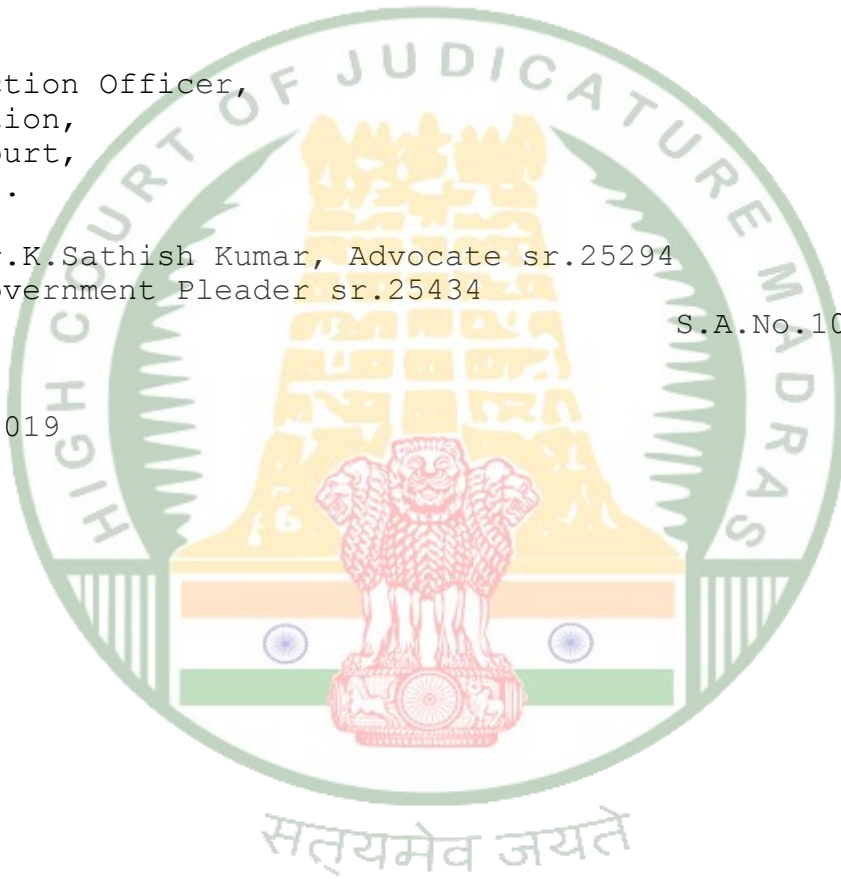
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+1cc to Mr.K.Sathish Kumar, Advocate sr.25294
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