

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 07.08.2019

PRONOUNCED ON : 16.08.2019

CORAM

THE HONOURABLE MR.JUSTICE T.RAVINDRAN

S.A.No.830 of 2019

1.Shyamsundar Mookim
2.VijayaMookim

... Appellants/Plaintiffs 2 & 3

Vs.

1.C.Shanthi ...Respondent/Ist Plaintiff
2.The Chairman cum Managing Director,
Chennai Metropolitan Water Supply,
and Swerage Board,
No.1, Pumping Station Road,
Chintadripet, Chennai - 2. ...Respondent/Defendant

Prayer :- Second Appeal has been filed under Section 100 of CPC against the Judgement and Decree dated 28.09.2018 passed in A.S.No.123 of 2013 on the file of the I Additional Judge, City Civil Court, Chennai, confirming the Judgment and Decree dated 08.08.2012 passed in O.S.No.805 of 2011 on the file of the IV Assistant Judge, City Civil Court, Chennai.

For Appellants : Mr.R.N.Amarnath

JUDGMENT

Challenge in this second appeal is made to the Judgement and Decree dated 28.09.2018 passed in A.S.No.123 of 2013 on the file of the I Additional Judge, City Civil Court, Chennai, confirming the Judgment and Decree dated 08.08.2012 passed in O.S.No.805 of 2011 on the file of the IV Assistant Judge, City Civil Court, Chennai.

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

3.The suit has been laid by the plaintiffs against the defendant for the reliefs of (a).Declaration that the demand notice issued by the defendant dated 06.09.2010 as null and void

and non est in law, (b).Declaration that the disconnection of water supply to the plaint "B" schedule property by the defendant as illegal and consequentially, prayed for the issuance of mandatory injunction directing the defendant to restore the water supply to the plaint "B" schedule property, (c). Mandatory injunction directing the defendant to effect changes in the records of the defendant by entering the names of the plaintiffs 2 & 3 with respect to the plaint "B" schedule property and assess water tax and water charges in the name of the plaintiffs 2 & 3, (d). For directing the defendant to repay the first plaintiff a sum of Rs.17,690/- said to have been illegally collected from the first plaintiff as arrears of water tax, water charges and surcharge for the period from 1999/2 to 2004/2 by receipt dated 31.03.2008, (e).For a sum of Rs.1,00,000/- to the plaintiffs 2 & 3 towards damages and costs.

4.The abovesaid suit had been resisted by the defendant on various grounds as set out in the written statement.

5.In support of the plaintiffs' case, the second plaintiff was examined as PW1 and Exs.A1 to A18 were marked. On the side of the defendant, DW1 was examined and Exs.B1 to 23 were marked.

6.On a consideration of the oral and documentary evidence adduced by the respective parties and the submissions made, the trial Court was pleased to grant the reliefs in favour of the plaintiffs as regards the reliefs A, B and D and dismissed the plaintiffs' suit in respect of the reliefs C & E. The plaintiffs 2 & 3 preferred the first appeal against the judgment and decree of the trial Court, and the first appellate Court also had concurred with the judgment and decree of the trial Court and thereby, dismissed the appeal preferred by the plaintiffs 2 & 3. Impugning the same, the present second appeal has been preferred.

7.It is found that the first appeal as well as the present second appeal have been preferred by the plaintiffs, mainly aggrieved over the refusal of the relief of damages prayed for by them against the defendant in a sum of Rs.1,00,000/-.

8.As regards the claim of damages sought for by the plaintiffs, the plaintiffs would only plead in the plaint that due to disconnection of water supply to the premise of the plaintiffs 2 & 3, they had been put to great hardship and mental agony and they had been forced to make arrangement to get water from outside and in addition to that, it is also pleaded by them that the reputation of the plaintiffs 2 & 3 had been lowered in the minds of the public, who are their neighbours and the public was made to believe that the plaintiffs could not pay the water tax and water charges due to non-availability of funds and the

high handed action of the defendant, resulted mental and physical stress on the plaintiffs 2 & 3 and thereby, according to the plaintiffs 2 & 3, the defendant is liable to compensate them for the loss caused to them towards the loss of reputation, mental agony and for damages in getting water from outside and accordingly, estimated the damages prayed for by them at Rs.1,00,000/-.

9. Qua the abovesaid case of the plaintiffs as regards the claim of damages, the defendant in the written statement has in toto disputed the entire allegations put forth by the plaintiffs with reference to the said claim.

10. In the light of the abovesaid position, as rightly found by the Courts below, the plaintiffs 2 & 3 should have placed convincing materials, both oral and documentary, to sustain their claim of entitlement to the damages from the defendant as prayed for by them. As abovenoted, the second plaintiff has been examined as PW1 in support of the plaintiffs' case. On a perusal of the evidence of PW1, it is found that nothing has been averred even in the chief examination of PW1 as regards the claim of damages put forth by the plaintiffs in the plaint. The evidence of PW1 is found to be centring only on the other reliefs prayed for by the plaintiffs from the defendant and accordingly, as determined by the Courts below, nothing has been whispered about the entitlement of the plaintiffs 2 & 3 to seek the damages from the defendant qua their act of disconnection of water supply to the premises of the plaintiffs 2 & 3 as such. Accordingly, it is found that the trial Court, while dealing with the issue of the claim of damages on the part of the plaintiffs, noting that inasmuch as no convincing and proper evidence had been adduced with reference to the same on the part of the plaintiffs and accordingly, dismissed the claim of damages put forth by the plaintiffs.

11. As abovenoted, aggrieved over the abovesaid determination of the trial Court, the plaintiffs 2 & 3 had preferred the first appeal. The first appellate Court also on an appreciation of the materials available on record, particularly, the evidence of PW1, noted that PW1 had not deposed anything with respect to the claim of damages, accordingly, further held that though the plaintiffs would claim that they had been put to great hardship and mental agony and forced to make arrangement to get water from outside due to the disconnection of water supply by the defendant and thereby, their reputation had been lowered down in the mind of public i.e. neighbours and the neighbours were left to the impression that they could not pay the water tax and water charges due to non-availability of funds, accordingly, held that there is no whisper at all at as regards the said case

projected by the plaintiffs in the plaint during the course of the evidence adduced by PW1 and accordingly, determined that when the plaintiffs, through the evidence of PW1, had not made any foundation for making a claim for damages and further more, when the plaintiffs had also not placed any material to support their claim of damages as prayed for, in such view matter, merely from the pleas set out in the plaint, the claim of damages prayed for by the plaintiffs cannot be countenanced particularly, when the same has been repudiated by the defendant and also further noted that as regards the loss of the reputation of the plaintiffs 2 & 3 in the minds of public i.e. neighbours and their necessity to procure water from outside, as regards even the said claim, the plaintiffs having not placed any proof whatsoever and also not chosen to examine the so-called neighbours in whose perception, the reputation of the plaintiffs is stated to have been lower down or damaged, accordingly, concluded that the plaintiffs had miserably failed to establish their claim of damages as prayed for and thereby, dismissed the appeal.

12.As rightly determined by the Courts below, the plaintiffs having laid the suit against the defendant praying for the reliefs including the claim of damages and when the reliefs prayed for by the plaintiffs had been in toto challenged by the defendant and even though the plaintiffs has succeeded in their case as regards the declaration and restoration of water supply found to have been disconnected by the defendant, all the more, as regards the claim of damages, as held by the Courts below, absolutely, there is no material on the part of the plaintiffs pointing to the same, as above noted, PW1 has not whispered anything with reference to the same even during the chief examination and equally, no document has been placed by the plaintiffs pointing to the claim of damages and no independent witness has been examined.

13.In the light of the abovesaid position, when the claim of damages prayed for by the plaintiffs has not been substantiated or buttressed by any material whatsoever, the Courts below are found to be justified in declining the said relief of damages prayed for and the abovesaid determination of the Courts below being found to be arrived at on a proper appreciation of the available materials on record and not suffering from any infirmity or perversity in any manner and also the abovesaid determination being based on the appreciation of the factual matrix, in all, it is found that there is no scope for warranting any interference with reference to the same.

For the reasons aforesated, no substantial question of law is found to be involved in the second appeal. Resultantly, the second appeal is dismissed. Consequently, connected miscellaneous petition, if any, is closed.

Sd/-
Assistant Registrar(CS V)

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Sub Assistant Registrar

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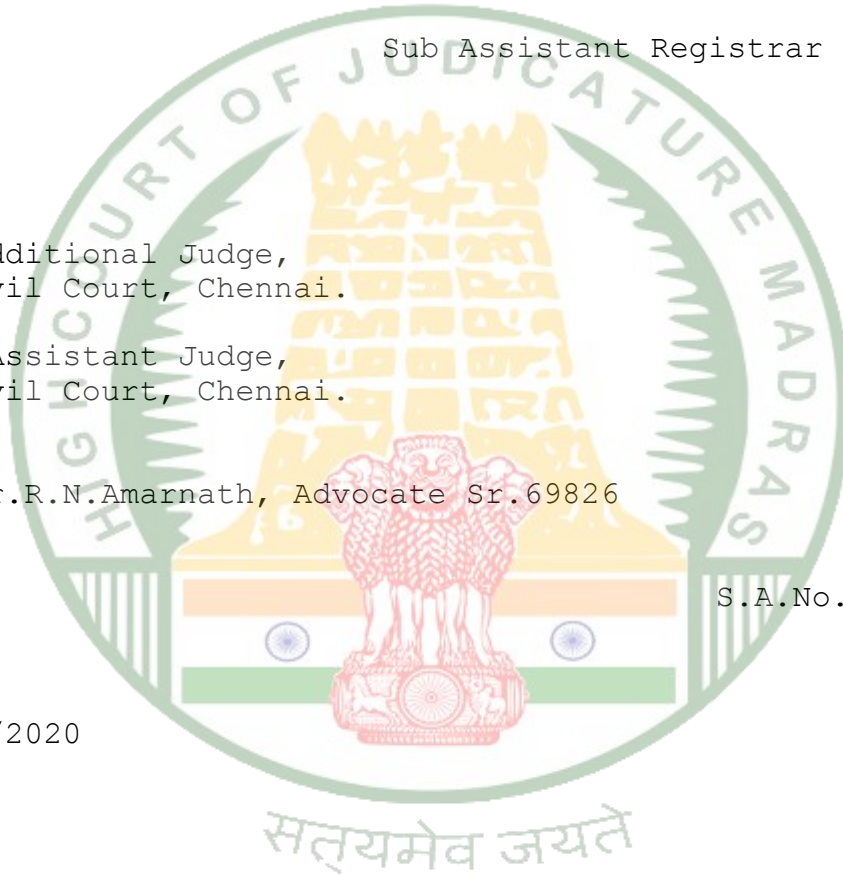
To

- 1.The I Additional Judge,
City Civil Court, Chennai.
- 2.The IV Assistant Judge,
City Civil Court, Chennai.

+1cc ot Mr.R.N.Amarnath, Advocate Sr.69826

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