

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.08.2020

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

C.R.P(PD)No. 1582 of 2018

and

C.M.P.No. 8545 of 2018

Colonel A.Sridharan
Managing Director,
M/s. Covai Property Center (India) Pvt Ltd.,

..Petitioner

Vs.

Squadron Leader V.S.Subramanian(Retired)

..Respondent

Prayer: Civil Revision Petition filed under Section 115 of the Code of Civil Procedure, to set aside the order dated 02.02.2018 in I.A.No. 413 of 2013 in O.S.No. 88 of 2014 on the file of the Court of Principal Sub-Ordinate Judge, Coimbatore.

For Petitioner : Mr.K.R.Arun Shabar

For Respondent : Mr.K.Venkata Subban
for Sarvabhauman Associates

ORDER

The defendant in O.S.No. 88 of 2012, whose application under Order 7 Rule 11(a) of C.P.C was dismissed by the Trial Court, on the ground

that the plaint does disclose a cause of action is on revision.

2. The suit in O.S.No. 88 of 2012 is one filed for damages for defamation. Both the plaintiff and the defendant are ex-servicemen having served in the different wings of the Indian army. The plaintiff is admittedly a resident of Senior Citizen's home, being run by the defendant. According to the plaintiff, the defendant had sent abusive E-mails to him on 27.06.2011 and he had also caused publication of such unwarranted allegations made in abusive manner amongst his co-residents and friends, thereby lowering the image of the plaintiff in the eyes of his friends and the co-residents and they started enquiring the plaintiff about such unwarranted allegations made by the defendant. Considering himself aggrieved, the plaintiff had come up with the suit for damages.

3. Pending suit, the defendant filed the present application in I.A.No. 413 of 2014 seeking rejection of the plaint on the ground that it does not disclose cause of action. I am not going into the other allegations made in the affidavit filed in support of I.A.No. 413 of 2014. The very basis

of the application for the rejection of the plaint is that there is no cause of action as there was no publication in the so called defamatory material. Even assuming that the E-mail contained certain defamatory statement in the absence of such publication, the plaintiff cannot maintain a suit for damages.

4. This application was resisted by the plaintiff, contending that the statement in Paragraph 8 of the plaint would show that there was publication that had affected the image of the plaintiff in the eyes of his close friends and co-occupants of the Senior Citizen's home. This itself would be sufficient for the plaintiff to maintain action for damages and defamation. The learned Trial Judge, upon a consideration of the plaintiff and the averments made therein, concluded that there is some material to show that there is a cause of action for the suit. The learned Trial Judge also pointed out that he cannot look into anything other than the plaint while considering the application under Order 7 Rule 11(a) of C.P.C. On the said conclusions, the learned Trial Judge dismissed the application.

5. I have heard Mr.K.R.Arun Shabari, learned counsel for the petitioner and Mr.K.Venkatasubban, learned counsel, for the Sarvabhauman Associates for the respondent.

6. Mr.K.R.Arun Shabhari, would vehemently contend that there was no cause of action for the suit and the allegations in the Para 8 would not amount to a cause of action for damages for defamation. Pointing out that the plaintiff has not disclosed the details of his friends and co-occupants to whom the publication was made and he has not stated in what manner was his reputation damaged. Therefore, according to the learned counsel, the Trial Court was wrong in dismissing the application,

7. Contending contra, Mr. K.Venkatasubban, learned counsel for the respondent would submit that at this stage namely, while dealing with an application under Order 7 Rule 11(a) of C.P.C, the Court has to look in to the plaint only and nothing else. If the plaint contains a cause of action or if the allegations in the plaint make out a cause of action, then the Court cannot reject the plaint under Order 7 Rule 11 (a) of the Code of Civil

Procedure. He would also take me to the averments in the Para 8 of the plaint and point out the essential requirement namely, the existence of the publication of the defamatory material has been pleaded that itself would constitute cause of action to the suit. The other details namely the particulars of friends and co-residents need not be pleaded as those details would be evidence in a action for defamation. I have considered the rival submissions.

8. No doubt, the averments in para 8 of the plaint are very sketchy and there is only a general statement that the defendant has disclosed the defamatory statements made by him in the E-mail to some of the friends of the plaintiff and co-residents in the Senior Citizen's home. The plaint does not disclose finer details of such communication and the effect of such communication. The essential requirement for suit for damages based on defamation is the fact that the defamatory statement was made and it was published to persons known to the plaintiff, resulting in a damage to the reputation of the plaintiff in their eyes. I think these essential facts are pleaded in Para 8 of the plaint. Once it is found that the essential facts are

pleaded, the Court cannot exercise power under Order 7 Rule 11(a) of C.P.C to reject the plaint. I am of the considered opinion that the trial Court was justified in dismissing the application and its order does not require interference under Art.227 of the Constitution of India. Hence, this Civil Revision Petition fails and it is accordingly dismissed. Consequently, connected miscellaneous petition is closed. No costs.

20.08.2020

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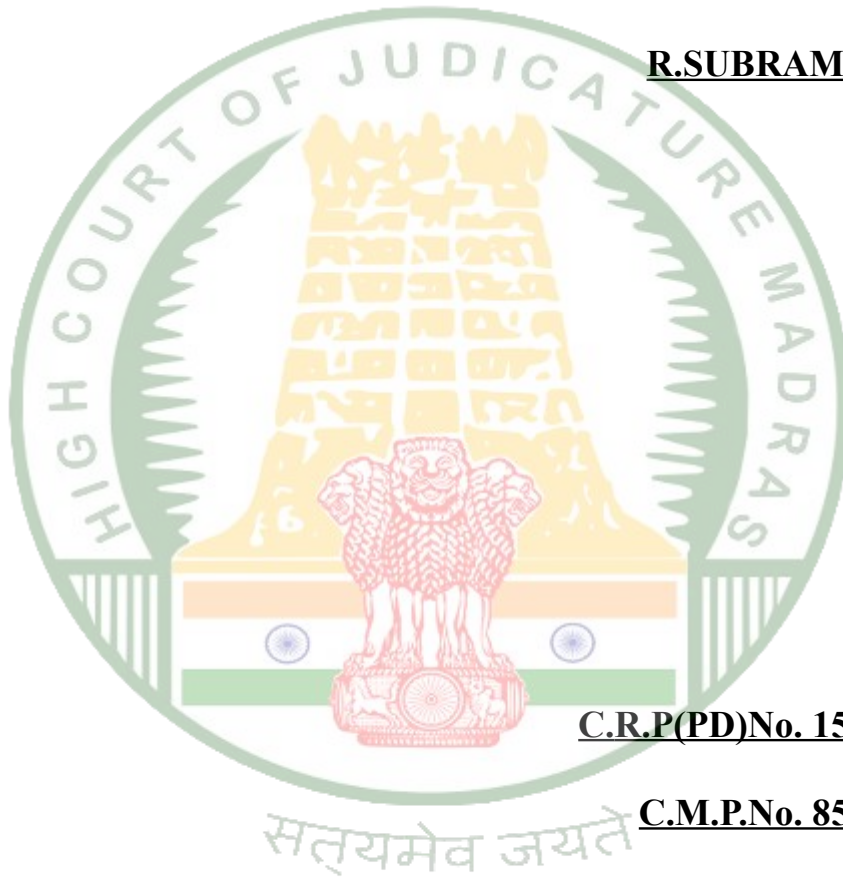
The Principal Sub-Ordinate Judge,
Coimbatore.



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R.SUBRAMANIAN, J.

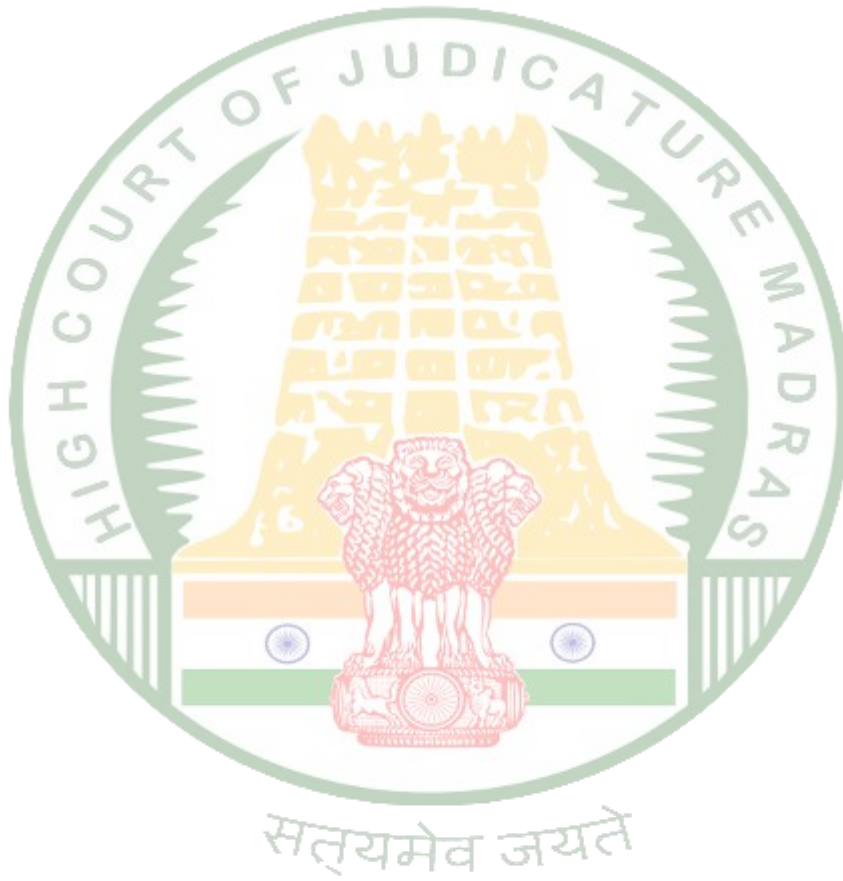
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