



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.10.2021

CORAM:

THE HONOURABLE MS.JUSTICE P.T.ASHA

A.S.No.161 of 2013

The District Sports Officer,
Sports Development Authority of Tamil Nadu,
Dharmapuri,
Dharmapuri District.

...2nd Defendant/Appellant

Vs

1.Raji
2.R.Sumathi
3.The Administrator,
Sri Viswabharathi Matric School,
Duraismy Naidu Street,
Dharmapuri Town,
Dharmapuri Taluk.

...Plaintiffs

4.The Chief Educational Officer,
Dharmapuri.

5.The Tamil Nadu State Represented
by it's the District Collector,
Dharmapuri District.

6.The Manager,
District Development Corporation,
Sports Department,
Dharmapuri.

...Defendants/Respondents

PRAYER Appeal Suit filed under Section 96 of the Code of Civil Procedure to set aside the Judgement and decree passed by the learned Principal District Court, Dharmapuri in O.S.No.24 of 2009 dated 30.06.2011.

For Appellant : Mr.Azhagu Raman

For Respondents: Mr.S.Kolandasamy for R1 & 2.

[Respondents 3 to 6 are not necessary parties. No relief claimed against them-they are given up.]



JUDGMENT

The 2nd defendant is the appellant before this Court challenging the Judgment and decree passed by the learned Principal District Judge, Dharmapuri in O.S.No.24 of 2009 dated 30.06.2011 in and by which the Learned Judge has decreed the suit directing the 2nd defendant to pay a sum of Rs.2,50,000/- to the plaintiff together with the interest at 9% per annum from the date of the suit till the date of the decree and thereafter at 7% from the date of the decree till the date of realization. The brief facts which are necessary to dispose of this appeal is herein below narrated and the parties are referred to the same rank as before the Trial Court.

1.The plaintiffs had filed the above suit claiming a compensation of a sum of Rs.15,00,000/- for the death of their son.

2.It is the case of the plaintiff that their son was studying in the 9th standard in 1st defendant's school and staying in the hostel attached to the school. On 11.05.2005, after completing the annual exam, the 1st defendant had permitted the said Karthick to learn swimming in the 2nd defendant's swimming pool. It appears that the 2nd defendant did not supervise the boy while he was swimming. As the result of this negligence, the said Karthick appears to have died by drowning in the swimming pool. Had there been proper supervision which is mandatory, the death not have happened. The plaintiff has lost their only son because of the negligence on the part of the defendant.

3.The plaintiff contended that the 1st defendant was under the control of the 3rd defendant, further the 2nd defendant was under the control of the 5th defendant. Therefore the plaintiffs have impleaded respondents 3 to 5 as parties in the above suit. The plaintiffs would contend that they had issued a legal notice dated 14.05.2005 calling upon defendant's 1 and 2 to pay compensation, however there was no positive response on the side of the defendants and the 1st defendant had issued a legal notice denying their liability.

4.The 1st defendant had filed a written statement inter-alia denying the claim of the plaintiffs and said that there was no permission given by the 1st defendant to the deceased Karthick to use the 2nd defendant's swimming pool. They would submit that they are in no way responsible for the death, as the swimming pool is situated nearly 4km away from the 1st defendant's school. The 1st defendant would further submit that on 11.05.2005 by midday all the students had vacated their hostel and their signatures had been obtained by the authorities. The holiday had been declared from 11.05.2005 to



17.05.2005 and the school was slated to reopen on 18.05.2005. Therefore they would submit that they are not responsible for the death of the said Karthick. They also submitted that they had got to learn that the Karthick had died while learning swimming in the 2nd defendant's swimming pool. They would state that the 1st defendant is an unnecessary party to the proceedings as they are not liable for the death of the said Karthick and the suit may be dismissed against them.

5.The 2nd defendant had filed a written statement inter-alia denying the claim against them. The 2nd defendant would deny that the said Karthick was studying in the 1st defendant's school and that he was very studious child in following the rules and regulations of the school. They would further submit that the 2nd defendant had admitted the students into the swimming pool, after receiving a fee of Rs.10/- per hour. Before permitting the children to swim they had enquired, whether the children knew swimming and only after ascertaining the same, children were permitted to swim. The 2nd defendant would submit that, contrary to the instruction, the deceased Karthick was swimming in the deep and therefore the death was caused due to the negligence of the deceased Karthick.

6.The learned District Judge on perusing the pleadings had framed the following issues:-

1)Whether the plaintiff is entitled to claim compensation of Rs.15,00,000/- from the defendants 1 to 5?

2)Whether the deceased Karthick go to swimming pool for taking training with permission of 1st defendant?

3)Is it true to say that the deceased Karthick went to his house on 11.05.2005 at about 2.00 O'clock?

4)Whether the plaintiffs are not entitled to get compensation from 1st defendant is true?

5)Whether the suit is bad for non joinder of necessary parties?

6)Is it true to say that the death would be caused due to negligent on part of the deceased Karthick?

7)Is it true to say that the plaintiffs can not seek any relief against the defendants 2 to 5?

8)Whether the defendants are entitled to get compensatory cost from plaintiffs?

9)Whether the defendants 2 to 5 are unnecessary parties to the suit?

10)To what any other reliefs the plaintiff is entitled?

7.The parties had gone to the Trial on the basis of the above issue. The 1st plaintiff had examined himself as PW1 and marked Exhibits A1 to A14. On the side of the defendants, three of them were examined as DW1 to DW3 and Exhibits B1 to



liable to compensate the plaintiffs is correct. The Trial Court has framed a separate issue recording the negligence and has elaborately considered the same and answered the issue against the 2nd defendant. The point for consideration is answered against the appellant.

13. The learned Principal District Judge has elaborately considered the evidence on record before passing the decree and no exception can be taken to the same.

In fine, the first appeal is dismissed and the Judgment and decree passed by the learned Principal District Judge, Dharmapuri in O.S.No.24 of 2009 dated 30.06.2011 is confirmed.

Sd/-
Assistant Registrar(CS-I)

//True copy//

Sub Assistant Registrar

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To

1. The Administrator,
Sri Viswabharathi Matric School,
Duraishamy Naidu Street,
Dharmapuri Town,
Dharmapuri Taluk.
2. The Chief Educational Officer,
Dharmapuri.
3. The Tamil Nadu State Represented
by it's the District Collector,
Dharmapuri District.
4. The Manager,
District Development Corporation,
Sports Department,
Dharmapuri.

+1cc to Mr.Azhagu Raman, Advocate SR.No.52111

A.S.No.161 of 2013

AD(CO)
GMY(26/11/2021)