



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 25.11.2021

CORAM

THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

S.A(MD)No.248 of 2017

WEB COPY

Dr.Arul Prakasam

... Appellant/Appellant/Plaintiff

Vs.

P.Palkani

... Respondent/ Respondent/Defendant

Prayer: Second Appeal filed under Section 100 of the Code of Civil Procedure against the judgment and decree, dated 19.02.2016 passed in A.S.No.23 of 2012, on the file of the II Additional District Court, Thoothukudi, confirming the judgment and decree dated 18.07.2012 passed in O.S.No.172 of 2007 on the file of the Subordinate Court, Thoothukudi.

For Appellant : Mr.C.Dhanaseelan

For Respondent : Mr.V.Balasubramaniam

JUDGMENT

The appeal is directed against the Judgment and Decree passed in A.S.No.23 of 2012, by the learned II Additional District Judge , Thoothukudi, in confirming the Judgment and Decree in O.S.No. O.S.No.172 of 2007, passed by the learned Subordinate Judge, Thoothukudi.

2. For the sake of convenience, the parties are referred to as, as described before the trial Court.

3.The case of the plaintiff, as per the averments made in the plaint, in short, is as follows :

The plaintiff had filed a suit against the defendant in O.S.No.75 of 2005, on the file of the District Munsif Court, Sathankulam, seeking injunction. The plaintiff had filed an I.A.No.335 of 2005 for restoration of the suit, which was dismissed for default. The defendant filed a counter for the same on 29.06.2007, in which, the defendant levelled certain allegations, which are scandalous and defamatory. The defendant alleged in the counter in I.A.No.335 of 2006 that the plaintiff is doing real estate and money lending business and also performs 'Katta Panchayat' regarding the property dispute, who has got money power and muscle power and as predominantly in the said area. The allegations are totally irrelevant to the issues in the suit or the petition. Thereby, the defendant spread derogatory and defamatory to the Judge, O.T. Clerk, Advocate Clerks and other connected with



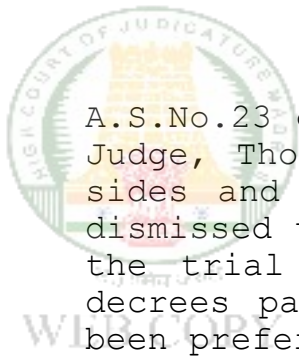
Court work and general public. The plaintiff was working as Headmaster in a Higher Secondary School and had obtained Doctorate in Tamil. The defendant, by filing such counter, spreading malicious allegations against the plaintiff and therefore, the plaintiff had been gravely injured in his credit and reputation and had been brought to odium and contempt in the eyes of the public and thereby suffered pain and humiliation. Quantifying the damages claimed by him at Rs. 10,00,000/-, the plaintiff sought a decree of court in his favour for the said sum. The plaintiff had issued a Lawyer's Notice, dated 26.09.2007, demanding the above said sum. The defendant received the same on 27.09.2007, but he had not chosen to pay the amount. On account of the financial constraints, the plaintiff restricts his claim to Rs.2,00,000/- (Rupees Two Lakh only). Hence, the suit was filed for recovery of damages of Rs.2,00,000/- (Rupees Two Lakh only) from the defendant.

4.The defendant filed a written statement contending *interalia* that the averments made in the plaint are false. The plaintiff is a native of Sankarankudierppu Village and was working as Headmaster and retired from service. He is at present residing at Tuticorin. The plaintiff filed O.S.No.75 of 2005, before the District Munsif Court, Sattankulam, for permanent injunction and for that case, he used to visit his native place and because of all those things, the plaintiff wanted to drag the defendant to Tuticorin and only in order to drag this defendant to Tuticorin, the plaintiff filed this suit for damages without any legal basis. The counter filed in I.A.No.334 of 2005 will not amount to publication. The representation, by way of counter made by the defendant in legal proceedings, will not amount to defamation. The suit schedule property in O.S.No.75 of 2005 is situated adjacent to the property of the defendant. The plaintiff threatened and compelled the defendant to sell her property to the plaintiff and for that purpose, the plaintiff filed the suit in O.S.No.75 of 2005. Now, by filing this suit, the plaintiff is harassing the defendant in order to blackmail the defendant to sell her property to the plaintiff. The suit is barred by limitation and there is no cause of action for the suit and therefore, prayed for dismissal of the suit.

5. Before the trial Court, on the side of the plaintiff, the plaintiff examined himself as P.W.1, one S.Dasan and Rajan were examined as P.W.2 and P.W.3 and Exs.A1 to A25 were marked. On the side of the defendant, the defendant examined herself as D.W.1 and Exs.B.1 to B.5 were marked.

6. On the basis of the rival pleadings on either side, the trial Court, after framing necessary issues and after evaluating both the oral and documentary evidence, has dismissed the suit in favour of the respondent / defendant.

7. Aggrieved by the Judgment and decree passed by the trial Court, the plaintiff, as appellant, had filed an Appeal Suit in



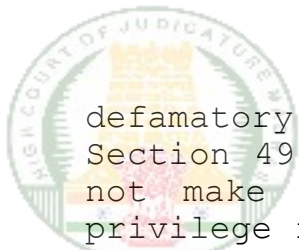
A.S.No.23 of 2012 on the file of the learned II Additional District Judge, Thoothukudi. The first appellate Court, after hearing both sides and upon reappraising the evidence available on record, had dismissed the appeal and confirmed the Judgment and decree passed by the trial Court. Challenging the said concurrent Judgments and decrees passed by the Courts below, the present second appeal has been preferred at the instance of the plaintiff, as appellant.

8. Heard the learned counsel for the appellant / plaintiff and the learned counsel for the respondent and also perused the materials available on record.

9.The learned counsel for the appellant/plaintiff would submit that the Courts below failed to note that the contention of the defendant made against the plaintiff in his counter filed in I.A.No.335 of 2005 in O.S.No.75 of 2005, on the file of the District Munsif Court, Sathankulam, that the plaintiff was doing 'Katta Panchayat' is per se defamatory and intended to discredit the integrity of the appellant. He further submits that all the disputes arising out from his native village, in the cross-examination, the plaintiff has stated that adducing any evidence to substantiate the allegation that the plaintiff was doing 'Katta Panchayat' is erroneous.

10.He further submits that the Courts below failed to note that the allegation of doing real-estate business and money lending business need to be taken into consideration in the said context in which, it was used against the plaintiff, who is a well known Headmaster in Thoothukudi and the Courts below failed to give due importance to the status of the plaintiff. The defendant as a party to the suit, has no privilege to defame the plaintiff by false imputation in her counter, filed against I.A.No.335 of 2005 in O.S.No.75 of 2005, especially the said petition is for condonation of delay only. The trial Court has wrongly held that there is no proof that the defamatory statements has lowered the status of the appellant in the society, even though it has correctly held that the disputed settlement made in the counter filed by the defendant in the court would amounts to publication, by relying on the Judgment of this Court in **Thangavelu Chettiar Vs. Ponnammal** reported in **(AIR 1966 Madras 363)**.

11. Adding further, the learned counsel for the appellant / plaintiff would submit that the trial Court has given an erroneous finding that the statement has been made only to protect her interest in O.S.No.75 of 2005 is not correct, especially when the suit is for resolving a boundary dispute and the I.A.No.335 of 2007 is for condonation of delay. The title, possession and enjoyment of the respective parties are the relevant facts to the case. The statement made by the defendant that the plaintiff is doing 'Katta Panchyat', 'Real-estate business' and 'Money lending business' are



defamatory statements are not falling under exception No.5 and 9 of Section 499 of the Indian Penal Code. The parties to the suit shall not make use of the Court of law and has no vested right or privilege for abusing another party by way of pleading and put it in record of the Court. The Code of Civil Procedure is also having a provision in Order 6 Rule 16(a) for striking out such pleadings. He further submits that the defendant deserves to be mended for her jolly in making unnecessary, scandalous defamatory statements and the professional ethics of Advocates also requires them whether his client can substantiate such allegations made into the pleadings are not at all considered by this Court and prayed for Rs.2,00,000/- (Rupees Two Lakh only) as compensation.

12.In the Memorandum of Second Appeal, the plaintiff / appellant sought to raise the following Substantial Questions of Law.

"1. Whether the Courts below are legally correct in holding that the marked Ex.A1 statements, made by the respondent is protected under the Doctrine of Absolute Privilege?

2. When the suit is for resolving a boundary dispute, whether the courts below are legally correct in applying the doctrine of absolute privilege with respect to Ex.A1, which is beyond the nature and scope of all the relevant issues to be decided in the suit?

3. Whether the courts below have entered into a perverse finding in holding that the plaintiff has not proved that the statement marked as Ex.A1 has not lowered his status?

4.When the respondent did not prove by citing single incident that the appellant is doing "Katta Panchayathu" whether he lower appelalte court has entered into a perverse finding in holding that the statement in Ex.A1 is not perverse defamatory?

5. Whether the courts below have failed to consider that evidentiary value of Ex.A4 to A6 to A24 on the status of the appellant in order to consider the seriousness of the libelous statement marked as Ex.A1.

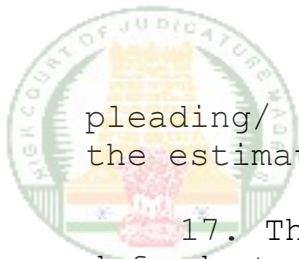
13.This Court paid its anxious consideration to the rival submissions made and also carefully perused the materials placed on



14. On perusal of the records, it is seen that the plaintiff had filed a suit, as against the defendant in O.S.No.75 of 2005, on the file of the District Munsif Court, Sathankulam, seeking injunction. The plaintiff had filed an interim application in I.A.No.335 of 2005 for restoration of the suit, which was dismissed for default. According to the plaintiff, in the counter filed I.A.No.335 of 2005, the defendant levelled various allegations, against the plaintiff, which are scandalous and defamatory. Quantifying the damages, the plaintiff had issued a Lawyer's Notice, dated 26.09.2007, demanding Rs.2,00,000/-. But, according to the defendant, to drag on the defendant to Tuticorin in the pending civil suit proceedings, the plaintiff filed this suit for damages, without any legal basis. The representation by way of counter made by the defendant in legal proceedings will not amount to defamation. Now by filing this suit, the plaintiff is harassing the defendant only to blackmail the defendant to sell her property to the plaintiff.

15. The only question, which arises for consideration in this appeal is whether the defendant has levelled allegations, under Ex.A1, against the plaintiff, which are scandalous and defamatory and for quantifying such damages, the claim of Rs.2,00,000/- made by the plaintiff, as against the defendant is sustainable in the eye of law. Ex.A1 is the counter filed by the defendant in I.A.No.335 of 2007 in O.S.No.75 of 2005, on the file of the District Munsif Court, Sattavnkulam. According to the defendant, by filing such counter, spreading malicious allegations against the plaintiff and therefore, the plaintiff had been gravely injured in his credit and reputation and had been brought to odium and contempt in the eyes of the public and thereby suffered pain and humiliation.

16. No doubt, the counter filed in the Interlocutory Application is not a public document. The contention of the plaintiff that all the persons and the advocates present in the Court, during the cross examination, may spread the news against the plaintiff, cannot be accepted for the simple reasons that the counter will be scrutinised only by the person, who are connected with this issue and not others. It is between the Judge and the counsels on either side and the parties to the proceedings. The plaintiff has not examined any advocate or the advocate clerk or any other person, who is having access to the Court or any other general public, who had come to the knowledge of the said defamatory statement. A defamatory statement is one, which has a tendency to injure the reputation of the person to whom it refers; which tends that is to say, to lower him in the estimation of right-thinking members of the society generally and in particular to cause him to be regarded with feelings of hatred, contempt, ridicule, fear, dislike or disesteem. The statement is judged by the standard of an ordinary, right-thinking member of the society. In the instant case, it can be inferred that due to the assertions in the



pleading/ evidence referred above, the complainant was lowered in the estimation of right-thinking member of the society generally.

17. The words used in the pleadings or in the affidavit by the defendant in the course of the judicial proceedings are privileged and therefore, cannot be made basis for any defamatory action by the 'Doctrine of Judicial Privilege'. In the Full Bench Judgment of the Hon'ble Supreme Court in **Chunni Lal Vs. Narsingh Das** reported in **(1918 All 69 (FB))**, it has been held that in the course of judicial proceedings were not actionable on the ground of 'Absolute Privilege'. Further, in an yet another Judgment, the Hon'ble Supreme Court in **Ali Mohammad Vs. Manna Lal**, reported in **(1929 All 972)**, has held that the 'Absolute Privilege' attached to the statement on the principle that there is an absolute privilege for parties, witnesses, counsel, jury or Judges in regard to words spoken in office, and this privilege extends to the statements in the affidavit made by the parties or witnesses.

18. At this juncture, it is worthwhile to refer Section 499 of the Indian Penal Code, which reads as follows :

499. Defamation –

Whoever, by words either spoken or intended to be read, or by signs or by visible representations, makes or publishes any imputation concerning any person intending to harm, or knowing or having reason to believe that such imputation will harm, the reputation of such person, is said, except in the cases hereinafter expected, to defame that person.

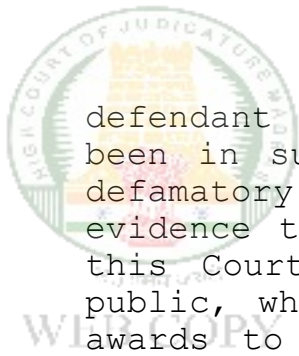
Explanation 1 –It may amount to defamation to impute anything to a deceased person, if the imputation would harm the reputation of that person if living, and is intended to be hurtful to the feelings of his family or other near relatives.

Explanation 2 –It may amount to defamation to make an imputation concerning a company or an association or collection of persons as such.

Explanation 3 –An imputation in the form of an alternative or expressed ironically, may amount to defamation.

Explanation 4 –No imputation is said to harm a person's reputation, unless that imputation directly or indirectly, in the estimation of others, lowers the moral or intellectual character of that person, or lowers the character of that person in respect of his caste or of his calling, or lowers the credit of that person, or causes it to be believed that the body of that person is in a loathsome state, or in a state generally considered as disgraceful.

19. That being the case, the statement made by the



defendant in a written statement or counter, that too, which has been in support of his case, are not to be considered to be a defamatory statement. The plaintiff herein has not let in any evidence to disprove the averments made in the counter. No doubt, this Court agrees that the plaintiff has got reputation in the public, wherein, he has been put into social activities and other awards to him. Whether that particular statement made in the counter filed by the defendant, is a defamatory statement and it has been published to a third person is not proved by the plaintiff. In the absence of any such proof to show that the counter filed by the defendant has been circulated outside the Court Hall or the general public, this Court is of the view that both the Courts below have absolutely and rightly come to the conclusion that the said statement would not amount to defamation.

20. In the considered opinion of this Court that unless and until, the same is proved to be a defamatory statement, the plaintiff herein cannot claim to strike out such pleading. When a specific plea has not been made out by the plaintiff to strike out the same, the Court, Suo-motu, cannot do so. Further, the plaintiff has not brought in any evidence to show that there was only a boundary dispute, when the allegations are made in the said counter runs to various other averments. The questions of law formulated in the Memorandum of Appeal also do not arise for determination in this Second Appeal, which are liable to be dismissed in limine. That being the case, this Court is not inclined to interfere with the concurrent findings of the Court below and also there is no question of law much less substantial question of law is involved in this appeal. The Judgment relied on by the plaintiff reported in **(AIR 1966 Madras 363)** (cited supra) is not applicable to the facts of the present case.

21. In fine, the Second Appeal is dismissed, confirming the Judgment and Decree passed in A.S.No.23 of 2012, by the learned II Additional District Judge, Thoothukudi, in confirming the Judgment and Decree in O.S.No.172 of 2007, passed by the learned Subordinate Judge, Thoothukudi. However, there shall be no order as to costs.

Sd/-

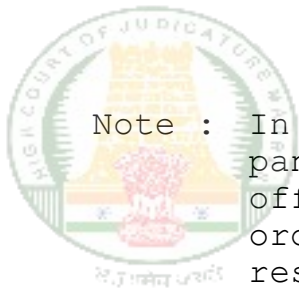
Assistant Registrar (CS III)

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Sub Assistant Registrar (CS)

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Note : In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

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To

1.The II Additional District Judge,
Thoothukudi,

2.The Subordinate Judge,
Thoothukudi,

Copy to

The Record Keeper,
V.R. Section,
Madurai Bench of Madras High Court,
Madurai.

S.A(MD) No.248 of 2017
25.11.2021

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