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IN THE HIGH COURT OF JUDICATURE AT MADRAS
RESERVED ON : 28.10.2021
PRONOUNCED ON : 31.01.2022

CORAM:
THE HONOURABLE MR.JUSTICE A.A.NAKKIRAN

A.S.No.147 of 2010
and
M.P.No.1 of 2010
(Through Video Conferencing)

Vatsala ...Appellant/Appellant
Vs
1.Dwarakaivasan
2.Dr.Panneerselvi ...Respondents/Defendants

Prayer:- This Appeal Suit has been filed, under Order 44 Rule 1 read with Section 96 of CPC, against the judgment and decree, dated 12.12.2008 passed in O.S.No.3 of 2008 by the Additional District-cum-Sessions Court, (FTC No.II) Ranipet, Vellore.

For Appellant :Mr.V.K.Rajagopalan

For Respondents:No appearance for R1
Dispensed with for R2
vide Court order dated
15.11.2010 made in
M.P. No. 2/2010.

JUDGMENT

This First Appeal is filed by the appellant challenging the judgment and decree, dated 12.12.2008 passed in O.S.No.3 of 2008 by the Additional District-cum-Sessions Court, (FTC No.II) Ranipet, Vellore. For the sake of convenience, the parties herein after are referred to as they were described before the Trial Court.

2. The suit was filed for directing the respondents/defendants to pay a sum of Rs.10,00,000/- towards damages, in order to take personal remedy against the respondents/defendants in default of paying the decree amount, create a charge over the 'A' and 'B' schedule properties in respect of the amount payable by them as per the decree and to pay the cost of the suit.



3. The averments made in the plaint are, in brief, as follows:-

The appellant married the first respondent on 06.09.1992 at Arakkonam and lived with him for 105 days. She impregnated and thereafter, the first respondent and his family members ill-treated her for Seervarisai. On 10.12.1992, the first respondent kicked the appellant at her right abdomen while she was 3 months pregnant, as a result of which, she was aborted in his house. The 2nd respondent, being the family doctor of the 1st respondent, collusively created false entries in the Government Hospital Records, as if the appellant delivered a full term female child on 11.12.1992. Thereafter, the 1st respondent had filed a petition in HMOP.No.2 of 1993 before the Sub-Judge, Ranipet, for Annulment of marriage and the same was dismissed by the learned Judge on 15.10.1999. Due to the illegal acts of the respondents, the appellant was put to severe mental agony. The 1st respondent had filed an appeal in H.M.C.M.A.No.3 of 2002 before the District Court, Vellore and the same was dismissed on 21.07.2003. He also filed a Second Appeal before this Court in CMSA.No.49 of 2003 and the same was also dismissed on 28.11.2003. Hence, the plaintiff was constrained to file the suit for the abovesaid reliefs.

4. The averments made in the written statement are, in brief, as follows:

The plaintiff and the first defendant lived together only for 95 days and not for 105 days. He further denied that the family members of the 1st defendant started abusing the plaintiff for not bringing the Kaarthigai Seervarisai and tortured her and also kicked the plaintiff at her right side of the abdomen resulting in abortion. The plaintiff was pregnant even before the marriage through someone and on 10.12.1992, the plaintiff developed labour pain and she delivered a full-term female baby on 11.12.1992. He further denied the statement that the plaintiff colluded with Dr.Panneer Selvi and connived and created the hospital records. The plaintiff with the malafide intention of grabbing money has filed this suit. The defendant has never committed any illegal act nor he has caused any mental agony to the plaintiff. Hence, he prays to dismiss this suit.

5. Based on the aforesaid pleadings, the learned District-cum- Sessions Court, (FTC.No.II) Ranipet, Vellore, had framed issues and tried the suit. During the Trial, on the side of the plaintiff, two witnesses were examined as



PW1 and PW2 and 12 exhibits were marked as Ex.A.1 to Ex.A.12. On the side of the defendants, the first defendant was examined as D.W.1 and 5 exhibits were marked as Ex.B1 to Ex.B5.

6. The learned District-cum-Sessions Court, (FTC.No.II) Ranipet, Vellore, had dismissed the suit. Aggrieved by the same, the plaintiff had filed the present Appeal.

7. Heard Mr.V.K.Rajagopalan, the learned counsel for the appellant.

8. The learned counsel for the appellant has submitted that the trial court failed to note that both the appeal and second appeal preferred by the 1st respondent were dismissed, confirming the order of the Sub-Court, Ranipet. It has also failed to note that the 1st respondent made allegations of adultery and questioned about her chastity, causing mental agony to her. He further submitted that instead of recording the abortion entry in the Government Records at Arakkonam, the 1st respondent colluded with the 2nd respondent and made a false entry that she gave birth to a fully grown up female child in order to file a petition before the court to annul his marriage with the appellant thereby ruined her life. All the allegations made against her were negatived by the Sub-Court to Supreme Court. Hence, the appellant/plaintiff claims a sum of Rs.10,00,000/- as damages from the respondents 1 and 2 and therefore, prays to allow this appeal.

9. This Court considered the submissions of the learned counsel appearing for the appellant and perused the materials on record.

10. On going through the materials available on record, the main contention of the appellant is that the 1st respondent colluded with the 2nd respondent and created forged documents and filed HMOP.No.2 of 1993 to obtain a decree of divorce, by making false allegations against her, due to which, her reputation was spoiled and her life was ruined. For that, she is claiming a sum of Rs.10 lakhs from both the respondents 1 and 2.

11. In this case, the date of the marriage is not disputed. Due to the acts of the defendants, the appellant/plaintiff was put to some mental agony, physical restless apart from financial strain. The appellant in her



reply dated 24.12.1992 never made any allegation that only because of the kick of her husband on her abdomen, she got aborted. Furthermore, one final report was filed, in which it is stated that the plaintiff has preferred a complaint before the Magistrate, against which, no appeal has been preferred.

12. On perusal of the records, it is seen that in the order made in CRP.No.2328 of 2002, it was mentioned that she was suffering along with 11 years old female child and till date this order was not expunged or modified or set aside.

13. Further, in order to obtain the claim of damages, the appellant has to prove the following four conditions,

- a) The plaintiff was prosecuted by the defendant;
- b) The prosecution ended in the plaintiff's favour;
- c) The defendant acted without reasonable and probable cause and
- d) The defendant was actuated by malice.

14. The Suit was filed with some materials stating that it was upto the Court to accept it or reject it. But in this case, the Trial Court has observed that a prima facie case has been made out and also the first respondent has filed the case with good intention. In Ex.A7, the learned HMOP Judge, has decided the case on various factors on merits. For so many reasons, the Courts may believe or disbelieve the records and evidence produced before them. In this case, the 1st respondent acted without a reasonable cause, is not proved.

15. Therefore, the findings of the Trial Court appear to be proper and do not require any reconsideration by this Court.

16. In fine, this Appeal Suit is dismissed. Consequently, the connected miscellaneous petition is closed. No costs.

s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

gv



To

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1.The Additional District-cum-Sessions Court,
(FTC No.II) Ranipet, Vellore.

2.The Record Keeper, V.R Section,
Madras High Court.

+1 CC to Mr.V.K.Rajagopalan, Advocate sr 5448.

A.S.No.147 of 2010
and
M.P.No.1 of 2010

KJ(CO)
SP(18/05/2022)