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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.12.2023

CORAM

THE HON'BLE Mr.JUSTICE **C.KUMARAPPAN**

S.A.No.1538 of 2008

1. Kaveryammal(Died)

2. Chinnammal

3. Shanmugam

4. Subbulakshmi

5. Rajeswari

6. Umamaheswari

7. Mouleeswaran

... Appellants

(Appellant 4 to 7 brought on record as LRs of the deceased first appellant viz Kaveriammal vide Court order dated 23.12.2021 made in C.M.P.Nos19708,19712 and 19713 of 2021 by JNBJ)

- Vs -

1.Munusamy

2. Seetha(deceased)

3.Jaya

4. Radhamani ... Respondents

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Second Appeal is filed under Section 100 of the Civil Procedure Code against the Judgment and decree dated 23.08.2007 in A.S.No.3 of 2006 on the file of the Court of Additional District Court (Fast Track Court No.2) Gobichettipalayam reversing the Judgment and decree made in O.S.No.4 of 2001 on the file of the First Additional Sub Court, Gobichettipalayam.

For Appellants : Mrs G. Sumitra for Mr.R.T.Duraisamy
For Respondents 1,3 and 4 : Mr. B. Ramkumar
for M/s M.Narayanaswamy
R2 : died

JUDGMENT

The instant second appeal has been filed at the instance of the plaintiffs. The respondents are the defendants before the Trial Court.

2. For the sake of convenience, the parties will be referred according to their litigative status before the Trial Court.

3. The facts leading to filing of the suit are as follows:-

There was some issue in respect of the immovable property between the plaintiffs and the defendants. There were some previous suits between the plaintiffs and the defendants. According to the plaintiffs, taking vengeance against their success in the suits and also taking the vengeance against the

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plaintiffs' status in the society, the defendants had shown animosity and on 04.07.2000, the defendants used filthy language and also by gesture, the first defendant committed obscenity thereby the plaintiffs were been humiliated which had caused a mental agony. Therefore, they had come forward with the suit claiming a sum of Rs.1,25,000/ towards damages.

4.The said suit was resisted by the defendants by disputing all the allegations. According to them, the plaintiffs are influential persons in the society and taking advantage of the same and to grab the property of the defendants, the plaintiffs filed such a false suit.

5. Before the Trial Court, the plaintiffs examined three witnesses as P.W.1 to P.W.3 and 11 documents were marked as Ex.A1 to A11. On behalf of the defendants, neither any document was filed nor any witness was examined. The Trial Court, after having considered the oral and documentary evidence of the plaintiffs, decreed the suit granting damages to the tune of Rs.75,000/- to the plaintiffs. Aggrieved by the Judgment of the Trial Court, the defendants preferred an appeal before the First Appellate Court. The First Appellate Court, on the finding that there was no criminal complaint filed in

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respect of the incident disbelieved the case of the plaintiffs and allowed the appeal, thereby dismissed the suit. Challenging the Judgment of the First Appellate Court, the plaintiffs are before this Court.

6. During the pendency of this appeal, the first appellant died and her legal heirs were brought on record. The second respondent also died during the pendency of this appeal and her legal heirs were already on record as R1 and R4. The memo filed was also recorded.

7. The learned counsel for the appellants vehemently submits that the nature of incident has been proved through the witnesses, that the proof before the Civil Court is only on preponderance of probabilities and that by examining P.W.1 to P.W.3, the plaintiffs proved the occurrence as well as mental agony and humiliation suffered by the plaintiffs.

8. However, the learned counsel for the respondents/defendants would contend that there was a long delay between the alleged occurrence and the filing of the suit and that no police complaint was filed. Therefore, the case

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put fourth by the plaintiffs absolutely lacks spontaneity. Therefore, it is too hard to believe the case of the plaintiffs. Hence, the findings recorded by the First Appellate Court are liable to be confirmed.

8.This Court has given its anxious consideration to either side submissions.

9. Now the sum and substance of the submissions of the counsel for the appellant is that the proof before the Civil Court is only on preponderance of probabilities and by examining P.W.1 to P.W.3, the case has been proved.

10. This Court has perused the evidence of the P.W.1 to P.W.3 wherein this Court finds that there are certain contradictions between the witnesses in respect of the nature of narration. It is true that the proof before the Civil Court is only on preponderance of probabilities and that doesn't mean that whatever the plaintiffs say has to be accepted without looking into the other circumstances.

11. Here, the circumstances, which impelled the First Appellate Court

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to disbelieve the case of the plaintiffs is the long delay between the occurrence and the filing of the suit.

12. This Court has further gone into the issue in depth and while doing so it is found that the witnesses were examined during December 2005 in nearly after a period of 5 years from the date of incident. Therefore, though the Trial Court rendered the findings based upon the evidence of the witnesses, who were examined after a period of 5 years, this Court is afraid to accept the findings recorded by the Trial Court in view of the absolute lack of spontaneity in respect of the nature of occurrence. In this regard, it is useful to rely upon the findings recorded by the First Appellate Court wherein in categorical terms it has been held that there were no documents submitted by the plaintiffs as to the filing of any police complaint.

13.In fact, it is an admitted case that the plaintiffs did not give any police complaint against the defendants. Therefore, when the plaintiffs did not file any police complaint immediately after the occurrence, this Court apprehends the statements made by the plaintiffs witnesses after a period of 5 years, as it lacks spontaneity and there is a possibility of improvement.

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Apart from that, when the very nature of occurrence is disbelieved, this Court is of the firm view that the claim made by the appellants seeking damages for humiliation and defamation must fail. Therefore, from the submissions made by the learned counsel for the appellants, this Court does not find any ground to deviate from the findings recorded by the First Appellate Court.

14.Hence, the second appeal is dismissed and the Judgment of the First Appellate Court is confirmed. No costs.

07.12.2023

Index : Yes/No
Internet:Yes/No
Speaking Order : Yes/No
smn

Note: The Registry is directed to carry out
necessary amendment before issuing order copies

To

1.The Additional District

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(Fast Track Court No.2, Gobichettipalayam)
2. The Additional Sub Court Gobichettipalayam

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C.KUMARAPPAN, J

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