



S.A.(MD).Nos.395 of 2009

WEB COP BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 25.10.2024

CORAM:

THE HONOURABLE **MRS.JUSTICE S.SRIMATHY**

S.A.(MD).No.395 of 2009

1. M/s.Narayanasamy Theatre, Kovilpatti,
(Now Satyabama Theatre)
Through its Proprietor,
P.S.A.Rajaguru,
Main Road, Kovilpatti.

2. M/s.Narayanasamy Theatre, Kovilpatti,
(Now Satyabama Theatre)
Through its Proprietor,
P.S.A.Rajaguru,
Main Road, Kovilpatti.
Tuticorin District.

... Appellants

/Vs./

M/s.Lakshmi Theatre,
Main Road,
Kovilpatti,
Through its Partners,
G.Sankaranarayanan (Died)

1.Rengalakshmi
2.Selvanarayanan

...Respondents

(Partners of Lakshmi Theatre substituted in the place of the deceased sole respondent, vide Court order, dated 28.08.2024, made in CMP(MD)No.9393 of 2024 in S.A.(MD)No.395 of 2009)



S.A.(MD).Nos.395 of 2009

WEB PRAYER:

PRAYER: Second Appeal filed under Section 100 of the Civil Procedure Code, against the Judgment and Decree dated 23.01.2009 passed in A.S.No.36 of 2008 on the file of Learned Subordinate Judge, Kovilpatti reversing the Judgment and Decree dated 05.09.2008 passed in O.S.No.73 of 2005 on the file of Learned District Munsif, Kovilpatti.

For Appellant : Mr.C.Kasirajan
For Respondent : Mr.S.Vellaichamy

JUDGMENT

The second appeal is preferred by the defendants in the suit against the Judgment and Decree dated 23.01.2009 passed in A.S.No.36 of 2008 on the file of Learned Subordinate Judge, Kovilpatti reversing the Judgment and Decree dated 05.09.2008 passed in O.S.No.73 of 2005 on the file of Learned District Munsif, Kovilpatti.

2. The plaintiff in the suit is the deceased respondent herein and the defendants in the suit are the appellants herein. For the sake of convenience, the parties are referred as plaintiffs and defendants as per the ranking in the suit.

3. The suit is filed for the damages of Rs.50,000/- incurred by plaintiff,



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since the defendants restrained from screening the film. The brief facts of the case as stated by the plaintiff are that the producer namely Sai Teja Films has produced a Film namely 'Maha Prabhu'. The distributor namely Pasumpon Film Distributors has produced a film namely 'Aruva Velu'. The Pasumpon Film Distributors entered into an agreement with Sai Teja Films and got distribution rights for 'Maha Prabhu' film. Since there was allegation against the Pasumpon Film Distributors that money collected by them from the theatre owners are not paid to Sai Teja Films, hence the deal dated 26.03.1995 came to be cancelled. This cancellation of agreement was also accepted by Pasumpon Film Distributors vide letter dated 17.10.1995.

4. The defendants had entered into an agreement dated 26.03.1994 with Pasumpon Film Distributors for exhibition of film 'Maha Prabhu' in his theatre. On 20.12.1995, in a meeting held at Nagercoil, the Pasumpon Film Distributors and the defendant agreed that instead of 'Maha Prabhu' exhibiting right for another film like 'Aruva Velu' would be given to the defendant by adjusting his payment of Rs.1,25,000/- meant for 'Maha Prabhu'. The above said fact was confirmed by the letter dated 08.12.1995 written by defendant to Pasumpon Film



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Distributors. Subsequently, the distribution right for Maha Prabhu for four southern districts was obtained by Actor Sarath Kumar. The Plaintiff through agreement dated 30.01.1996 obtained screening rights from the agent of Sarath Kumar namely Ganash Theatres, Thirunelveli. As per rights obtained, the plaintiff planned to screen Maha Prabhu film in his theatre on 02.02.1996, but the same was prevented by the defendant by obtaining injunction. But the injunction was vacated on 06.02.1996. Since the plaintiff was prohibited from screening the film for six days, he sustained loss of Rs.50,000/- Hence the suit is filed for damages.

5. The defendants denied the letter dated 17.10.1995 and also denied the alleged meeting held on 20.12.1995. Further denied the letter dated 08.12.1995. The Trial Court after perusing the pleading, evidence and the submission of either party had dismissed the suit. Aggrieved over the same, plaintiff had preferred Appeal Suit and the Appellate Court had allowed the suit by relying on the Exhibits A1 to A3. Aggrieved over the said judgment passed by the Appellate Court, the defendants had preferred the present second appeal raising the following substantial questions of law:

“(i) Whether the 1st Appellate Court is right in Decreeing the suit as the Plaintiff has failed to enter into the witness box and adverse inference



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(ii) Whether the 1st Appellate Court is right by acting upon the evidence of PW1 who is not authorized to represent the case of plaintiff?

(iii) Whether the Judgment and Decree of 1st Appellate Court is sustainable in law as it has failed to follow the dictum laid down by this Hon'ble Court in the case reported in 2003 3 CTC 18?

(iv) Whether the 1st Appellate Court is right in decreeing the suit against both defendants without any finding against the 2nd defendant?

(v) Whether the 1st Appellate Court is right of accepting the evidence of PW1 as he cannot give evidence regarding the acts done by the partners representing the plaintiff firm?"

6.The substantial questions of law 1, 2 and 5 raised by the defendants / appellants herein is that the PW1 has deposed as witness representing the plaintiff, but the plaintiff has not entered the witness box and he is not authorized to depose. It is seen that the plaintiff is a partnership firm and none of the partners appeared to depose. Further, the PW1 is not authorised to represent the plaintiff firm and he is not the partner of the said firm. When the partners of the plaintiff firm had not entered into the witness box, especially, the partner who had the



personal knowledge about the facts and the alleged, then adverse inference ought to be drawn against the plaintiff as per Section 114 of the Indian Evidence Act. Therefore, the substantial questions of law 1, 2 and 5 are held in favour of the defendants / appellants herein.

7. The 4th substantial question of law is the Appellate Court has not rendered any finding against the 2nd defendant and in such circumstances, relief cannot be granted to plaintiff against 2nd defendant. It is a settled proposition of law until a finding is rendered against a person then he cannot be made liable for any allegations, that too he cannot be made liable to pay damages. When the Appellate Court had failed to rendered any finding against the 2nd defendant, then damages cannot be levied against the 2nd defendant. Therefore, the Appellate Court has erred in granting damages to the plaintiff.

8. The Appellate Court had erred in reversing the judgment rendered by the Trial Court. In such circumstances, while reversing the judgment of the Trial Court, the Appellate Court ought to render clear finding against the 2nd defendant, when it has failed to do so. Therefore, the Judgment of the Appellate Court ought



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to be interfered with. Therefore the 4th substantial question of law is held in favour of the defendants / Appellants herein.

9. For the reasons stated supra, the second appeal is allowed. The damages levied against the defendants are set-aside. The Judgment and Decree dated 23.01.2009 passed in A.S.No.36 of 2008 by the Sub Court, Kovilpatti is set aside and the Judgment and Decree dated 05.09.2008 passed in O.S.No.73 of 2005 by the District Munsif, Kovilpatti is confirmed. No costs.

25.10.2024

Index : Yes / No

NCC : Yes / No

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TO:

1. The Subordinate Judge,
Kovilpatti.
2. The District Munsif Court,
Kovilpatti.
3. The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.



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S.SRIMATHY, J.

Tmg

Judgment made in
S.A.(MD).No.395 of 2009

Dated:
25.10.2024