
(2012) 06 MAD CK 0216
In the Madras High Court
Case No : S.A. No. 1215 of 1998

S. Isakki Thangam

APPELLANT

Vs

Sivanandam

RESPONDENT

Date of Decision : 28-06-2012

Acts Referred:

Citation : (2013) 2 MadWN(Civil) 553

Hon'ble Judges : M. Sathyanarayanan, J.

Bench : Single Bench

Advocate : G. Venugopal for Prabaharan, Advocates, for the Appellant; V. Meenakhisundaram, Advocate, for the Respondent

Final Decision : Dismissed

Judgement

M. Sathyanarayanan, J.—The Defendants 1 to 3 who were unsuccessful before the Courts below, are the Appellants.

2. The Respondents/Plaintiffs filed the Suit in O.S. No. 575 of 1993 on the file of the Court of Principal District Munsif, Tirunelveli, against the Defendants, praying for a Judgment and Decree directing the Defendants to pay a sum of Rs. 10,000/- (Rupees Ten Thousand only) as damages to the Plaintiffs with interest from the date of Complaint till date of realisation.

3. It is averred by the Plaintiffs that they and the Defendants belonged to "Thiruvalluvar Kulam", better known as "Valluvar Kulam" in their locality and astrology is the main profession practised by the said community people. The Plaintiffs would further aver that the First Plaintiff is the famous and respectable person among the community people and the Second Plaintiff is the son of the First Plaintiff and the Plaintiffs 3 & 4 are brothers and further that the Plaintiffs 5 & 6 are also the respectable persons belong to the said community and are hailing from the said locality.

4. The Plaintiffs would further aver that a District Society/Sangam was formed by some of the persons belonged to the said community as "Nellai District Valluvar

Kula Sangam" and the District level society has its branches in some towns and villages in Tirunelveli District and its branch was also started at Palayamkottai and it was formed by the community people residing at Manakavalampillai Nagar. The Third Plaintiff has served as a President of the said Sangam in the year 1984-1985 and subsequently, on account of difference of opinion, the said Sangam has become defunct and thereafter, no proper Society/Sangam was in existence in respect of the said community people.

5. It is further stated by the Plaintiffs that the Defendants 1 to 3 issued a Circular dated 29.03.1993 (Ex.A.1) to the President of the District Sangam, wherein it is alleged that the Sangam at Manakavalampillai Nagar, Palayamkottai, passed a resolution in its meeting held on 08.03.1993 excommunicating the Plaintiffs from the caste and it also directed the members of the caste not to participate in any ceremonies of the Plaintiffs and also not to invite any of the functions conducted by the caste people. In Ex.A.1-Circular dated 29.03.1993, the First Defendant is described as the President; the Second Defendant is described as the Treasurer and the Third Defendant is described as the Secretary of the said Sangam at Manakavalampillai Nagar Branch, Palayamkottai and it is also stated that it was formed on 19.07.1992 as per the Circular and the Fourth Defendant is the President of District Sangam.

6. According to the Plaintiffs, they are very respectable persons among their community in and around the District and pursuant to the said Circular in Ex.A.1, their name and fame had been affected greatly and further that the act of excommunicating the Plaintiffs from the community and also calling upon the other community people to exercise the social boycott, are illegal and unjustifiable and the allegations in Ex.A.1 are also highly defamatory. In this regard, the Plaintiffs sent a Lawyer's Notice dated 08.05.1993 under Ex.A.2 and it was also acknowledged by the Defendants under Ex.A.3 - series and in spite of the same, they have not chosen to send any reply.

7. The Plaintiffs aggrieved by the acts of the Defendants in sending Ex.A.1-Circular with highly false and defamatory allegations coupled with the fact that under the said communication, the community people were also asked to exercise social boycott, the Plaintiffs came forward to file the said Suit for damages.

8. The Defendants 1 to 3 filed the Written Statement denying all the averments made in the Plaint and also specifically denied the passing of resolution with regard to the excommunication of the Plaintiffs from the community. The Defendants 1 to 3 would further aver that the Plaintiffs had chosen to violate the purpose and object of the formation of the Society and also committed default in payment of subscription and also created obstacles for proper function of the Sangam and also acted against the interest of the same and in this regard, a resolution was passed excommunicating them from the membership of the Sangam and no resolution was passed excommunicating them from the community itself.

9. The Defendants 1 to 3 would further aver that the Fourth Defendant has no role to play in the affairs of the Sangam and further denied the averment that the Plaintiffs are very respectable persons among the community people. As regards non-sending of reply to the legal notice, the Defendants 1 to 3 averred that after notice, the some of the important members of the community had contacted the Plaintiffs and they have also accepted their misdeeds and promised not to take further action and in view of the same, the Defendants 1 to 3 did not send any reply. Hence, for the said reasons, the Defendants 1 to 3 prayed for the dismissal of the Suit.

10. The Fourth Defendant filed the Written Statement denying the averments made in the Plaint and also denied the allegation that the Plaintiffs are respectable persons among the community people. In Paragraph 6 of the Written Statement, the Fourth Defendant denied that a Resolution was passed excommunicating the Plaintiffs from the community and also supported the stand taken by the Defendants 1 to 3 and prayed for the dismissal of the Suit.

11. The Trial Court, on consideration of pleadings, framed the following issues :

- (i) Whether the Plaintiffs are entitled to damages ?
- (ii) Whether the Plaintiffs are entitled to claim interest ?
- (iii) To what relief, the Plaintiffs are entitled to ?

12. The Fourth Plaintiff examined himself as PW1 and the Third Plaintiff examined himself as PW2 and one Senthivel was examined as PW3 and Exs.A1 to A7 were marked on the side of the Plaintiffs. On behalf of the Defendants, the First Defendant was examined as DW1 and the Fourth Defendant was examined as DW2 and Ex.B1 - Resolution dated 05.03.1985 was also marked.

13. The Trial Court on consideration of pleadings, oral and documentary evidence, found that under Ex.A.1-Circular, the name and fame of the Plaintiffs were damaged and since they were also excommunicated from the community, found that the case of the Plaintiffs merits acceptance and therefore, decreed the Suit with costs, vide Judgment and Decree dated 11.01.1996.

14. The Defendants 1 to 3 aggrieved by the same, preferred the Appeal in A.S. No. 21 of 1996 on the file of the Court of Principal Subordinate Judge, Tirunelveli.

15. The Lower Appellate Court formulated the following point for determination :

"Whether the appeal is to be allowed or not ?"

16. The Lower Appellate Court found that the reasons assigned by the Trial Court are proper and therefore, upheld the Judgment and Decree passed by the Trial Court and consequently, dismissed the Appeal, vide Judgment and Decree dated 28.04.1998.

17. The Defendants 1 to 3 challenging the vires of the judgment and decree passed by the Lower Appellate Court, preferred this Second Appeal.

18. This Court, at the time of admission, has formulated the following substantial questions of law :

"(1) Whether Ex.A7 is defamatory in its nature and whether the Suit for damages is maintainable based upon the contents of Ex.A7 ?

(2) Whether the Courts below are right in relying upon Ex.A.1 (xerox copy) as the same is inadmissible in evidence ?

(3) Whether the Suit as framed is maintainable without impleading the Valluvarkula Sangam, a registered body on the basis of the Circular-Ex.A1?

(4) Whether the Courts below are right in granting the decree for damages in the absence of any evidence?"

19. Mr. G. Venugopal, learned Counsel for the Appellants/Defendants 1 to 3 would submit that admittedly, Ex.A1 is the xerox copy and though PW3 has spoken to the effect that he had received, the fact remains that it was unsigned and the cover in which Ex.A1 was sent, did not also bear the sender's address and in the absence of clear and cogent evidence as to the truth and validity of Ex.A1, there was no cause of action for the Plaintiffs to file the Suit for damages.

20. The learned Counsel for the Appellants would further submit that the Court has placed heavy reliance upon the testimonies of PW3 said to be an independent witness and drawn the attention of this Court to the testimonies of PW3 and pointed out that he has also started a separate Sangam, of which some of the Plaintiffs are office bearers and therefore, his testimonies cannot be relied upon and also corroborated the version of the Plaintiffs.

21. It is the further submission of the learned Counsel for the Appellants that the Courts below had overlooked an important question as to whether the alleged statement found in Ex.A1, is defamatory or not and consequently, whether the Plaintiffs suffered any damage to their reputation? Attention of this Court is drawn to the testimonies of PW1 & PW2 and the learned Counsel for the Appellants would submit that even assuming without admitting that they have spoken to truth, still the basic ingredients for sustaining their plea of damage to their reputation, have not been made out.

22. Lastly, it is contended by the learned Counsel for the Appellants that though the Plaintiffs placed much reliance upon the testimonies of DW2/Fourth Defendant, it is of no use for the reason that he deposed contrary to his own pleadings and nothing has been made out in favour of the Plaintiffs and in fact, his testimonies would disclose that he was not aware of the proceedings in the local branch of the Sangam. Therefore, the learned Counsel for the Appellants would contend that since the Courts below had misappreciated the oral and documentary evidence and also acted on misconception of law, have committed a grave error in upholding the case of the Plaintiffs and the impugned judgment and decree passed by the Lower Appellate Court warrants interference at the hands of this Court in exercise of jurisdiction under Section 100 of the Code of

Civil Procedure.

23. Per contra, Mr. V. Meenakshisundaram, learned Counsel for the Respondents/ Plaintiffs would vehemently contend that the Courts below on a thorough consideration and appreciation of oral and documentary evidence in proper perspective, had rightly arrived at a finding to uphold the case of the Plaintiffs. It is the further submission of the learned Counsel for the Respondents that admittedly, in response to the legal notice, the Defendants 1 to 3 did not send any reply and therefore, adverse inference had rightly been drawn. In support of his submissions, he placed reliance on the decision in Jaga Industries v. Sulochana Cotton Spinning Mills Pvt. Ltd., 2012 (1) MWN (Civil) 608 : 2009 (1) MLJ 1067.

24. It is the further submission of the learned Counsel for the Respondents that the receipt of Ex.A1 has been clearly spoken to by PW3 and nothing useful or contra has been elicited in his cross-examination and would further contend that expelling the Plaintiffs from the community would also entitle them to claim damages and placed reliance upon the decision of this Court in A.D. Narayana Sah v. Kannanma Bai (Dead), 1932 (62) MLJ 608 : 140 Ind Cas 422.

25. Lastly, it is submitted by the learned Counsel for the Appellants that the Defendants 1 to 3 who are in possession of the copy of the Resolution, have failed to produce the same and since they were in possession of the best evidence and failed to produce the same, adverse inference should have been drawn against them and it was also drawn. In support of the said submission, he relied on the decision of the Honourable Supreme Court in Gopal Krishnaji v. Mohd Haji Latif, AIR 1968 SC 1413.

26. The learned Counsel for the Respondents would further contend that a perusal of Ex.A1 would disclose that the allegations made therein are per se scandalous and therefore, the Courts below on a proper consideration and appreciation of law, had rightly upheld the case of the Plaintiffs and since the findings recorded by the Courts below are concurrent in nature, interference may not be warranted at the hands of this Court in exercise of jurisdiction under Section 100 of the Code of Civil Procedure.

27. This Court paid its best attention to the rival submissions and also perused the typed set of documents as well as the original records.

Substantial Questions of Law: (1), (2) & (4)

28. A perusal of Ex.A1 would disclose that it is a xerox copy of the Letter Head and the contents of the same would disclose that the Plaintiffs had acted against the interest of the Society and though steps were taken to mend the difference, they have not responded properly and accordingly, on 08.03.1993, a meeting held wherein decision was taken to excommunicate the Plaintiffs from the community and therefore, called upon the members of the Sangam and their family members not to participate in the functions of the Plaintiffs whether it is

good or bad and also communicated the same to the community people residing at Tirunelveli District, Chidambaranar District and Kanyakumari District and at the end of the letter, the names along with their designations namely, President, Treasurer and Secretary (the Defendants 1 to 3) were printed and their signatures were not found. The copy of the same was also marked to the President of District Valluvar Kula Sangam, namely S. Thangachamy and the office bearers of the District Sangam.

29. PW1/Fourth Plaintiff, in his cross-examination would depose that if any members act contrary to the bye-law, they are liable to disciplinary action and as per Ex.B1 dated 05.03.1985, a decision has been taken to take action against the Plaintiffs 1 & 2 by lodging a Police Complaint. PW1 admitted that by their conduct, the office bearers should set an example to the community people and further deposed that the Third Plaintiff had contracted another marriage though his first wife is alive and through her, he got children and added that with the concurrence of the first wife, he contracted the second marriage.

30. PW1 would admit that he did not peruse Ex.A1 and also not aware of the contents of the same and would further admit that a decision has been taken to separate Manakavalampillai Nagar Sangam into two and it was presided over by the District President and he has also participated in the same and Ex.A1 is connected with the said meeting.

31. PW1 would further admit that the difference of opinion arose in the year 1986 and from that onwards, they stopped paying the subscription and all the Plaintiffs are acting separately and disassociated themselves from the Sangam. As regards excommunication, PW1 deposed that in the year 1994, his daughter's marriage was solemnised in which, except the Defendants 1 to 3 and some other members, the other participated and in fact, the Third Defendant also attended the marriage. PW1 further admitted that except the Defendants, the Plaintiffs are not having enmity with the people belonging to their community and the Defendants 2 & 3 did not come to the houses of the Plaintiffs and therefore, the Plaintiffs got grievance against them and therefore, they sent a Legal Notice under Ex.A2 dated 08.05.1993. PW1 also admitted that as called by the Defendants in Ex.A1, there was no restriction with regard to the movement of the Plaintiffs with their community people. It was also deposed by PW1 that after the Legal Notice, the office bearers of the District Society met them and tried to effect compromise and denied the suggestion that if suggestion was accepted and would state that they started a separate Association.

32. PW2/Third Plaintiff admitted that if any member acted against the interest of the Sangam, disciplinary action can be taken against them and in the cross-examination, admitted that he is having two wives and denied the suggestion that the Defendants did not send Ex.A1. PW2 further deposed that the Fourth Defendant has informed that without his knowledge, Letters were circulated and also admitted that the Fourth Defendant is nothing to do with the affairs of Manakavalampillai Nagar Sangam.

33. P.W.3 who received Ex.A1, deposed that he received Ex.A1 during the year 1993 and there is no signature found in Ex.A1 and it is typed in a Letter Head pad. PW3 further deposed that he started new District Association in which the third Plaintiff was selected as an office bearer and he did not receive summons for deposition on behalf of the Plaintiffs.

34. The First Defendant who was examined as DW1, was extensively cross-examined with regard to the contract of second marriage by the Second Defendant and deposed that in the meeting, a discussion was made about the action to be taken against the Plaintiffs, but it was not reduced into writing and a decision has been taken that the members of the Sangam should not to have any contact with the Plaintiffs as they acted against the interest of the Sangam. It was further deposed by DW1 in the cross-examination that they have no Letter Head and specifically denied the suggestion that Ex.A1 was sent by them.

35. The Fourth Defendant who was examined as DW2, deposed that though he did not send a reply to the Legal Notice, since the Plaintiffs themselves averred that much importance need not be attached to it. Subsequently sent a Letter under Ex.A4, wherein he has stated that he has excommunicated the persons who took the decision and the District Association is nothing to do with the decision by those persons. DW2 made a categorical admission that he did not remember that Manakavalampillai Nagar Sangam sent a Letter in their Letter Head pad and that they did not send any Letter using the Letter Head pad and they also effected conciliatory efforts for conciliation.

36. A perusal of the pleadings, oral and documentary evidence coupled with Ex.A1 would disclose that Ex.A1 is the xerox copy of the Letter Head said to have been used by the Sangam, in which it has been shown that the Defendants 1 to 3 are the office bearers at the relevant point of time. Though at the bottom of the contents of Ex.A1, the names of the Defendants 1 to 3 with their designations, have been indicated, no signature was found.

37. A perusal of the cover in which Ex.A1 was sent, also did not contain the sender's address. The Defendants 1 to 3 in their Written Statement took a specific stand that they did not send Ex.A1 to the Plaintiffs and a decision was taken only to expel them from the membership and requested the members not to have any contact with the Plaintiffs and they are very categorical that they did not send any communication calling upon the members or other community people not to have any social relationship with the Plaintiffs.

38. In the light of the said stand taken, this Court has to incidentally find out as to whether the Plaintiffs had proved that Ex.A1 was sent by the Defendants 1 to 3 ?

39. The testimonies of the witnesses narrated above would disclose that the Plaintiffs had miserably failed to probablise that at the instigation of the Defendants only, Ex.A1-Circular was sent. Though it is averred that the communications were sent to number of persons, the fact remains that Ex.A1

was marked through PW3 who said to have received the said communication.

40. A perusal of the testimonies of PW3 would also disclose that he started a rival Association in which one of the Plaintiffs became the office bearer. A perusal of the testimonies of PW1 & PW2 would disclose that they were not ostracized from the community and in fact, the Third Defendant also attended his daughter's marriage. PW1 in the cross-examination, admitted that though the Plaintiffs made attempts to have contact with the Defendants, they refused to entertain the same and therefore, they developed enmity with them and hence, sent a legal notice under Ex.A2. PW1 had also gone to the extent of admitting that he was not aware of the contents of Ex.A1 also.

41. It is the primordial submission of the learned Counsel for the Appellants that since the Plaintiffs at the relevant point of time, were in possession of the copy of the resolution and they have failed to produce the same, the Courts below ought to have rightly taken adverse inference and placed reliance on the decision in *Gopal Krishnaji v. Mohd Haji Latif*, AIR 1968 SC 1413. In the said decision, the Honourable Supreme Court placed reliance on the decision in *Murugesam Pillai v. Gnana Sambandha Pandara Sannathi*, AIR 1917 PC 6 and held that if a party who is in possession of the best evidence which would throw light on the issue in controversy, is withholding it, the Court ought to have drawn adverse inference against him notwithstanding that the onus of proof does not lie. There cannot be any difficulty in accepting the said time tested proposition.

42. The facts of the present case would disclose that the Plaintiffs miserably failed to prove that Ex.A1 was sent by the Defendants 1 to 3 and as already stated above, it is a xerox copy of the Letter Head. Admittedly, the signatures of all the Defendants did not find a place and PW3 who was examined with regard to the receipt of Ex.A1, has also axe to grind as he started rival Association in which one of the Plaintiffs became office bearer. Though much reliance was placed upon the testimonies of DW2/Fourth Defendant, his testimonies would disclose that at no point of time, the District Association used to send with any communication in the Letter Head. Therefore, the above said facts lead to the only inference that the Plaintiffs had failed to prove the truth and validity of Ex.A1, which is admittedly an unsigned xerox copy.

43. Much arguments were also put with regard to non-sending of reply under Ex.A2, for which the explanation was offered by DW1 as well as DW3, wherein they have stated that after receipt of Legal Notice, mediatory efforts took place which were also admittedly by PW1 & PW2 and therefore, they have taken a stand that they did not send a reply to the Legal Notice.

44. Reliance placed by the learned Counsel for the Appellants to the decision in *Jaga Industries v. Sulochana Cotton Spinning Mills Pvt. Ltd.*, 2012 (1) MWN (Civil) 608 : 2009 (1) MLJ 1067, cannot be applied to the facts of this case as DW1 & DW2 offered probable explanation as to the non-sending of reply to the Legal Notice.

45. It is also the submission of the leagued Counsel for the Appellants that the Suit for damages is perfectly maintainable in the event of wrongful excommunication. There cannot be any difference of opinion in accepting the said proposition as held by this Court in the decision in A.D. Narayana Sah v. Kannamna Bai (Dead), 1932 (62) MLJ 608 : 140 Ind Cas 422. In the case on hand, even as per the own testimonies of PW1, one year prior to giving deposition, his daughter's marriage was solemnised in which the Third Defendant participated and all other community people were also contacted him and participated in the function and since the Defendants 1 to 3 had severed the relationship, the Plaintiffs developed enmity against them and they sent a legal notice. Therefore, in the light of the said testimonies, it cannot be said that the Plaintiffs suffered a social boycott on account of the communication sent under Ex.A1.

46. In the considered opinion of this Court, in the absence of evidence as to the sending of Ex.A1 by the Defendants 1 to 3, and that Ex.A1 itself being the xerox copy, it cannot be said that the Plaintiffs had probablised their case.

47. In *Burke v. Sklpp*, AIR 1924 Mad. 340 (DB), a prosecution was launched under Sections 499 & 500, I.P.C. wherein the Law of Defamation has been discussed in detail and it has been held that the libel should have been read by at least one other person than the defamer and the defamed and mere communication to the person defamed is not enough and in the case of written defamation, the Court should insist on the production of the original and should not easily admit the certified copies.

48. In the considered opinion of this Court, admittedly, Ex.A1 is a xerox copy of the alleged Letter Head used by Manakavalampillai Nagar Sangam and though the names of the Defendants with designations found place, admittedly, they have not signed it and Ex.A1 which was said to have been received by PW3, cover of Ex.A1 did not contain the sender's address. Since all the Defendants specifically denied the truth and validity of Ex.A1, the burden lies heavily on the Plaintiffs to prove that Ex.A1 was sent by the Defendants and on account of the contents of the same or allegations levelled against them, they suffered mentally and they were socially boycotted. However, the Plaintiffs have not proved or probablised the same.

49. It is also a settled position of law that the claim of damages requires pleadings and strict evidence and in the considered opinion of this Court, the testimonies of PW1 to PW3 coupled with Ex.A1 did not help or advance their case. Hence, the Substantial Questions of Law: (1), (2) & (4) are answered in affirmative and in favour of the Appellants/Defendants 1 to 3 and in view of the same, it is not necessary to answer the Substantial Question of Law (3).

50. This Court, on an independent application of mind and on careful consideration and appreciation of the entire materials placed before this Court, is of the view that the Courts below had overlooked and totally misappreciated the

evidence and wrongly cast the burden on the Defendants and therefore, the impugned judgments are unsustainable and are liable to be set aside.

51. In the result, this Second Appeal is allowed and the Judgment and Decree dated 28.4.1998 passed in A.S. No. 21 of 1996 by the learned Principal Subordinate Judge, Tirunelveli, is set aside and consequently, O.S. No. 575 of 1993 on the file of the Court of Principal District Munsif, Tirunelveli, is dismissed. However, in the facts and circumstances of the case, there is no order as to costs.