IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 31.8.2010

Coram:

THE HONOURABLE MR.JUSTICE M.JAICHANDREN

S.A.No.165 of 2007

Manoharan .. Appellant/Defendant/Appellant

vs.

Botharaja Udayar .. Respondent/Respondent/Plaintiff

The Second Appeal has been filed against the judgment and decree, dated 13.7.2006, made in A.S.No.49 of 2005, on the file of the Subordinate Court, Arani, confirming the judgment and decree, dated 28.11.2001, made in O.S.No.265 of 1999, on the file of the District Munsif Court, Polur.

For Appellant : Mr.G.Rajan

For Respondent : Mr.V.Ayyadurai

J U D G E M E N T

The second appeal has been filed against the judgment and decree, dated 13.7.2006, made in A.S.No.49 of 2005, on the file of the Subordinate Court, Arani, confirming the judgment and decree, dated 28.11.2001, made in O.S.No.265 of 1999, on the file of the Principal District Munsif Court, Polur.

2. The defendant in the suit, in O.S.No.265 of 1999, is the appellant in the present second appeal. The plaintiff in the said suit is the respondent herein. The suit had been filed praying for a decree to direct the defendant to pay the plaintiff a sum of Rs.30,000/- towards damages, with subsequent interest, at the rate of 12%, from the date of the plaint, till the date of the realisation of the entire suit amount, and for costs.

3. The plaintiff had stated that he is the owner of the suit property, as it had been allotted to him, under a registered partition deed, dated 27.7.1993. It had also been stated that the defendant is having cultivable lands, on the northern side of the suit property, belonging to the plaintiff. The plaintiff had cultivated sugar cane crops in the suit property and it was ready for harvest, during the first week of July, 1999. The defendant

had also cultivated his land and he had harvested the sugar cane crops cultivated therein. Thereafter, on 4.7.1999, without taking precautionary steps in safeguarding the standing crops in the suit property belonging to the plaintiff, the defendant had set fire to the dried sugar cane leaves, causing damages to the plaintiff, to the tune of Rs.30,000/-. The plaintiff had also lodged a police complaint against the defendant, before the Kadaladi police, under Section 435 of the Indian Penal Code, 1860. In such circumstances, the plaintiff had filed the suit, in O.S.No.265 of 1999, on the file of the Principal District Munsif Court, Polur.

4. In the written statement filed on behalf of the defendant, the averments and allegations made in the plaint had been denied. It has been stated that there is no truth in the allegations made by the plaintiff that the standing sugar cane crops in the land belonging to the plaintiff had been destroyed, due to the negligence of the defendant in setting fire to the dried sugar cane leaves in his land. The sugar cane crops of the plaintiff could have been destroyed by accidental fire, as it had happened in the sugar cane fields belonging to certain other persons, whose lands were situated in the same area. The averments made in the plaint that the defendant had, intentionally, set fire to the sugar cane fields belonging to the plaintiff is only a figment of imagination. The averments made by the plaintiff, regarding the lodging of a criminal complaint against the defendant, is without any basis.

5. It has been stated that the suit had been filed by the plaintiff only with the intention of extracting money from the defendant. Since, the suit filed by the plaintiff is false, frivolous and vexatious, it is liable to be dismissed, with exemplary costs.

6. In view of the averments made on behalf of the plaintiff, as well as the defendant, the trial Court had framed the following issues for its consideration:

> "1. Whether the plaintiff's sugar cane crops had been destroyed, due to the act of the defendant?
>
> 2. whether the plaintiff is entitled for damages, as claimed in the plaint ?
>
> 3. To what reliefs, the plaintiff is entitled to?"

7. P.W.1 and P.W.2 had been examined as witnesses on the side of the plaintiff and Exhibits A.1 to A.8 had been marked. D.W.1 had been examined, as a witness, on behalf of the defendant and no document had been marked on his behalf. C.W.1 had been examined as a Court witness and Exhibits C.1 and C.2 had been marked as Court documents.

8. The trial Court had found that there was no dispute about the fact that the defendant's land is situated adjacent to the land belonging to the plaintiff. It had been found, from the referred charge sheet, filed by the Inspector of Police, Kadaladi Police station, on 5.8.1999, as R.C.S.3/ 1999, dated 5.8.1999, that the witnesses examined, in respect of the alleged incident, had adduced evidence against the defendant. From the final report, it could be seen that the defendant had committed the alleged act of setting fire to the dried sugar cane leaves, negligently.

9. The trial Court had also relied on Exhibit A.6, dated 22.7.1999, as proof of the alleged occurrence. The Commissioner, who had inspected the suit property, had also deposed, in his evidence, that the sugar cane leaves in the field could have been set fire about a month and a half prior to the inspection.

10. It had been held that the defendant, who was an Engineer, ought to have taken sufficient care, while setting fire to the dried sugar cane leaves in his field, as a prudent man. It had also been found that the claim of the defendant that such accidental fire had occurred in the fields belonging to certain other persons, namely, Pillaiyar, Arumugam and Ravi. However, they had not been examined, as witnesses in the suit.

11. The trial Court had further held that the criminal complaint against the defendant could not be proceeded with, as there was no criminal intention, that could be attributed to the defendant, in causing the fire. However, since, the damages had been caused to the sugar cane crops, belonging to the plaintiff and as it had been found, on evidence, that the defendant had caused the fire, negligently, he was found to be liable to pay damages, to the tune of Rs.30,000/-, to the plaintiff. Accordingly, the suit had been decreed, as prayed for by the plaintiff, by the judgment and decree of the trial Court, dated 28.11.2001, made in O.S.No.265 of 1999.

12. Aggrieved by the judgment and decree of the trial Court, the defendant in the suit had filed an appeal, in A.S.No.49 of 2005, on the file of the Subordinate Court, Arani. The first appellate Court had framed the following points for determination:

> "1. Whether the judgment and decree of the trial Court is correct?
>
> 2. Whether the appellant is entitled to the relief prayed for in the appeal?"

13. In view of the averments made on behalf of the appellant, as well as the respondent, and on analysing the evidence available on record, the first appellate Court had confirmed the judgment and decree of the trial Court, by its judgment and decree, dated

13.7.2006, made in A.S.No.49 of 2005.

14. Aggrieved by the judgment and decree of the first appellate Court, the defendant in the suit, who was the appellant in the first appeal, had filed the present second appeal before this Court, raising the following questions, as substantial questions of law:

> "1. Whether the first appellate Court is correct in decreeing the suit for damages on the basis of negligence, without framing any issue concerning negligence on the part of the appellant/defendant?
>
> 2. Is not the 1st appellate Court is wrong in relying upon Exhibit A.1 to decree the suit in favour of the plaintiff/respondent when the allegation in Exhibit A.1 is in stark contradiction with the allegation in the plaint?
>
> 3. Whether the lower appellate Court is correct in holding that the respondent/plaintiff had discharged the onus of proof when no single scrap of relevant document has been produced by the respondent/plaintiff to show the alleged setting of fire by the appellant/defendant on 7.7.1999 and the negligence of the appellant/defendant?"

15. The learned counsel appearing for the appellant had submitted that the judgment and decree of the courts below are erroneous, contrary to law, weight of evidence and the probabilities of the case. The first appellate Court ought to have seen that the judgment and decree of the trial Court had been passed, without framing the necessary issues and based on no evidence. The first appellate Court ought to have seen that there was no eye witness to the alleged act of the appellant, in setting fire to the dried sugar cane leaves in his field. The respondent had not discharged the onus of proof in proving his claim that he had incurred damages due to the loss of the sugar cane crops, as a consequence of the negligent act of the appellant.

16. It had also been stated that it is not probable for the appellant to have set fire to the dried sugar cane leaves in his lands, three months after the harvesting of the sugar cane crops. The Courts below ought to have seen that the fire, which is said to have destroyed the standing sugar cane crops of the respondent, could have been caused due to an accident, as it had happened in certain other cases. Relying on the evidence recorded in the final report relating to the criminal complaint, the courts below ought not to have arrived at their conclusions in finding the appellant guilty of the negligent act. As such, the judgment and decree of the courts below are erroneous and invalid and unsustainable in the eye of law.

17. Per contra, the learned counsel for the respondent had submitted that the judgment and decree of the Courts below are based on the evidence available on record. Both the courts below had arrived at their conclusions, correctly, as it had been clearly found that the damage to the sugar cane crops, belonging to the respondent, had been caused only due to the act of the appellant in setting fire to the dried sugar cane leaves. While so, it is not open to the appellant to claim that the courts below had erred in relying on the Referred Charge Sheet, relating to the criminal complaint filed against the appellant. Further, the claim of the appellant that there is no cause of action for the filing of the suit is also erroneous and unsustainable. Even though it had been claimed by the appellant that the fire could have been caused, accidently, as it had happened in certain other fields located in the area concerned, no evidence had been adduced to substantiate such a claim.

18. The learned counsel had also submitted that the evidence of P.W.1 had corroborated the evidence of P.W.2. In view of such evidence available before the Courts below, and in view of the Commissioner's report marked as Exhibit C.1, it is clear that the sugar cane crops, belonging to the respondent, had been damaged, due to the negligent act of the appellant, in setting fire to the dried sugar cane leaves in his field. Therefore, the present second appeal filed by the appellant is devoid of merits.

19. The learned counsel appearing for the respondent had relied on the decision of the Supreme Court in SETH RAMDAYAL JAT Vs. LAXMI PRASAD (2009) 11 SCC 545, wherein, it had been held that the civil proceedings cannot be determined on the basis of the judgment of the criminal court. However, it would not mean that it is not admissible, for any purpose, whatsoever.

20. In view of the submissions made by the learned counsels appearing for the parties concerned and in view of the records available, this Court is of the considered view that the appellant has not shown sufficient cause or reason to set aside the concurrent findings of the Courts below.

21. Both the courts below had arrived at their conclusions, based on the evidence available on record, both oral, as well as documentary. The Courts below had rightly held that the damage had been caused to the sugar cane crops of the respondent due to the negligent act of the appellant, in setting fire to the dried sugar cane leaves in his field, which was located adjacent to the land belonging to the respondent.

22. Even though the appellant had claimed that the damage could have been caused due to accidental fire, that could have been started due to the dried bushes nearby the field of the

respondent, as it had happened in certain other cases, he had not chosen to examine the persons, whose crops had been, similarly, damaged. Further, from the evidence of P.W.1 and P.W.2 and in view of the report filed by the Commissioner, marked as Exhibit C.1, the Courts below had rightly held that the damage to the sugar cane crops of the respondent had been caused, due to the fire, which had been caused by the negligent act of the appellant. Further, no substantial question of law arises for the consideration of this Court, in the present second appeal. As such, the second appeal is liable to be dismissed, as it is devoid of merits. Hence, it is dismissed. No costs. Consequently, connected M.P.No.1 of 2007 is closed.

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Sd/-
Asst. Registrar

//True Copy//

Sub Asst. Registrar

To:

1. The Subordinate Court, Arani

2. The Principal District Munsif Court,
   Polur

+ 1 cc to Mr. V. Ayyadurai, Advocate SR No.64509

+ 1 cc to Mr. G. Rajan, Advocate SR No.64569

SP(CO)
SR/22.10.2010

S.A.No.165 of 2007