

**IN THE COURT OF APPEAL OF THE DEMOCRATIC SOCIALIST
REPUBLIC OF SRI LANKA**

M. S. Abdullah (Pailwan)
Maruthamunai

Plaintiff

Vs.

1. Aliyarlebbe Mohideen (Jamali)
(Deceased)
2. Aboobucker Mohomed Hassan
(Sharki)
Both of Division 2,
Maruthamunai

Defendants

C. A. No. 628/2004 (F)
D. C. Kalmunai Case No. 3648/M

AND NOW

M. S. Abdullah (Pailwan)
Maruthamunai

Plaintiff-Appellant

Vs.

Aboobucker Mohomed Hassan
(Sharki)
Division 2,
Maruthamunai

2nd Defendant-Respondent

On this day of November, 2004

**TO: HIS LORDSHIP THE PRESIDENT AND THE OTHER LORDSHIP
JUSTICES OF THE COURT OF APPEAL OF THE DEMOCRATIC SOCIALIST
REPUBLIC OF SRI LANKA**

The Petition of Appeal of the Plaintiff-Appellant above named appearing by Mr. Thaha Zainudeen his Attorney-At-Law states as follows;

1. The Plaintiff-Appellant (hereinafter called and referred to as the Appellant) is the author of the book titled **ஈமனின் உண்மையை நீ அறிவாயா?** (EAMANIN UNMAIYAI NEE ARIVAYA? = DO YOU KNOW THE TRUTH OF IMAN?) who has written thirteen Islamic books and over two hundred Spiritual hymns and published all over the world.
2. The aforesaid book was published in May 1980 in Tamil language and the copies of the same were presented to leading Muslim institution and persons, and the Appellant was highly commended for the said valuable book.
3. Several years later on or about 25-04-1989 the Defendants who were the president and the Secretary of a religious body called Jemmiyathul Ulama of Maruthamunai Branch published a letter which was dispatched to version institution and people alledging that the Appellant has in his book made certain reference which are repugnant to the Islamic faith and to the Muslims and further had branded the Appellant as "Murthath" (a person who deserted the Islamic religion)
4. Thereafter the Appellant instituted above styled action in the District Court of Kalmunai seeking inter alia to recover a sum of Rs. 500.000 as damages from the defendants.
5. the Appellant in his plaint stated that the allegations contained in the said letter which was published by the defendants are false, malicious and made with intent to harm the reputation of the Appellant
6. Further the Appellant contented that by the said illegal and unwarranted acts, of the defendants the Appellant has suffered severe pain of mind and loss of reputation.
7. though the summons were duly served on the defendants, they were absent and unrepresented and accordingly the case was fixed for ex-parte trial against the defendants and a judgement was entered as prayed for in the prayer to the plaint
8. After serving of the ex-parte decree the defendants made an application to have the said ex-parte decree set aside and after an inquiry the ex-parte judgement was vacated and the case was taken up for inter-parte trial.
9. thereafter the defendants filed their answer and stated inter alia that
 - (a) The 2nd defendant as the secretary of Jemmiyyathul Ulama of Muruthamunai wrote a letter dated 25-04-1989 to the authorities informing their decision on the said book requesting the authorities to take steps to ban the said book and to safeguard the religion from corruptive influences

- (b) The 1st and the 2nd Defendants have signed the decision of Jemmiyathul Ulama of Muruthamunai as the president and the secretary and not in their individual capacity as such no cause of action arises against them in their individual capacity and the Appellant cannot proceed with this action as it is presently constituted.
- (c) The defendants being Ulamas have every right to express their views and opinions on the subject of Islam and in order to prevent corruptive un-Islamic substances getting into Islamic faith.
- (d) The Appellant in reference to this case falsely and maliciously published same false statements in a leaflet which was distributed among the public of Muruthamunai and other adjoining villages and as a result the defendants have suffered pain of mind loss of reputation and damages estimated in a sum of Rs. 500,000/=
10. Accordingly the defendants sought for a dismissal of the Appellant's action and a sum of Rs. 500,000/= as damages on the claim in reconvention from the Appellant against which the Appellant filed his replication.
11. After constant postponements for about a decade the defendants made an application that a Muslim judge be appointed to hear the case and accordingly Mr. M. P. Mohideen the Additional District Judge was appointed.
12. Thereafter the case was taken up for trial and the learned trial Judge delivered his judgement dated 22-09-2004 by dismissing the action of the Appellant
13. Being aggrieved by the said judgement the Plaintiff-Appellant begs to appeal to Your Lordships' Court on the following among other grounds which may be urged by the Counsel for the Appellant at the hearing of this Appeal inter-alia that;
- (a) The said judgement is contrary to the law and the evidence placed before the learned trial Judge.
- (b) It is apparent from each and every sentence of the judgement the learned trial Judge has failed to properly evaluate the evidence placed before him
- (c) The facts of the case have been distorted by the learned trial Judge.
- (d) It was clearly visible that at the time the judgement was pronounced the behavior of the learned trial Judge was unusual and he has made the personal comments on the Appellant such as;
- i The appellant is a follower of Hinduism / Advaidam but not an Islamic
- ii Only the Islamic religion is perfect

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