IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.07.2015

CORAM

THE HONOURABLE **Mrs. JUSTICE. S.VIMALA**

Civil Suit No.668 of 2012

M/s.Sekar Emporium (Textiles) Pvt. Ltd
Represented by its Managing Director
Mr.C.Murugan
Having registered office at
No.22, Arcot Road, Kodambakkam,
Chennai-600 024 ... Plaintiff

Vs.

Mrs.Nisha Sivaraman
No.35, Trustpuram, 1st Cross Street,
Kodambakkam, Chennai-600024 ... Defendant

Civil Suit filed under Order IV Rule 1 of the Original Side Rules read with Order VII Rule 1 of the Code of Civil Procedure, 1908, praying to pass an order of judgment and decree:

(a) to declare that the plaintiff company is the absolute owner of the suit schedule properties and to grant consequential injunction restraining the defendant from interfering with the possession and enjoyment of the suit schedule property of the plaintiff.

(b) to award costs of the suit.

For Plaintiff :Mr. Mr.Prabhakaran
For Respondents :Sole Defendant set exparte.

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J U D G M E N T

The plaintiff has filed the suit seeking for a

declaration that the plaintiffs company is the absolute owner of the suit properties and for a consequential injunction restraining the defendant from interfering with the plaintiff's possession and enjoyment of the suit properties.

2.In the schedule of properties, originally there were seven items and later, as ordered in Application No.5334 of 2014, dated 11.11.2014, Item No.5 has been deleted from the schedule of properties. Four parts of the property have been included in Item No.7.

3. The plaintiff was originally a Partnership firm, which was later converted as a company, invoking the provisions of Section 565 of the Companies Act, 1956. The plaintiff's company engaged in the business of textiles, ready made garments and all types of dress materials. The plaintiff's company has several shareholders.

4. The properties, as described in the schedule to the plaint, were purchased in the normal course of business and for the exclusive use of the firm. The consideration for the purchase was paid from out of the funds of erstwhile partnership firm, namely, Sekar Emporium. The sale deeds stand in the name of the firm and few sale deeds stand in the name of the individual partners.

5. Item No.1 of the suit property was originally purchased by N.Chandrasekaran, S.V.S.Pandian and Subbiah, the then partners of Sekar Emporium, by way of sale deed, dated 24.11.1971, under Ex.P-1. Even though it was allotted in the partition to the share of N.Chandrasekaran, the same has been shown as stock in the the newly formed partnership, namely, Sekar Emporium.

6. The second item of the suit property, namely, the land and building, situated at Door No.22, Arcot Road, Kodambakkam, was obtained by N.Chandrasekar, by way of a compromise decree, dated 16.04.1990, obtained in O.S.No.120 of 1987 on the file of this Court, under Ex.P-14.

7. A perusal of the said decree reveals that it is the suit between the brother N.Chandrasekaran and Sivarathna Pandian, in which the suit second item has been allotted to the share of N.Chandrasekaran.

8. The third item of the suit property (Old Door No.45, Arcot Road, Kodambakkam) has been purchased in the name of partnership firm, Sekar Emporium, represented by its then Partners, Chandrasekaran, Mrs.Andal Sivaraman, Murugan and Sivakumar, through a registered sale deed, dated 05.11.2003, which is marked as Ex.P-2.

9. Item No.4 of the property, namely, the land and

building, situated at Old Door No.28, New Door No.47, Arcot

Road, Kodambakkam, was also purchased in the name of the Partnership Firm, M/s.Sekar Emporium, represented by its Partners, Chandrasekaran, Andal Sivaraman, Murugan and Sivakumar, through a registered sale deed, dated 10.06.1988, which is marked as Ex.P-3.

10. Item No.6 of the property, namely, Plot No.31, T.S.No.20, Block No.25, Puliyur Village, Door No.34, First Cross Street, Trustpuram, Kodambakkam, Chennai, has been purchased in the name of Chandrasekaran, through a registered sale deed, dated 23.06.1997, through Ex.P-4.

11. Item No.7 of the property has been purchased in four parts which are the land and premises bearing Door No.20 (Old No.97) Arcot Road, Kodambakkam, Chennai, along with undivided 1/3rd share in 1239 sq.ft., pathway with specific boundaries for each of the items, through sale deeds, dated 22.06.1994, 26.10.1994, 20.12.1994, and 20.12.1994, which are marked as Exs.P-5 to P-8.

12. Sivaraman died intestate on 16.09.2002. Later, Chandrasekaran, Mrs. Andal Sivaraman, Murugan and Sivakumar jointly executed a declaration, dated 05.01.2006, where under they explicitly admitted and acknowledged that the properties were acquired from and out of the funds of Sekar Emporium, and therefore, it is the properties of the firm as contemplated under Section 14 of The Indian Partnership

Act, 1932. It was also declared that none of the legal heirs of any of the individuals shall have any claim in respect of those properties. Even though Chandrasekaran died on 12.01.2007, the properties of Chandrasekaran remain as the properties of the firm.

13. The defendant who is the daughter of Sivaraman dispute the title of the plaintiff. The defendant also issued a notice, dated 25.05.2012, disputing the title of the plaintiff and also claiming equal share in the properties.

14.The claim of the defendant is not sustainable in the light of the declaration made by the individuals that the properties belong to the firm and that none of the individuals or their legal heirs can make any claim over the properties.

15. As there was cloud over the title of the plaintiff, the suit has been filed seeking declaration and injunction.

16.It is the case of the plaintiff that originally it was a partnership firm and later, it was converted into a company. The various unregistered partnership deeds, dated 01.04.1998, 17.09.2002, 13.01.2007 and 01.06.2008, have been filed as Exs.P-9 to P-12. The Memorandum of

Association and Articles of Association of the plaintiff company has been filed as Ex.P-16.

17. It is the further case of the plaintiff that on the registration of the company, the properties belonging to the company at the date of its registration, vested with the company, as contemplated under Section 575 of The Indian Companies Act, 1956.

18.The Managing Director of the plaintiff company has been examined as P.W.1.

19. It is stated in the evidence of P.W.1 that after the dissolution of the partnership on 18.01.2008, the plaintiff company was incorporated on 19.01.2008 and the partners of the erstwhile Partnership Firm became the Directors and shareholders of the company. It is pointed out that as such the properties of the Partnership vested with the company as and when the company was incorporated after the dissolution of partnership.

20. The learned counsel for the plaintiff contended that by the express declaration, the contention of the plaintiff that the property belonged to the plaintiff's company has been admitted, accepted and acknowledged by all

the Directors and share holders of the company and therefore, the defendant is estopped from disputing the validity of the title in favour of the plaintiff and also estopped from claiming any share over the property.

21. The declaration, dated 05.01.2006, (Ex.P-13) signed by Chandrasekaran, Andal Sivaraman, Murugan and Sivakumar, as parters of the Sekar Emporium, have expressly declare that none of the partners have independently contributed any amount for the purchase of the properties (which are described in Schedules 1 to 11 in the annexure) and that the properties were purchased, though in the name of the partners, but, out of the funds of the Partnership Firm.

22. The oral and documentary evidence adduced on the part of the plaintiff remains unchallenged. The silence on the part of the defendant would lead to the inference that the defendant has no case to contest and that is why, the defendant did not choose to contest.

23. It would be appropriate to quote the decision reported in MANU/TN/0601/2012 (S.K.S. Siva Kumar v. The Executive Officer, Inam Karur Municipality), where-under the implications of non-examination of the defendant who avoid the witness box has been discussed and the dictum laid down equally applies to non-appearance of the defendant before the Court, especially when the defendant

disputed the claim of the plaintiff by issuing the notice. The relevant observation reads as under:

> "35. The learned Senior Counsel also referred to the judgment of the Supreme Court reported in MANU/SC/0172/1999 : (1999) 3 SCC 573 [Vidhyadhar v. Mankikrao and another] and stated that if party to the suit does not appear into the witness box and state his own case on oath and does not offer himself for cross-examination by the other side, the the presumption arise that the case set up by him is not correct. Reliance was placed on the following passage found in Paragraph 17:
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> > 17. Where a party to the suit does not appear in the witness-box and states his own case on oath and does not offer himself to be cross-examined by the other side, a presumption arise that the case set up by him is not correct as has been held in a series of decisions passed by various High Courts and the Privy Council from the decision in Sardar Gurbakhsh Singh v. Gurdial Singh. This was followed by the Lahore High Court in Kirpa Singh v. Ajaipal Singh and the Bombay High Court in Martand Pandharinath Chaudhari v. Radhabai Krishnarao Deshmukh. The Madhya Pradesh High Court in Gulla Kharagjit Carpenter v. Narsingh Nandkishore Rawat also followed the Privy Council decision in Sardar Gurbakhsh Singh case. The Allahabad High Court in Arjun Singh v. Virendra Nath held that if a party abstains from entering the witness-box, it would give rise to an adverse inference against him. Similarly, a

Division Bench of the Punjab and Haryana High Court in Bhagwan Dass v. Bhishan Chand drew a presumption under Section 114 of the Evidence Act, 1872 against a party who did not enter the witness-box."

24. Thus, the non-appearance of the defendant, which makes the evidence of the plaintiff indisputable, persuades the court to accept the case of the plaintiff.

25. When the claim that the properties were purchased from out of the funds of the erstwhile partnership firm and that the properties of the partnership firm became the property of the Company after the incorporation of the Company consequent to the dissolution of the Firm remain unchallenged, then the case of the plaintiff that the plaintiff's company is the owner of the property has to be accepted. It is all the more imperative when all the partners have made a declaration that the properties are not their individual properties but the property of the plaintiff's company.

26.Therefore, the claim of the plaintiff that the plaintiff is the owner of the property and that the defendant should be prevented from interfering with the possession and enjoyment of the property has to be upheld.

27. In the result, the suit is decreed with costs granting: (a) a decree for declaration that the plaintiff is the owner of the suit properties; (b) a decree for injunction restraining the defendant from interfering with the plaintiff's possession and enjoyment of the suit properties.

sd/.S.V.J

13.07.2015

//Certified to be a true copy//

Dated this the day of 2015.

R.s/21.09.2015 COURT OFFICER

From 25.09.2008 the Registry is issuing certified copies of the Order/Judgment Decree in this format.