

HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

APPEAL SUIT No. 622 OF 2014

JUDGMENT:

The unsuccessful plaintiff in Original Suit No.2 of 2014 on the file of the Court of VIII Additional District and Sessions Judge, Medak (for short, 'the trial Court'), preferred this Appeal challenging the decree and judgment dated 08.10.2014; wherein the suit filed by the plaintiff, for declaration of title and other reliefs, was dismissed.

2. Appellant herein was the plaintiff and the Respondents 1 to 3 herein were the defendants before the trial Court. For convenience of reference, the ranks given to the parties in O.S. No.2 of 2014 will be adopted throughout this judgment.

3. The plaintiff filed the suit, against the defendants, for declaration of title alleging that he is the owner of Ac.12.00 + 4.00 guntas, which is described in the schedule at Yeldurthy village. Originally, father of the plaintiff, late Hukmichand Bhangadia, purchased Ac.12.00 guntas *i.e.*, Ac.8.19 guntas in old Survey No.1970 and Ac.3.21 guntas in old survey No.1971 from one Dandu Balaiah under registered sale deed bearing D.No.479/1969 dated 30.04.1969. Since then, father of the plaintiff was in continuous and un-interrupted possession of the property and during his life time in 1969-70 established a sugar mill under the name and style of 'M/s. Gopal Khandasari Sugar Mill' with factory sheds, office rooms, godown and private temple. Subsequently, there was a resurvey of land in Medak district; wherein, the land in Survey Nos.1970 and 1971 were assigned new survey Nos.2236, 2237 and 2238. In the said re-survey, the land in an extent of Ac.7.25 guntas in Survey No.2238 was wrongly described as Poramboku land; thereupon, the father of the plaintiff having come to know about the wrong entry filed an application before the Joint Collector, Medak for rectification of entries in respect of Ac.7.25 guntas. It is further

contended that the Joint Collector, after hearing the parties, passed an order on 09.07.1981 referring the matter to the Commissioner of Survey and Settlement. Consequently, the Commissioner passed an order on 15.05.1982 giving sub-division number as 2238/2 to an extent of Ac.7.25 guntas deleting the same from classification as Poramboku land and included in Katha No.276, pattadar pass book and title deed were also issued in favour of the father of plaintiff.

While the matter stood thus, due to non availability of sugarcane, the Sugar mill was closed in the year 2006 but structures were in existence. After death of father of the plaintiff, the name of the plaintiff was mutated in the revenue records. Surprisingly, a notice under Section 7 of A.P. Land Encroachment Act, 1905 was issued to the plaintiff, by 3rd defendant, stating that the plaintiff illegally encroached the land admeasuring Ac.7.25 guntas in Survey No.2238 and Ac.1.00 guntas in Survey No.2239 showing as T.P. and K.K. The plaintiff got issued a reply through his counsel and after receiving the reply the 3rd defendant neither fixed the date of hearing nor conducted any enquiry but came to the schedule property along with his staff and tried to remove the fencing and stone pillars illegally, for the reasons best known to them, thus, the 3rd defendant started harassing the plaintiff; due to which acts, the plaintiff filed Writ Petition No.33337 of 2013 before this Court and the same seems to have been disposed of due to withdrawal of Section 7 notice by 3rd defendant.

It is further contended that during the life time of his father, his father was in uninterrupted, continuous possession of the property raising construction in the entire land, including the land covered under the notice to the knowledge of everyone and that the plaintiff, after death of his father, cannot be removed from possession by adopting summary procedure under Sections 6 and 7 of the A.P. Land Encroachment Act. Hence, the plaintiff filed the suit for declaration of

his title and for consequential permanent injunction restraining the defendants from interfering with his possession and enjoyment of the schedule property.

4. The defendants did not contest the matter, obviously for different reasons, and remained *exparte*.

5. During course of trial, on behalf of the plaintiff, PW.1 was examined and Exs.A-1 to A-9 were marked. On behalf of the defendants, as they remained *exparte*, none were examined and no documents were marked.

6. Upon hearing argument of learned counsel for the plaintiff and perusing the material available on record, the trial Court dismissed the suit assigning its own reasons.

7. Aggrieved by the decree and judgment of the trial Court, the present Appeal is preferred raising several contentions, more particularly that the procedure adopted by the trial Court in disposal of the suit is against Order VIII Rules 5 and 10 of C.P.C. and the trial Court ought to have pronounced the judgment in favour of the plaintiff treating that the plea of the plaintiff is true. It is further contended that the trial Court failed to consider the law laid down by the Apex Court in ***Government of A.P. Vs. Thummala Krishna Rao and others***^[1] and ***Ramesh Gowda and others Vs. M. Varadappa Naidu and others***^[2] and committed an error in dismissing the suit. Finally, it is contended that the Government itself cannot decide its own title, in its own proceedings, by adopting the summary procedure under the Land Encroachment Act and thereby the summary procedure adopted by the Government is erroneous but the trial Court on erroneous appreciation of facts and law dismissed the suit and the reasons assigned by the trial Court would not stand to any reasoning, therefore, prayed to set-aside the decree and judgment of the trial Court.

8. *Per contra*, learned Government Pleader for appeals for the State of Telangana, argued totally in support of the finding recorded by the trial Court and prayed to dismiss the Appeal, confirming the decree and judgment of the trial Court.

9. Heard the learned counsel for the plaintiff-appellant and learned Government Pleader for appeals for Telangana, at length, and with their consent, the matter is taken up for final disposal at the stage of interlocutory.

10. Considering rival contentions and perusing the material available on record, the points that arise for consideration are as follows:

- 1) Whether the procedure adopted by the trial Court in deciding the suit, on merits, without applying Order VIII Rules 5 and 10 of C.P.C. is in accordance with law?
- 2) Whether the plaintiff is entitled to a decree for declaration of title to the property?
- 3) Whether the plaintiff is entitled to perpetual injunction restraining the defendants from interfering with their possession and enjoyment of the property?

11. **POINT No.1:** The first and foremost contention raised by the learned counsel for the plaintiff-appellant is that the procedure adopted by the trial Court in disposal of the suit is against Order VIII Rules 5 and 10 of C.P.C. Undoubtedly, the defendants before the trial Court did not contest the matter but surprisingly the Revenue Inspector having received notice from the Court appeared and filed copy of the order passed by the Government, as observed by the trial Court in Para 6 of the judgment.

12. Order VIII Rule 5 of C.P.C. deals with specific denial. According

to Order VIII Rule 5(1), every allegation of fact in the plaint, if not denied specifically or by necessary implication or stated to be not admitted in the pleading of the defendant, shall be taken to be admitted except as against a person under disability: provided that the Court may in its discretion require any fact so admitted to be proved otherwise than by such admission. According to Order VIII Rule 5(2) of C.P.C, where the defendant has not filed a pleading, it shall be lawful for the Court to pronounce judgment on the basis of the facts contained in the plaint, except as against a person under a disability, but the Court may, in its discretion, require any such fact to be proved.

13. Even from a bare reading of Order VIII Rule 5 clauses 1 and 2 of C.P.C., it is clear that discretion is conferred on the Court to direct the plaintiff to prove a particular fact and merely because the defendants did not contest the matter, the Court need not pronounce the judgment against the plaintiff.

14. Learned counsel for the plaintiff-appellant further drawn the attention of this Court to Order VIII Rule 10 of C.P.C., which is introduced by Act 22 of 2002 with effect from 01.07.2002; and according to it, where any party from whom a written statement is required under Rule 1 or Rule 9 fails to present the same within the time permitted or fixed by the Court, as the case may be, the Court shall pronounce judgment against him, or make such order in relation to the suit as it thinks fit and on pronouncement of such judgment, a decree shall be drawn up. The procedure prescribed under Rule 10 is only to pronounce the judgment and pass a decree in respect of the judgment against the defendants but did not file the written statement. Undoubtedly, the Court has to pronounce judgment under Order VIII Rule 10 of C.P.C. but when similar question came up before the Apex Court in ***Ramesh Chand Ardawatiya Vs. Anil Panjuwani***^[3], it was held as follows:

“But there is substance in the other limb of this submission made by the learned senior counsel for the defendant-appellant. Even if the suit proceeds *ex parte* and in the absence of a written statement, unless the applicability of Order VIII Rule 10 of C.P.C. is attracted and the Courts acts thereunder, the necessity of proof by the plaintiff of his case to the satisfaction of the Court cannot be dispensed with. In the absence of denial of plaint averments the burden of proof on the plaintiff is not very heavy. A *prima-facie* proof of the relevant facts constituting the cause of action would suffice and the Court would grant the plaintiff such relief as to which he may in law be found entitled. In a case which has proceeded *ex parte* the Court is not bound to frame issues under Order XIV and deliver the judgment on every issue as required by Order XX Rule 5. Yet the trial Court would scrutinize the available pleadings and documents, consider the evidence adduced and would do well to frame the ‘points for determination’ and proceed to construct the *ex parte* judgment dealing with the points at issue one by one. Merely because the defendant is absent the Court shall not admit evidence the admissibility whereof is excluded by law nor permit its decision being influenced by irrelevant or inadmissible evidence.”

15. In another judgment of the Apex Court in ***C.N. Ramappa Gowda Vs. C.C.C. Chandregowda***^[4], it was held as follows:

“It is only when the Court for recorded reasons is fully satisfied that there is no fact which needs to be proved at the instance of the plaintiff in view of the deemed admission by the defendant, Court can conveniently pass a judgment and decree against the defendant who has not filed the written statement. If the Court is clearly of the view that the plaintiff’s case even without any evidence is *prima-facie* unimpeachable and the defendant’s approach is clearly a dilatory tactic to delay the passing of a decree, it would be justified in appropriate cases to pass even an uncontested decree. What would be the nature of such a case ultimately will have to be left to the wisdom and just exercise of discretion by the trial Court which is seized of the trial of the suit.

But, if the plaint itself indicates that there are disputed questions of fact involved in the case arising from the plaint itself giving rise to two versions, it would not be safe for the

Court to record an *ex parte* judgment without directing the plaintiff to prove the facts so as to settle the factual controversy. In that event, the *ex parte* judgment although may appear to have decided the suit expeditiously, it ultimately gives rise to several layers of appeal after appeal which ultimately compounds the delay in finally disposing of the suit giving rise to multiplicity of proceedings which hardly promotes the case of speedy trial.

It was further held as follows:

“The trial Court while accepting the plea of the appellant/plaintiff ought to have recorded reasons even if it were based on *ex parte* evidence that the plaintiff had succeeded in proving the jointness of the suit property on the basis of which a decree of partition could be passed in his favour. But the trial Court has decreed the suit without assigning any reason how the plaintiff is entitled for half-share in the property. The same is absolutely cryptic in nature wherein the trial Court has not critically examined as to how the affidavit filed by the plaintiff in support of his plea of jointness of the family was proved on relying upon the documents without even discussing the nature thereof indicating that the suit property was a joint property.”

16. In ***Board of Trustees of Martyr Memorial Trust and another Vs. Union of India and others***^[5], when similar question came up while dealing with judicial process can exercise power and the duties and interest to pronounce reasoned judgment by due application of mind, the Apex Court held as follows:

“Brevity in judgment writing has not lost its virtue. All long judgments or orders are not great nor brief orders are always bad. What is required of any judicial decision is due application of mind, clarity of reasoning and focussed consideration. A slipshod consideration or cryptic order or decision without due reflection on the issues raised in a matter may render such decision unsustainable. Hasty adjudication must be avoided. Each and every matter that comes to the Court must be examined with the seriousness it deserves.”

17. From the law declared by Apex Court, it is clear that whether it is contested suit or un-contested suit, still it is the duty of presiding

officer of the Court to pass reasoned judgment, strictly adhering to Order XX of C.P.C. and to satisfy the requirements of judgment as defined under Section 2(9) of C.P.C. duly, if the suit is contested, the Court is required to frame issues under Order XIV Rule 1 of C.P.C. but framing of issues would arise only when the defendants contested the matter by filing written statement, as one fact or law is affirmed by one party and denied by other party. In the present case the defendants did not contest the suit but it is the duty of the trial Court to frame point for consideration affording an opportunity to adduce evidence on each point.

18. The major contention of plaintiff-appellant is that by applying Order VIII Rules 5 and 10 of C.P.C. the Court should have passed a decree and believed the contention of learned counsel for the plaintiff-appellant, as it is contrary to the law laid down by the Apex Court referred *supra*. Therefore, I am unable to accept the contention of the plaintiff-appellant that the Court should have passed a decree by exercising power under Order VIII Rules 5 and 10 of C.P.C. as it amounts to an admission; since the facts pleaded by the plaintiff-appellant were not traversed by exercising discretionary power under order VIII Rule 5 of C.P.C. In any view of the matter, the judgment passed by the trial Court after due consideration of each and every fact cannot be set-aside on the sole ground that the trial Court violated Order VIII Rules 5 and 10 of C.P.C., passed the decreed and judgment.

19. However, learned counsel for the plaintiff-appellant, at the end of his argument, requested this Court to remand the matter, as the trial Court did not insist the plaintiff to prove any fact alleged in the plaint and the learned Government Pleader for appeals also conceded to his request, without going into the merits of the case, I find that it is a fit case to remand the matter to the trial Court.

20. In ***S. Guravaiah and others Vs. S. Ramesh and others***^[6], a Division Bench of this Court while dealing with Order VIII Rule 10 of C.P.C. held that the Courts are not expected to pass a cryptic judgment and required to pass a reasoned judgment, however remanded the matter to the trial Court with a direction to the defendants to file a petition to set-aside the exparte decree. In view of the law declared by the Division Bench of this Court in ***Guravaiah***⁶, the decree and judgment of the trial Court is liable to be set-aside. Accordingly, the point is answered in favour of the plaintiff-appellant and against the defendants-respondents.

21. **POINT Nos.2 and 3**: According to Order XX Rule 5 of C.P.C., it is the duty of the Court to record finding on each and every issue but, if a finding on one issue is sufficient for decision in any Suit or Appeal, the Court need not record separate finding on the other issues. Hence, and in view of the plaintiff's failure to prove the facts alleged in the plaint by adducing cogent and satisfactory evidence, detailed and elaborate examination of these two points is unwarranted; thereby no finding need be recorded.

In the result, the Appeal Suit is allowed setting aside the decree and judgment dated 08-10-2014, passed in Original Suit No.2 of 2014 by the learned VIII Additional District and Sessions Judge, Medak, while remanding the matter to the trial Court with a direction to restore the suit to its original number in the suit register and as such both the parties are directed to appear before the trial Court on 09.09.2015 and on such appearance, subject to filing of application by the plaintiff-appellant, the Court may decide the suit in accordance with law, at an early date.

In consequence, miscellaneous petitions, if any, pending in this Appeal, shall stand dismissed. No order as to costs.

**M. SATYANARAYANA MURTHY,
J**

Date: 14-07-2015.

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HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

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- [\[1\]](#) 1982 (2) SCC 134
[\[2\]](#) 2003 (8) SCC 928
[\[3\]](#) AIR 2003 SC 2508
[\[4\]](#) 2012 (5) SCC 265
[\[5\]](#) 2012 (10) SCC 734
[\[6\]](#) 2015 (3) ALT 362 (DB)