

IN THE HIGH COURT OF JUDICATURE AT MADRAS

ORDERS RESERVED : 23.08.2016

ORDERS DELIVERED : 01.09.2016

DATED: 01.09.2016

CORAM

THE HONOURABLE MR. JUSTICE K.RAVICHANDRABAABU

Second Appeal Nos.885 and 886 of 2009

and

M.P.Nos.1/2014, 1/2009 and 1/2011

in

S.A.No.885/2009

and

M.P.No.1/2009 in S.A.No.886/2009

P.Jayarama Pillai

... Appellant
in both appeals

Vs.

1.K.Balakrishnan

2.K.Vedachala Pillai

... Respondents
in S.A.885/09

1.K.Balakrishnan

2.The Superintending Engineer,
C.E.D.C.
Tamilnadu Electricity Board,
Chinglepet Town.

3.The Executive Engineer (O&M),
Tamil Nadu Electricity Board,
Madurantakam.

4.The Junior Engineer (O&M),
Tamil Nadu Electricity Board,
Madurantakam.

..Respondents
in S.A.886/2009

Prayer in S.A.885/2009:- This second appeal has been filed under Section 100 C.P.C., against the Judgment and Decree of the learned Subordinate Judge, Madurantkam made in A.S.No.24 of 2006 dated 23.01.2009 thereby confirming the judgment and decree of the learned District Munsif, Madurantkam made in O.S.No.113 of 1993 dated 31.08.2005.

Prayer in S.A.886/2009:- This second appeal has been filed under Section 100 C.P.C., against the Judgment and Decree of the learned Subordinate Judge, Madurantkam made in A.S.No.68 of 2006 dated 23.01.2009 thereby confirming the judgment and decree of the learned District Munsif, Madurantkam made in O.S.No.92 of 1999 dated 31.08.2005.

For Appellant	: Mr.M.S.Subramanian in both appeals
For Respondents	: Mr.N.Nagusah for R1 in both appeals No Appearance for R2 in S.A.885/2009 Mr.V.Viswanathan for R2 to R4 in S.A.886/2009

C O M M O N J U D G M E N T

S.A.No.885 of 2009 is filed by the second defendant in a suit for declaration of plaintiff's title to the suit properties and for permanent injunction restraining the defendants from interfering with the plaintiff's peaceful possession and enjoyment of the suit properties.

2.S.A.No.886 of 2009 is filed by the fourth defendant in a suit for mandatory injunction directing the defendants 1 to 3 to shift the service connection No.78 of Seethamangalam village from the suit property.

3.The appellant in both the appeals is one and the same. It is submitted by the learned counsels appearing on either side that the decision to be made in S.A.No.885 of 2009 will automatically have a bearing on the other appeal S.A.No.886 of 2009.

S.A.No.885/2009:-

4.S.A.No.885 of 2009 arises out of suit in O.S.No.113 of 1993 filed on the file of the District Munsif Court, Madhurantakam. The first respondent herein as the plaintiff filed the said suit for declaration and permanent injunction as stated supra.

5.The case of the plaintiff in the said suit is as follows:

The suit properties were allotted to the share of the plaintiff in pursuant to a family partition took place on 19.09.1992 between himself and his brother, the first defendant. Thus, he is the absolute and exclusive owner of the suit properties and is in possession and enjoyment of the same. The second defendant is the brother-in-law of

the first defendant. Even prior to partition, the first defendant wanted the plaintiff to sell the suit properties for Rs.10,000/- which the plaintiff did not agree. Prior to partition, the first defendant wanted to partition by way of koor chit dated 26.01.1991, also by including a sentence therein to sell the suit properties to the second defendant and the said term was not acceptable to the plaintiff. The second defendant was an attestor to the said koor chit. However later, the partition deed was effected and registered on 19.09.1992 as stated supra, conferring title of the suit property on the plaintiff. Even after the said registered partition deed, the defendants insisted the plaintiff to execute the sale deed in favour of the second defendant by way of bringing a draft sale deed. The plaintiff refused to do the same. The defendants are powerful men and they attempted to trespass into the suit properties. Therefore, the present suit for declaration and injunction is filed.

6.The first defendant filed a written statement and admitted that the suit properties were allotted to the plaintiff in the partition deed dated 19.02.1992 and he never challenged the title of the plaintiff. He further contended that he only recommended to sell the suit properties to the second defendant for a reasonable price, since he was in

possession and enjoyment of the same for several years. He further contended that the plaintiff who agreed to sell the suit properties to the second defendant, however refused to do so.

7.The second defendant filed a written statement and contended as follows:

The plaintiff is not the owner of the suit properties in entirety. The documents created by the plaintiff will not clothe any title on him. The signature of the second defendant found in koor chit as contesting witness would have been obtained by misrepresentation.

8.Before the trial court, the plaintiff examined himself as PW1 and examined three other independent witnesses as PW2 to PW4. He marked Exs.A1 to A33 in support of his case. The first defendant examined himself as DW1. The second defendant examined himself as DW2. They also examined two other independent persons as DW3 and 4. They have marked Exs.B1 to B112 in support of their contention.

9.The trial court upon considering the respective pleadings of the parties and the evidence let in by them decreed the suit as prayed for. The second defendant preferred an appeal in A.S.No.24 of 2006 on the file of the Sub Court, Madurantakam. The Appellate Court confirmed

the finding of the trial court and dismissed the appeal. Challenging the concurrent findings, the above second appeal was filed.

S.A.No.886 of 2009:-

10.This appeal is arising out of the suit for mandatory injunction to shift the service connection. The first respondent in this appeal is the plaintiff. According to the plaintiff, the service connection given in the name of the fourth defendant/appellant herein in respect of the suit property has to be shifted, since the fourth defendant is not having any right or title over the said property.

11.The trial court decreed the suit and the Appellate Court confirmed such finding. These two appeals were admitted by this court by raising the following substantial questions of law in common:

"1) When the plaintiff has come forward with a case of property being ancestral which has been denied by the 2nd defendant but proved by registered documents and revenue records, whether the judgments of the courts below are not vitiated on misreading of evidence documentary and oral?

2) Whether can there be a declaration of title in favour of the plaintiff without a prayer for setting aside the sale deed, Ex.B4?

3) Whether the judgments of the Courts below are vitiated as Ex.B2 the compromise agreement and the

registered sale deed Ex.B4, are not sought to be set aside since the plaintiff admits execution of the same but only claims in evidence, to be obtained by coercion?"

12.Mrs.M.S.Subramaniam, learned counsel appearing for the appellant submitted as follows:

The claim of the plaintiff and the first defendant in respect of the suit property is not correct and they are entitled to only lesser extent. The plaintiff is entitled to only 24 cents in item No.1 of the suit property and 42 cents in item No.2 of the same. Therefore, the plaintiff cannot seek the relief of declaration and injunction in respect of the entire extent. Pending suit, the plaintiff himself has executed a registered sale deed in favour of the second defendant on 17.07.1995 under Ex.B4. On the same day, a compromise deed was also entered into between the parties marked as Ex.B2, wherein the plaintiff agreed to withdraw the present suit. However, he has not done so. Under Ex.B108, dated 20.03.1996, the plaintiff issued notice to both the defendants stating as if Ex.B4 sale deed was obtained by force and threat. In the said notice, the plaintiff also specifically stated that he would file a suit to set aside the sale deed under Ex.B4. However, no suit is filed. He did not amend the plaint also. The plaintiff admits his signature under Ex.B4. On the same day, the plaintiff executed a

registered exchange deed in respect of some other properties with his brother, viz., first defendant herein under Ex.B109. Scribe and some of the attestors of Ex.B4 and Ex.B109 are one and the same. Ex.B4 document was not obtained by threat. So far, no steps are taken to set aside the Ex.B4 sale deed. Therefore, the plaintiff is bound by the same. Survey No.63/2 was not included in the original sale deed marked as Ex.B4. However, the said survey Number was included later by manipulation. This is evident from certified copy obtained and filed along with application filed under Order 41 Rule 27 CPC before this court. Even otherwise, Ex.A33 certified copy of Ex.B4, there also Survey No.63/2 is not referred to as one of the property conveyed. Therefore, it is evident that the plaintiff has played fraud by manipulating some documents. Both the courts below have not given a finding as if Ex.B4 is obtained by coercion.

13.Mr.Nagushaw, learned counsel appearing for the respondents submitted as follows:

The concurrent findings rendered on facts by both the courts below need not be interfered with as the decision arrived by the courts below was based on purely factual aspects of the matter. The first defendant admitted that the entire suit property belongs to the family

and there was no cross-examination. Even though the second defendant claimed that the plaintiff has executed Ex.B4, which is admittedly after the suit, the second defendant has not taken steps to file additional written statement. In the absence of any pleadings by way of counter claim by the second defendant based on Ex.B4, no amount of evidence can be filed or let in. In fact, no issue was framed with regard to Ex.B4 sale deed. There is no necessity for the plaintiff to take steps to set aside the sale, since the same is alleged to have been executed by the plaintiff subsequent to the suit.

14.The learned counsel for the appellant in response to the submissions made by the learned counsel for the respondent/plaintiff submitted that the documents marked by the defendants cannot be ignored, even though they came into existence subsequent to the suit, as the parties know what is their case and let in evidence and therefore, no pleadings are necessary. He relied on a decision of the Apex Court reported in **2003 (8) SCC 752, R.VE.Venkatachala Gounder vs. Arulmigu Viswesaraswami & V.P.Temple.**

15.Heard both sides.

16.The plaintiff seeks the relief of declaration and injunction by contending that the suit properties are the family properties, fell into the share of the plaintiff in pursuant to a partition took place on 19.09.1992 between himself and the first defendant. The first defendant, the brother of the plaintiff admits the said position. He also admits the title of the plaintiff over the suit property. The second defendant, who is the appellant herein, is none else than the brother-in-law of the first defendant. It is seen that the brothers viz., the plaintiff and the first defendant, before partition entered into an arrangement by way of koor chit, wherein the second defendant has attested the same.

17.No doubt, it is claimed by the plaintiff that the first defendant wanted him to sell his property to the second defendant and to that effect, a clause was added in the the koor chit and that he was not agreeable for such term. On the other hand, the second defendant though contended that his signature found in the said koor chit as an attestor might have been obtained by misrepresentation, has however sought to rely on Ex.B4 and B2 documents viz.,sale deed and compromise memo both dated 17.07.1995, said to have been executed by the plaintiff in respect of the suit property. Therefore,

even according to the second defendant, he purchased the certain extent of suit property from the plaintiff subsequent to the filing of the suit. If that be the case, what prevented the second defendant from amending his written statement and to make a counter claim with regard to such property is not known. On the other hand, he claims that the plaintiff should have filed a separate suit for setting aside the sale deed under Ex.B4. It is true that the plaintiff is having issued a notice under Ex.B108 to the second defendant and claimed as though the sale deed under Ex.B4 was obtained by threat and force and that he would file a separate suit to challenge the same. Fact remains no such suit is filed so far.

18.It is seen that the parties to the present proceedings are closely related with each other. However, the fight between them is going on from 1993. According to the second defendant, he is in possession and enjoyment of the suit property all along even prior to the partition dated 19.09.1992. However, he also claims title to certain extent of suit property under Ex.B4 by contending that the same was executed by the plaintiff voluntarily.

19.Upon perusal of the pleadings of the parties and the

judgments rendered by both the courts below, the following facts are emerging:

The second defendant claims title to the suit property, though for a lesser extent, based on Ex.B4 a document, which admittedly came into existence subsequent to the filing of the suit. But the second defendant has not amended his written statement by making a counter claim. Likewise, the plaintiff who issued the notice under Ex.B108 on 20.03.1996 to the defendants has accepted his knowledge about the sale deed under Ex.B4 however, by stating that the same was obtained by force. By saying so, the plaintiff also indicated to file a separate suit for setting aside the sale deed. But the fact remains that he has neither filed any suit to set aside the Ex.B4 sale so far, nor he amended the plaint in the present suit. Therefore, it is evident that the parties are agitating the matter before the court by letting in evidence against each other without there being any proper pleadings or no pleadings. Though the learned counsel for the appellants contended that the documents let in by the parties can be looked into even in the absence of the pleadings, I do not propose to accept such contention, as it is well settled proposition of law that no amount of evidence can be looked into in the absence of any pleadings. The decision of the Apex Court relied on by the learned counsel for the

appellant will not help him in any manner as it has been rendered in respect of an issue with regard to an objection raised against admissibility of a document after it was admitted by the court. Here the issue is, whether the parties can lead evidence and court can go into the same without there being any pleading in respect of those documents. Needless to say that it is well settled proposition of law that any amount of evidence without a pleading can be of no use and the court will not be justified in rendering a finding on the same. Therefore, I find that without making proper pleadings by the respective parties, the actual issue between them cannot be decided in a just and proper manner. Therefore, the evidence let in by them and the findings rendered, if any, also are of no use in the absence of such pleadings.

20. Considering the above stated facts and circumstances and that the parties are agitating the matter ever since 1993, instead of driving them to file a separate suit, this court is of the view that the matter can be remitted back to the trial court for fresh consideration after amendment of the pleadings by the respective parties. Therefore, I am of the view that both the second appeals should be disposed of by setting aside the order of the courts below and remitting the matter to the trial court for fresh consideration as stated supra. The

questions of law raised in these appeals are thus answered accordingly. The second appeals are allowed and the judgments and decrees of the courts below are set aside and the matter is remitted back to the trial court for fresh consideration. It is made clear that this court has not expressed any view on the merits and contention of the respective parties, as it has only remitted the matter to the trial court for fresh consideration after amendment of the pleadings. Thus, the parties should amend the pleadings within three weeks from the date of receipt of this judgment. On such amendment, the trial court will take up the suits and decide it on merits and in accordance with law, uninfluenced by any of the findings rendered by the courts below and in the present proceedings. It is open to the respective parties to let in fresh evidence, if so required, after amendment of the pleadings and the trial court will look into those evidence as well apart from the evidence already let in by the parties. The suits shall be disposed of within four months after amendment of pleadings. No costs. The connected miscellaneous petitions are closed.

01.09.2016

Index :Yes/No
Internet:Yes/No
vri

To

- 1.The Subordinate Judge,
Madurantkam.
- 2.The District Munsif,
Madurantkam.

K.RAVICHANDRABAABU,J.
Vri

PRE DELIVERY COMMON JUDGMENT IN
S.A.NOS.885 AND 886 OF 2009

01.09.2016

