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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.09.2015

CORAM :

The Hon'ble MR.SANJAY KISHAN KAUL, CHIEF JUSTICE

AND

The Hon'ble MR.JUSTICE T.S.SIVAGNANAM

O.S.A.No.65 of 2015

- 1.PR.Palaniappan
- 2.PR.Veerappan
- 3.RM.Visalakshmi
- 4.RM.Periakaruppan
- 5.RM.Meyyammal (Minor)
- 6.P.R.Alagappan

.. Appellants

-vs-

- 1.CT.C.Nachiappa Chettiar
- 2.T.R.Rathineswaran
- 3.Dhanalakshmi Impex Pvt. Ltd.
Rep. By its Managing Director,
H.Vimala.
- 4.SKV Import and Export,
Rep. By its Proprietor,
S.Vairavasundaram.
- 5.R.Rajam
- 6.M/s.Om Shakthy Agencies
(Madras) Private Limited,
No.1, Jawaharlal Nehru Road,
Ekkattuthangal, Chennai.

.. Respondents

Appeal filed under Order 36 Rule 1 of O.S.Rules read with Clause 15 of the Letters Patent against the order dated 01.12.2014 made in C.S.No.710 of 2002.

For Appellants : Mr.PL.Narayanan

For Respondents : No appearance



J U D G M E N T

(Judgment of the Court was delivered by The Hon'ble Chief Justice)

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A suit in C.S.No.710 of 2002 was filed on the original side of this Court by the first two appellants as the two plaintiffs, but subsequently, defendants 3 to 6 in the suit were transposed as plaintiffs vide order dated 15.07.2009 in Application No.3092 of 2009 in the said suit. The plaint, as laid, is for the following relief:

' ' For a permanent injunction restraining the first and second defendant their agents and servants any person every person claiming under them either directly or indirectly from in any way dealing with the suit properties morefully described in the Schedule hereunder or interfering with the plaintiffs use, occupation and enjoyment of the suit properties morefully described in the schedule hereunder and directing the defendants 1 to 5 to jointly and severally pay damages of Rs.50,00,000/- (Rupees fifty lakhs only) to the plaintiffs and pay to the plaintiffs interest at such rate that this Court deem fit on Rs.50,00,000/- from the date of judgment and decree till realization of the same.' '

2.It is the case of the appellants / plaintiffs that they have rival claims to title with the first respondent, while the second respondent claims through the first respondent. The third and fourth respondents / defendants 3 and 4 are the creations of the second respondent and the fifth respondent is his family member. The sixth respondent was the purchaser, who has subsequently given up his right over the property in a contempt proceeding.

3.The subject matter of the suit is a piece and parcel of the land situated at Saligram Village, totally measuring 10 grounds and 1600 sq.ft on one part and 6 grounds on another part, out of which, the suit property is 10 grounds and 1600 sq.ft.

4.The case of the appellants is that their father PR.Periyakaruppan Chettiar purchased the property vide a registered document dated 08.12.1960 from one K.M.Lakshmanan, which was of 10 grounds and 1600 sq.ft. and the second portion of 6 grounds was purchased by the mother of the appellants vide a registered sale deed dated 20.02.1961, for construction of a Cinema Theatre. The said land was the subject matter of disputes under The Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1978, and thus, proceedings are stated to have gone on from 19.10.1976 till 10.01.2000, when the appellants finally succeeded before the Land Reforms Tribunal.

5.The claim laid by the first respondent / first defendant in respect of the suit land is qua the portion which had been purchased



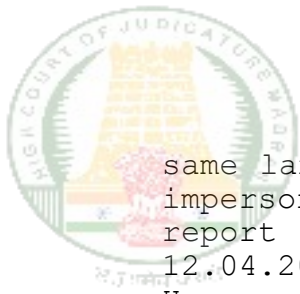
by the father of the appellants, i.e., that Late Chockalingam Chettiar, who was the father of the first defendant, had purchased it from K.M.Lakshmanan and not the father of the appellants, but that he had lost the title deeds. However, not only the original title deeds have not seen the light of the day, but the repeated directions by the Court to provide at least the registration particulars have also not been successful.

6.The second respondent / second defendant claims to possess a Power of Attorney dated 06.09.2001 registered on 13.09.2001 executed by the first respondent in favour of the second respondent. The second respondent is alleged to have trespassed into the suit property pending consideration of the interim relief. Contempt proceedings were filed and the allegation is that there was continuous breach of interim orders granted earlier. Suffice to say that these proceedings resulted in the property being held custodia legis to preserve the same.

7.It may also be noticed that respondents 3 to 5 had executed a sale deed in favour of the 6th respondent which was cancelled in the contempt proceedings and thus, practically all sale deeds executed by the second respondent or others have been declared not to have force of law or cancelled. In the suit proceedings, it is the claim of the appellants that the second respondent continues to obstruct the early disposal alleging that he needs to summon all the family members of the appellants and other oral evidence numbering over to 100 witnesses. In the meantime, the first respondent had stopped appearing and had not even filed a written statement and was, thus, proceeded ex parte. It is in these circumstances that the appellants claim that a decree should be passed against the first respondent under Order 6 Rule 11 of the O.S. Rules of this Court when the matter was listed before the Court by the Master on account of alleged obstructionable tactics by the second respondent. This relief was, however, denied to the appellants by the learned Single Judge as per the impugned order dated 01.12.2014 stating that the decree could not be passed against the first respondent / first defendant alone.

8.In the present appeal, a number of orders had been passed. On 01.06.2015, we recorded the plea of the appellants that the respondents should be called upon to produce title documents through which they claim title and even if original title documents have been lost, at least the registration particulars of the title documents through which the first respondent claims title may be produced. Despite our direction, the learned counsel for the second respondent on 22.06.2015 failed to answer this question and finally conceded, as recorded in the order, that there may not be any proper title.

9.This Court was of the view that the matter was of such a nature that it should be referred to the Economic Offences Wing and the concerned officer was called. The information obtained, as recorded in our order dated 25.06.2015, is that in respect of the



same land, the matter was directed to be investigated and forgery and impersonation in documents of the respondents were found and a final report was filed before the XI Metropolitan Magistrate Court on 12.04.2013 and taken on file in C.S.No.1683 of 2013 on 17.04.2013. However, those proceedings were stayed by the learned Single Judge of this Court in Crl.O.P.No.5350 of 2014 on 17.03.2014. The counter to vacate the stay had already been filed. There was also stated to be another Crl.O.P.No.17911 of 2011 filed by the appellants. These matters were, thus, requested to be taken up by the learned Single Judge and were finally disposed of with adverse observations against the respondents. On 11.08.2015, the learned counsel for the second respondent sought an adjournment on the ground that his senior counsel was not available and the matter was deferred to 08.09.2015. None appeared for any of the respondents on that date and in the interest of justice, we listed the matter today. The position is no different today.

10.It is in the aforesaid facts and circumstances that the learned counsel for the appellants has referred to the provisions of Order 6 Rule 11 of the O.S. Rules, which reads as under:

'Rule 6: When one of several defendants does not file a written statement within the period fixed by the summons, the plaintiff may apply to the Master that the suit as against such defendant may be heard ex parte and the case may then be disposed of in manner provided by Rule 2 of this Order.'

11.The submission of the learned counsel for the appellants is that the rights, if any, claimed by the second respondent are only through the first respondent. The first respondent did not file any written statement and has chosen to absent himself from the proceedings and has been proceeded ex parte. Not only that, criminal cases have been registered on the basis of the documents alleged to have been executed in favour of the respondents, which have been found prima facie to be forged and fabricated. Even the registration particulars of the documents alleged to have been executed in favour of the father of the first respondent have not been given and as noticed, the learned counsel for the second respondent really conceded that there may not be any legal title.

12.In the aforesaid peculiar circumstances, the question is whether a decree can at least be passed against the first respondent.

13.We do believe that the procedures are man-made procedures, as observed by the Hon'ble Supreme Court. The very purpose of introduction of the aforesaid Rule is to facilitate passing of a decree against the defendant, who absents himself. This, however, does not imply that in every case, such a decree should be passed. But, it is a matter of discretion for the Court examining the facts and circumstances of the case.



14. We have sketched out the facts aforesaid to show how the first respondent / first defendant is continuing to absent himself from the proceedings and has not even disclosed his defence. The claim of the second respondent / second defendant, who now seems to have disappeared from the scene at least before this Court, is predicated on the title of the first respondent, which was now conceded to be not valid. In these circumstances, we see no reason why a decree is not capable of being passed under the provisions of Order 6 Rule 11 provided that the requirements under which rules under Order 6 including specifically Rule 2 are followed. It is towards this direction that the matter be now posted before the learned Single Judge, as the evidence of P.W.1 on behalf of plaintiffs is over and the learned counsel for the appellants states that there are only two formal witnesses, one being P.W.2, who is a police officer whose evidence is over and P.W.3, who is the Commissioner appointed by the Court, whose evidence is capable of being closed at this stage.

15. Original Side Appeal, accordingly, stands allowed, the impugned order is set aside and the matter be placed before the learned Single Judge on 06.10.2015. No costs.

Sd/-
Asst.Registrar (CS IV)

/true copy/

Sub Asst. Registrar

sra

To

The Sub Assistant Registrar
Original Side, Madras High Court,
Chennai.

Copy to:
The Section Officer,
Judicial Department,
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+1 cc to Mr.P.L.Narayanan, Advocate, sr.49516

O.S.A.No.65 of 2015

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