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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 25.02.2016

DATE OF DECISION: 04.03.2016

CORAM:

The Honourable Mr. SANJAY KISHAN KAUL, CHIEF JUSTICE
and

The Honourable Mr. Justice M.M.SUNDRESH

O.S.A.NOS.73 TO 77 OF 2015

S.V.Matha Prasad ... Appellant in all Appeals

Vs.

1. S.V.R.Saroja
2. S.V.R.Vijaya
3. S.V.R.Ramaprasad
4. S.V.R.Renuka Devi
5. Rajabu Fathima Buhari (died)
6. A.M.Buhari (died)
7. Mohammed Basheer Buhari (died)
8. Zubaida Hamid
9. Mohammed Farooq
10. Maimeena Jamal
11. Haja Mohideen Buhari
12. Abdul Coder Buhari
13. Mumtaj Buhari ... RR5 to 13 are LR of Ist JD
14. Shahira Basheer ... RR14 to 24 are LR of 3rd JD
15. Fazeelath Siraj
16. Mahajubdeen Ibrahim
17. Haja Abdul Nazeer
18. Farzana Malik
19. Haja Anwar Murad
20. Zeenath Yusuf
21. Haja Ahmed Imtiaz
22. Haja Mohammed Sameer
23. Roshanara Begam
24. A.M.D.Buhari ... Respondents in all Appeals

Prayer: Original Side Appeal in O.S.A.No.73 of 2015 is filed under Clause 15 of the Letters Patent read with Order XXXVI Rule 9 of Madras High Court Original Side Rules against the Order dated 16.2.2015 made in Application No.6809 of 2014 in E.P.No.48 of 1997 in C.S.No.43 of 1962 on the file of this Court.



Original Side Appeal in O.S.A.No.74 of 2015 is filed under Clause 15 of the Letters Patent read with Order XXXVI Rule 9 of Madras High Court Original Side Rules against the Order dated 16.2.2015 made in Application No.6810 of 2014 in E.P.No.48 of 1997 in C.S.No.43 of 1962 on the file of this Court.

Original Side Appeal in O.S.A.No.75 of 2015 is filed under Clause 15 of the Letters Patent read with Order XXXVI Rule 9 of Madras High Court Original Side Rules against the Order dated 16.2.2015 made in Application No.6811 of 2014 in E.P.No.48 of 1997 in C.S.No.43 of 1962 on the file of this Court.

Original Side Appeal in O.S.A.No.76 of 2015 is filed under Clause 15 of the Letters Patent read with Order XXXVI Rule 9 of Madras High Court Original Side Rules against the Order dated 16.2.2015 made in Application D.No.30964 of 2014 in E.P.No.48 of 1997 in C.S.No.43 of 1962 on the file of this Court.

Original Side Appeal in O.S.A.No.77 of 2015 is filed under Clause 15 of the Letters Patent read with Order XXXVI Rule 9 of Madras High Court Original Side Rules against the Order dated 16.2.2015 made in Application D.No.40981 of 2014 in E.P.No.48 of 1997 in C.S.No.43 of 1962 on the file of this Court. A.Nos.6809 to 6811/2014: Applications praying that this Hon'ble Court be pleased to condone the delay of 69 days in filing the appeal against the order dated 06.06.2014 passed in EP No.48/1997 by the Master, Original Side, High Court, Madras.

For Appellant : Mr.June Chaudhari, Sr.Counsel
for M/s.Sumeeta Chaudhari
for Mr.M.Kamalakannan

For Respondents: Mr.R.Natarajan for RR.1 to 4

COMMON JUDGMENT

There has been a growing demand over the years to re-visit the procedural law qua the delay in the justice delivery system. While there may be various reasons for delay, abusing the process of law is one of the primary concern. This case could very well be a case in point. The litigation started in the year 1962 is yet to get concluded, thus, justifying the public perception that a real journey towards justice starts after the decree.

2. Before going into the merits of the case, a broad recapitulation of the facts is required.



C.S.No.43 of 1962 was filed before this Court for re-conveyance of 'A' Schedule property followed by delivery of possession. It was instituted by the father and son, the appellant being the later. After contest, the suit was decreed on 10.11.1965. The defendants No.1 and 2 filed appeals before the Division Bench of this Court in O.S.A.Nos.8 and 9 of 1966 respectively.

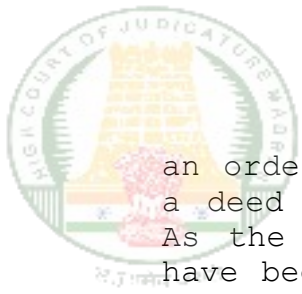
3. In the meanwhile, a registered family settlement deed was said to have been executed by the 1st plaintiff on 22.5.1969, by which, the appellant was given certain properties. In turn, he relinquished and released his claim over the remaining properties. It also appears that the appellant has sold some of the properties given to him in pursuant to the above said deed. Thereafter, a registered Will was allegedly executed by the 1st plaintiff on 15.7.1970 in favour of his four other children said to be illegitimate.

4. On 10.5.1972, a Division Bench of this Court was pleased to allow the appeals preferred against the judgment and decree rendered in C.S.No.43 of 1962. The 1st plaintiff alone filed a Special Leave Petition before the Apex Court, which was subsequently converted into Civil Appeal No.224 of 1974. The reason for the appellant in not preferring the appeal must be known only to him, perhaps, because of the documents referred above. However, we do not propose to go into the said issue. Suffice it is to state that in the Civil Appeal, the appellant was arrayed as the 3rd respondent.

5. Pending Civil Appeal No.224 of 1974, the sole appellant died on 31.12.1980. C.M.P.No.7282 of 1981 was filed by the legal heirs of the deceased claiming through the registered Will dated 15.7.1970. The application was duly allowed, apparently with the knowledge and tacit approval of the appellant. By the order dated 17.4.1995, the Apex Court allowed civil Appeal No.224 of 1974 reversing the judgment and decree rendered by the Division Bench of this Court. It was held that the judgment debtors were to execute a deed of re-conveyance within a period of thirty days, failing which, the trial Court would execute the same.

6. Despite the above said order, ignoring the impleaded legal representatives of the deceased, the appellant herein levied execution proceedings in E.P.No.48 of 1997, apparently claiming himself as a sole plaintiff entitled for the decree. Curiously, even his own natural sister was not added in the said application.

7. After some more proceedings, the learned Master passed



an order on 7.7.2000 directing the Judgment debtors to execute a deed of re-conveyance and deliver possession within a month. As the respondents 1 to 4 were not added as parties, appeals have been filed under Order XXIV Rule 12 of Original Side Rules in Application Nos.2872 and 2873 of 2000 before the learned single Judge. Accordingly, the learned single Judge was pleased to direct re-conveyance of the property in favour of the appellant as well as respondent Nos.1 to 4 as decree holders, while holding the appellant guilty of suppression of material facts. Incidentally, it was held that the dispute with respect to the shares was to be decided separately.

8. Not satisfied with the same, the appellant preferred appeal in O.S.A.No.372 of 2000. While affirming the order of the learned single Judge, the Division Bench directed respondents 1 to 4 to be added as co-petitioners in the Execution Petition, followed by re-conveyance. A memo was filed by the respondents 1 to 4 to the learned Master enclosing the orders passed by the learned single Judge and the Division Bench. Thus, the attention of the learned Master was drawn that the execution has to be made by treating the appellant and respondents No.1 to 4 as the co-petitioners. In the subsequent dates - 20.12.2002, 3.1.2003 and 8.1.2013, the name of the counsel for respondents 1 to 4 was printed in the cause list before the learned Master. In the meanwhile, the appellant made one more attempt before the Apex Court. The Special Leave Petition in S.L.P.No.895 of 2003 was dismissed with the clarification that if any fresh suit is filed inter se the appellant and respondent Nos.1 to 4, the dispute including the ownership and the extent of shares will have to be decided therein. The assignees filed applications, which once again went up to the Supreme Court. By the order passed in Civil Appeal No.1576 of 2007, the applications filed by the assignees were directed to be heard afresh. In the meanwhile, a complaint was given by the counsel of the appellant alleging that certain amendments have been made merely based upon the averments made in the letter dated 24.2.2004 given by the counsel for the assignees. In pursuant to the orders of the Apex Court dated 28.8.2006, a complaint was given by the appellant on 25.9.2006.

9. A second memo was filed by respondents 1 to 4 seeking inclusion of necessary amendments in pursuant to the orders passed, as confirmed by the Apex Court. On the complaint given, one Officer of this Court was found guilty.

10. Respondents 1 to 4 filed application in D.No.38355 of 2007 for impleading them as parties in E.P.No.48 of 1997. The appellants filed a memo before the learned Master on 24.3.2012 seeking delivery of possession and re-conveyance of the property. Once again, a third memo was filed by respondents 1 to 4 bringing to the notice of the learned Master the orders passed



by this Court earlier, as confirmed by the Apex Court earlier. On 26.3.2013, the appellant's counsel raised an objection for listing of E.P.No.21 of 2004 filed by the assignees along with E.P.No.48 of 1997. Objections have also been raised for printing the name of the counsel for respondents 1 to 4. Despite the orders passed earlier in this regard as mentioned above in favour of respondents 1 to 4, a complaint has been made to the Registrar General by counsel for the appellant on 8.4.2014. In pursuant to the communication addressed by the Registrar General on 29.4.2014, the learned Master passed an order removing the name of the counsel for the respondents 1 to 4 in E.P.No.48 of 1997. Respondents 1 to 4 brought to the notice of the learned Master about the pendency of the memos pursuant to which the Registry was directed to list them by printing the name of the counsel. However, it was not done so. Thereafter, on 27.8.2014, orders were passed on the memos in E.P.No.48 of 1997 unilaterally recording certain adverse findings against respondents No.1 to 4 without hearing them as their counsel's name was not printed.

11. An application was also filed by the appellant seeking appropriate action under Section 340 of the Criminal Procedure Code against respondents 1 to 4 in application No.4969 of 2014. The said application was ordered.

12. The respondents 1 to 4 filed 5 applications before the learned single Judge in Application Nos.6809 to 6811, 6848 and 6849 of 2014 seeking (i) to condone the delay of 69 days in filing the appeal against the order dated 6.6.2014 passed in E.P.No.48 of 1997 by the learned Master, Original Side, High Court, Madras, (ii) to permit to file appeal against the order passed in E.P.No.48 of 1997 dated 06.06.2014 on the file of the learned Master, Original Side, High Court, Madras and set aside insofar as to the extent affecting their rights in E.P.No.48 of 1997, (iii) to permit them to file Appeal against the order passed in E.P.No.48 of 1997 dated 27.08.2014 on the file of the learned Master, Original Side, High Court, Madras and set aside the same, (iv) to stay operation of the Order dated 27.08.2014 passed in E.P.No.48 of 1997 on the file of the Master, Original Side, High Court, Madras pending disposal of the appeal and (iv) to stay all further proceedings in E.P.No.48 of 1997 in C.S.No.43 of 1962 on the file of the learned Master, Original Side, High Court, Madras, pending disposal of the Appeal, respectively. The learned single Judge was pleased to allow application Nos.6809 to 6811 of 2014 by setting aside the orders dated 6.6.2014 and 27.8.2014 passed by the learned Master. Application D.Nos.30964 and 40981 of 2014 were ordered directing the Registry to number the same. While passing the said order, it was observed that the issues raised in



Application D.No.30964 of 2014 will have to be decided only after numbering it and insofar as Application D.No.40981 of 2014, a finding was given that application is maintainable in view of the decision of this Court reported in 100 LW 738 (Harikrishna Jhaver Vs. Ram Narayan Bhattad, Madras). Challenging the above said orders, the present appeals have been filed.

13. Learned Senior Counsel appearing for the appellant submitted that the learned single Judge has exceeded his jurisdiction by passing orders on merit on the applications filed seeking condonation of delay and seeking leave. The applications are also not maintainable before the learned single Judge against the orders passed by the learned Master. The Order dated 6.6.2014, being an administrative order, the applications ought not to have been entertained. The learned single Judge ought not to have passed the orders based upon memos filed. The Master, being the Court, is entitled to take action under Section 374 of the Criminal Procedure Code. Respondents 1 to 4 have committed a serious offence and therefore no indulgence ought to have been shown to them. There is a difference between legal heir and legal representative. A Will, though registered, has not been probated, cannot be the basis. Having not filed an application for execution, respondents 1 to 4 have given up their rights. Their claim, if any, is barred by limitation. In support of her contention, learned Senior counsel has made reliance upon a decision of Division Bench of this Court in Sreyas Sripal and another Vs. Upasana Finance Limited, (2007(4) CTC 161).

14. Seeking to repel the contentions raised by the appellant, learned counsel for respondents 1 to 4 submitted that it is a case of clear abuse of process of law. Despite the orders passed, as confirmed by the Apex Court in two previous occasions, the appellant is trying to re-litigate the concluded issues. Order XIV Rule 12 on a bare reading does not require separate applications. There is no necessity to produce even original order passed by the learned Master. The parties were heard at length. The respondents have clearly sought for setting aside orders dated 6.6.2014 and 27.8.2014, as seen from the prayer in application Nos.6810 and 6811 of 2014. The learned Master has passed the order dated 6.6.2014 in E.P.No.48 of 1997 and therefore the same cannot be termed as an administrative order. The aforesaid orders have been passed without hearing respondents 1 to 4, merely based upon the proceedings of the Registrar General dated 29.4.2014 and on the technical ground that no separate application for impleading has been filed. These orders have been passed against the basic canons of law with utter disregard to the earlier orders passed inter se



parties, as confirmed by the Apex Court. The learned counsel inter alia contended that insofar as the appeals filed in O.S.A.Nos.76 and 77 of 2015 are concerned, the learned single Judge, having merely directed the applications to be numbered, there is no basis for making any challenge to it. Similarly, in application D.No.40981 of 2014, it was only held that application is maintainable in view of the judgment of the Division Bench of this Court in Sreyas Sripal and another Vs. Upasana Finance Limited, (2007(4) CTC 161). Therefore, the appeals will have to be dismissed with exemplary costs, more so, when there was no attempt to raise any objection at the earliest point of time in the applications filed seeking to implead respondents 1 to 4 as legal representatives of the deceased appellant. In support of his contention, reliance has been made on the following decisions:

- '(1) Ranipet Municipality Vs. M.Shamsheekhan, ((1998(1) CTC 66);
- (2) Director ESI Scheme, Orissa Vs. Dr.Sabita Mohanty, (1995 Supplement (2) SCC 369);
- (3) Muthiah Chettiar Vs. Krishnadas Varu, (AIR 1921 Madras 599 (Full Bench);
- (4) Shreenath Vs. Rajesh, (AIR 1998 SC 1827).

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15. It is a clear case of an attempt to overreach the decision concluded inter se parties through a collateral proceedings. We are at a loss to understand as to how, in law the appellant could raise objections to the inclusion of respondents 1 to 4 as the co-decree holders. Admittedly, in the first round of litigation, it is the appellant's father, being the 1st plaintiff, approached the Apex Court. Thus, for the reasons known, the appellant kept quiet after the decision of the Division Bench in O.S.A.Nos.8 and 9 of 1966 rendered on 10.5.1972. The appellant was arrayed as respondent No.3 before the Apex Court in C.A.No.224 of 1974. In the aforesaid decision, onus was squarely fixed on the judgment debtors to execute the deed of re-conveyance within a period of thirty days. On their failure, a duty was imposed upon the trial Court to do the needful. Therefore, when respondents No.1 to 4 contested the appeal and became the decree holders in pursuant to the judgment and decree rendered by the Apex Court confirming that of the trial Court in C.S.No.43 of 1962, nothing more is required, except to complete the formalities through the execution proceedings in favour of the appellant as well as respondents 1 to 4. The appellant wants to enjoy the fruits of the decree without even a challenge to the exclusion of the others. Similarly, even on the second occasion, it was once again held by this Court in O.S.A.No.372 of 2000 adding respondents 1 to 4 as co-petitioners in the Execution Petition with a direction to execute the deed of re-conveyance in favour of all of them. It



was also confirmed by the Apex Court in S.L.P.No.895 of 2003, dated 17.4.2003. The only issue left open was the inter se dispute between the parties after the execution of the decree. Thus, it is clear that the appellant is bent upon denying the fruits of the decree to respondents 1 to 4 by thoroughly misusing the process of law on frivolous grounds.

16. A perusal of the order dated 6.6.2014 would show that the respondents 1 to 4 have not been heard and it was also passed in the Execution Petition. Thus, there is no difficulty in holding that it is a judicial order. The said order deleting the names of respondents 1 to 4 in the Execution Petition is in total disregard to the orders passed earlier, as confirmed by the Apex Court. Similarly the subsequent order passed on 27.8.2014 also cannot be sustained for the aforesaid reasons. It is not necessary for respondents 1 to 4 to file separate applications to implead themselves in the light of the earlier orders passed by the Division Bench, as approved by the Apex Court. The order also does not indicate the opportunity having been given to the respondents 1 to 4.

17. We do not find any lack of jurisdiction involved in the applications filed. The parties were heard at length. Even assuming that the applications filed are to be treated as review, the decision having been rendered by the learned single Judge based upon relevant materials, We do not find any error warranting interference. The order dated 6.6.2014, by no stretch of imagination, can be termed as an administrative one. The learned Master exercises judicial power that is delegated to him. The Order dated 6.6.2014 has certainly got adverse consequences on respondents 1 to 4. Therefore, the contentions raised by the learned Senior Counsel for appellant in this regard cannot be accepted.

18. A perusal of the order dated 27.8.2014 would show that there is a total non-application of mind without regard to the orders passed inter se parties. The learned Master has adopted a hyper-technical approach without due regard to the established legal principles. In a multi-Court hierarchy, judicial discipline will require a lower Court to respect and implement the orders passed by the higher forum.

19. Coming to the remaining two appeals also, we do not find absolutely any merit. The learned single Judge has merely directed the applications to be numbered. It is rather strange that an appeal has been filed against the said order by the appellant. We are unable to understand as to how the appellant is aggrieved by the order passed to number the application. Admittedly, in the said application No.4969 of 2014, respondents



1 to 4 have not been heard. Findings have been rendered against them without affording an opportunity of being heard. The learned single Judge has merely directed the Registry to number the Application D.No.40981 of 2014 preferred against the Order passed by the learned Master in Application No.4969 of 2014, basing reliance upon the decision of the Division Bench of this Court reported in 100 L.W. 738 (Harikrishna Jhaver Vs. Ram Narayan Bhattad, Madras). In other words, no decision has been rendered on merit. A perusal of the above said decision, as rightly taken note of by the learned single Judge, would show that it is the High Court, which has jurisdiction to look into the complaint for the purpose of taking appropriate action and not the learned Master. If the learned Master is a delegatee, then as rightly held by the Division Bench referred supra, the said action should be on judge's summons. Thus, making reliance upon the above said judgment, the learned single judge has directed the Registry to number the application. It is apposite to refer to the relevant passage of the decision of the Division Bench for better appreciation:

'for one thing, the Master's Court is also a Court within the meaning of the Rules of the High Court on the Original Side. Secondly, under the Original Side Rules, Order 14 Rule 8 the application for sanction to prosecute will have to be filed by a Judge's summons and not by a Master's summons and in these circumstances, the application filed before the learned Judge was in order.'

Therefore, we do not find any reason to interfere with the order passed by the learned single Judge.

20. As discussed above, we are of the considered view that the appellant continues to put spokes in implementing the orders passed earlier without any legal basis. Thus, we have no hesitation in holding that it is a clear case of abuse of process of law through vexatious litigation.

21. Accordingly, we dismiss the appeals. Cost of Rs.50,000/- (Rupees fifty thousand only) is imposed on the appellant with the hope that the appellant would put an end to this judicial adventurism atleast now. The cost should be paid



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by the appellant to respondents No.1 to 4 within a period of four weeks from the date of receipt of copy of this order.

Sd/-

Assistant Registrar (CS-VII)

//True Copy//

Sub Assistant Registrar

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To:

1. The Sub Assistant Registrar,
Original Side Section,
High Court, Madras.

2. S.V.Matha Prasad, S/o.Late.S.V.Ramakrishnan,
No.10, Srige Appartments,
Velmurugan Colony,
Keelkattalai, Chennai 600 117.

+5 ccs to Mr.M.Kamalakannan, Advocate, sr.14158

+3 ccs to Mr.R.Natarajan, Advocate, sr.14172

O.S.A.Nos.73 to 77 of 2015

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