

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.04.2017

CORAM

THE HON'BLE MS. INDIRA BANERJEE, CHIEF JUSTICE
AND
THE HON'BLE MR.JUSTICE M.SUNDAR

O.S.A.No.95 of 2017

A.Mohamed Ali .. Appellant

vs.

1 E.Feroz

2 Khan Sahib Madhi Hussain
Sahib Wakf Estate
rep. by Advocate Receiver,
V.Pauldas
Advocate, No.65, Law Chambers
High Court, Chennai - 600 104.

Shanoo Khaleel (deceased)
rep. by LRs, respondents 20 and 21

A.Agasar Ali (deceased)
rep. by LRs, defendants 22 to 24

Haseena Begum (deceased)
rep. by defendants 14 to 28

3 A.Zahir Hussain
4 Farida Begum
5 Asif Hussain
6 Naseera Begum
7 M.A.Subhan
8 Mumtaz Begum

M.A.Sattar (deceased)
rep. by LR, 19th defendant

9 Modi Habibullah
10 Shammeem Mecci

11 Yusuf Hussain
rep by PA Holder, Shameem Mecci

12 A.A.Khaleel
13 Modi Azeem
14 Reshma
15 Kiran
16 A.Shahin Alam
17 Abbas Hussain
18 Mohamed Hussain
19 Khalid Mohammed Modi
20 Dr.Nahid Khaleel
21 Salma Khaleel
22 Sarwari Begum
23 Nawreen Fathima
24 Arshed Ali

.. Respondents

PRAYER: Appeal under Order XXXVI Rule 9 of the Original Side Rules read with Clause 15 of the Letters Patent against the fair and decreetal order of learned Single Judge dated 2.2.2017 in A.No.586 of 2017 in C.S.No.1306 of 1992.

For Appellant : Mr.T.Mohan
for M/s.M.Murali
For Respondents : Mr.S.J.Jagadev
for 1st respondent

JUDGMENT
(Delivered by M.Sundar,J.)

The third defendant in the main suit is the appellant before us.

2. The main suit pertains to Khan Sahib Mahdi Hussain Sahib Bahadur Wakf, a private wakf (Wakf-Alal-Aulad).

3. The main suit has been filed inter alia with prayers regarding administration of the Wakf-Alal-Aulad, for accounts and for appointment of a fit and proper person as Muthavalli (Trustee) of the Wakf-Alal-aulad. There are other prayers too.

4. Considering the nature of the order we propose to pass, we are not going into great detail regarding the plaint or the prayers therein.

5. It is now brought to our notice that the trial has commenced and the plaintiff's side evidence has been completed. It is also not in dispute before us that the defendants' side evidence is in progress.

6. In such circumstances, the third defendant in the suit is now in the witness box. His examination in chief is by way of a proof affidavit. That proof affidavit is dated 15.11.2016. It is evident from the proof affidavit that the third defendant, who is the appellant before us, has set out that he intends to mark as many as 51 documents.

7. In the above said scenario, the third defendant took out an application being Application No.586 of 2017 with a prayer to receive the documents.

8. The plaintiff alone opposed the said application.

9. The learned Single Judge, by an order dated 2.2.2017, dismissed the application holding that all the documents (51 documents) sought to be marked are photocopies.

10. Aggrieved, the third defendant has filed the intra-court appeal.

11. We see from the order that the only ground on which the application of the third defendant has been dismissed is that the 51 documents that are sought to be filed now are photocopies.

12. It is brought to our notice that all the documents are not photocopies and that some are originals and some others are certified copies.

13. Be that as it may, any document filed is subject to proof and relevance.

14. As stated supra, it is not in dispute between the parties that the trial is in progress and defendants' side evidence is under way. Therefore, when these documents are sought to be marked through witness, it will be open to the plaintiff to object to the same on all grounds that may be available to the plaintiff in law, including the ground that the documents are photocopies/secondary evidence (wherever applicable).

15. Therefore, we see no prejudice or hardship that would be caused to the plaintiff if the order of the learned Single Judge, called in question before us, is set aside and if the third defendant's documents are allowed to be filed subject to proof and relevance.

16. It is seen from the papers placed before us that in the Judge's summons, out of which this intra-court appeal arises, i.e., A.No.586 of 2017, no substantial provision of law has been invoked. It has been filed merely under Order XIV Rule 8 of the Original Side Rules of the Madras High Court. However, there

can be no dispute that there are ample and adequate powers for a Single Judge of this Court to entertain an application of this nature, inter alia under Order IX of the Madras High Court Original Side Rules, besides provisions under the Code of Civil Procedure, 1908. Though the application has not been dismissed on this ground, we deem it fit to say that we have noticed this aspect of the matter also.

17. For the foregoing reasons, we pass the following order:

- (a) The appeal is allowed and the order of the learned Single Judge dated 2.2.2017 in A.No.586 of 2017 in C.S.No.1306 of 1992 is set aside;
- (b) As and when the 51 documents enlisted in the Judge's summons to A.No.586 of 2017 and filed by the third defendant are sought to be marked before the learned Master, it will be open to the plaintiff to raise all the objections available to him in law;
- (c) Though obvious, we make it clear that in the course of progress of trial, as and when objections to marking of 51 documents are raised, learned Master shall record objections at his discretion and proceed in accordance with the established trial procedures qua marking of document with objection;
- (d) Considering the fact that this is a suit of the year 1992 and that there are 28 defendants, both the learned counsel before us undertake that the trial will be completed within six months and in view of the undertaking by the learned counsel, the suit shall be proceeded as expeditiously as possible and the trial shall be completed by the learned Master within six months of the date of receipt of the copy of this judgment.
- (e) The parties shall bear their own costs.

Sd/-

Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

sasi

To:

The Sub Assistant Registrar
Original Side
High Court, Madras.

+ 2 ccs to Mr.M.Murali, Advocate SR.22908
+ 1 cc to Mr.S. J. Jagadev, Advocate SR.22901

O.S.A.No.95 of 2017

SR(CO)
EU 5.5.17



WEB COPY