

## IN THE HIGH COURT OF JUDICATURE AT MADRAS

| Date of Reserving Judgment | Date of Pronouncing Judgment |
|----------------------------|------------------------------|
| 10.08.2017                 | 06.10.2017                   |

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THE HON'BLE MR.JUSTICE **D.KRISHNAKUMAR**S.A.No.26 of 2015

K.Balakrishnan ... Appellant/Defendant

Vs.

S.Dhanasekar ... Respondent/Plaintiff

Second appeal filed under Section 100 of the Civil Procedure Code to set aside the judgment and decree of the II Additional Sub Judge, Salem, dated 28.02.2014 made in A.S.No.52 of 2013 confirming the Judgment and Decree of the I Additional District Munsif, Salem, dated 11.11.2013 made in O.S.No.24 of 2012.

For Appellant : Mr.T.Murugamanickam  
Sr. Counsel for  
Ms.Zeenath Begum

For Respondent : Mr.K.Sathapal for  
Mr.P.Mohanraj

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**JUDGMENT**

The brief facts of the case as follows:

The respondent/plaintiff has filed a suit in O.S.No.24 of 2012 for permanent injunction against the appellant from interfering with the peaceful possession and enjoyment of the suit property. According to the plaintiff, the suit property originally belonged to one Mariappa Pillai by virtue of a registered sale deed, dated 28.1.1983. A sale agreement, dated 31.10.2004 was entered into between the respondent/plaintiff and the legal heirs of the deceased Mariappa Pillai. Subsequently, the respondent/plaintiff has also purchased the adjacent house site from the legal heirs of Mariappa Pillai by registered sale deed, dated 11.2.2005. The plaintiff is in possession and enjoyment of the same. The appellant/defendant is having house site on the western side of the plaintiff's house site. The defendant attempted to remove the boundary stones in the suit property and to trespass into the suit property. The respondent/plaintiff was examined as P.W.1 and Ex.A1 to A7 were marked. Since the defendant has not entered appearance, ex parte decree has been passed against the defendant. Aggrieved by the ex-parte decree, dated 11.1.2013, the defendant had filed an appeal in A.S.No.52 of 2013.

2 Before the Appellate court, the appellant/defendant contended that the trial court failed to record reasons to pass judgment and decree in favour of the respondent/plaintiff. The lower appellate court considering the oral and documentary evidence adduced by the respondent/plaintiff and the grounds raised by the appellant/defendant, confirmed the judgment and decree passed by the trial Court and dismissed the appeal. Challenging the judgment and decree passed by the Courts below, the defendant/appellant has filed the present Second Appeal.

3 This court framed the following substantial questions of law involved, for entertaining the Second Appeal and for further consideration.

- (i) Whether the judgments of the Courts below are vitiated in that while passing an ex-parte decree, the judgment does not reveal a detailed reasoning for coming to a conclusion that a judgment should be passed in favour of the plaintiff ?
- (ii) Whether the judgments of the Courts below are vitiated that they have granted a decree for permanent injunction without there being any proof of the plaintiff's possession of the suit property to evidence by an mutation of revenue records ?

4 Heard the learned counsel for the appellant and perused the materials available on record.

5 The learned Senior counsel for the appellant/defendant contended that the Courts below ought to have followed the procedure contemplated under Order 8 Rule 10 C.P.C. The trial court failed to appreciate the oral and documentary evidence to prove the plaintiff's possession of the suit property.

6 The only ground raised by the appellant is that the trial court passed the ex parte decree without giving detailed reason or appreciating the evidence adduced by the plaintiff. The learned counsel for the appellant/defendant submitted that the respondent/plaintiff herein filed the suit before the Additional District Munsif Court for permanent injunction. The trial court passed the ex parte decree against the appellant/defendant. Challenging the judgment and decree passed by the trial court, the appellant/defendant preferred an appeal before the Sub Court by raising a ground that the trial court failed to record reasons in the judgment for granting relief in favour of the plaintiff. According to the learned counsel for the appellant/defendant, the trial court has simply decreed the suit, by recording a finding that on the basis of the evidence of P.W.1 and the documents marked as Ex.A1 to A7,

the plaintiff has proved the case. In the said judgment, except the aforesaid fact, there is no discussion or appreciation of evidence adduced by the plaintiff nor any reason in the judgment for granting relief in favour of the plaintiff. According to the learned Senior counsel for the appellant/defendant, in the light of the decision of the Hon'ble Supreme Court as well as this court, the settled legal principles of law is that judgment must contain the bare minimum facts, the point for determination, evidence adduced and the evidence which are basis for deciding the issues. It is the further contention of the learned Senior counsel that as per the definition under Section 2(9) of C.P.C., the judgment means there must be adjudication of dispute. The judgment should contain brief summary. Therefore, the present judgment passed by the trial court is cryptic and an unreasoned judgment. Hence, the judgment and decree passed by the trial court as well as the judgment and decree passed by the Appellate court are liable to be set aside. In support of his submission, the learned counsel for the appellant/defendant relied on the following decisions:

- (i) **SMT. SWARAN LATA GHOSH VS. H.K.BANERJEE AND OTHERS [1969(I) 1 SCC 709**
- (ii) **C.N.RAMAPPA GOWDA VS. C.C. CHANDREGOWDA (DEAD) BY LRS. AND ANOTHER [(2012)5 SCC 265**
- (iii) **SHANTILAL GULABCHAND MUTHA VS. TATA ENGINEERING AND LOCOMOTIVE COMPANY LTD. AND ANOTHER [(2013)4 SCC 396**



**(iv) AZIZ AHMED KHAN VS. I.A. PATEL (A.I.R. 1974 (V.61,C.1) A.P.1)**

**(v) M/s.MEENAKSHI SUNDARAM TEXTILE VS. VALLIAMMAL TEXTILE LTD. [2011-3 L.W.80],**

7 The learned counsel for the respondent/plaintiff contended that the respondent/plaintiff filed a suit for permanent injunction. The appellant/defendant was set exparte and exparte judgment and decree has been passed by the trial court in favour of the respondent/ plaintiff. The Appellate Court while rejecting the contention of the appellant/defendant has held that the trial court has considered the documents filed by the respondent/plaintiff and and dismissed the Appeal suit filed by the appellant/defendant.

8 The learned counsel for the respondent/plaintiff further submitted that the Appellate court has held that the defendant/appellant has not adduced any oral and documentary evidence to disprove the case of the respondent/plaintiff. Therefore, the Appellate Court has rightly rejected the contention of the appellant/ defendant and dismissed the Appeal suit. In support of his submission, he relied on the following decisions:

**(i) KAILASH VS. NANHKU AND OTHERS [(2005)4 SCC 480]**

**(ii) MOHAMMED YUSUF VS. FAU MOHAMMAD AND OTHERS [(2009)3 SCC 513]**

- (iii) **M/s.EMAMI LTD. VS. ATHERYA INCORPORATIONS REP. BY ITS PROPRIETOR, S.R.SUBRAMANIAN (2012(4) L.W. 643)**
- (iv) **GUJARAT MARITIME BOARD VS. G.C.PANDYA [(2015)12 SCC 403]**

9 In **SMT. SWARAN LATA GHOSH VS. H.K.BANERJEE AND OTHERS [1969(1) 1 SCC 709]** the Hon'ble Supreme Court in para 6, 8 of the judgment has held as follows:

"6. Trial of a civil dispute in Court is intended to achieve, according to law and the procedure of the Court, a judicial determination between the contesting parties of the matter in controversy. Opportunity to the parties interested in the dispute to present their respective cases on questions of law as well as fact, ascertainment of facts by means of evidence tendered by the parties, and adjudication by a reasoned judgment of the dispute upon a finding on the facts in controversy and application of the law to the facts found, are essential attributes of a judicial trial. In a judicial trial the Judge not only must reach a conclusion which he regards as just, but, unless otherwise permitted, by the practice of the Court or by law, he must record the ultimate mental process leading from the dispute to its solution. A judicial determination of a disputed claim where substantial questions of law or fact arise is satisfactorily reached,

only if it be supported by the most cogent reasons that suggest themselves to the Judge : a mere order deciding the matter in dispute not supported by reasons is no judgment at all. Recording of reasons in support of a decision of a disputed claim serves more purposes than one. It is intended to ensure that the decision is not the result of whim or fancy, but of a judicial approach to the matter in contest : it is also intended to ensure adjudication of the matter according to law and the procedure established by law. A party to the dispute is ordinarily entitled to know the grounds on which the Court has decided against him, and more so, when the judgment is subject to appeal. The Appellate Court, will then have adequate material on which it may determine whether the facts are properly ascertained, the law has been correctly applied and the resultant decision is just. It is unfortunate that the learned Trial Judge has recorded no reasons in support of his conclusion, and the High Court in appeal merely recorded that they thought that the plaintiff had sufficiently proved the case in the plaint.

8 We are unable to agree with counsel for the plaintiff that "for all practical purposes" the action was undefended and that the Trial Judge recorded merely formal evidence in proof of the plaintiff's case. The defendants had filed a written statement denying the plaintiff's



*claim, had appeared by counsel at the trial, and had challenged the plaintiff's evidence by intensive cross-examination. The plaintiff who was the principal witness was asked as many as 317 questions and his examination appears to have taken the better part of a day. In the course of the examination in attempting to elicit the truth the learned Judge took no mean or insignificant part. Three more witnesses were also examined."*

10 In **C.N.RAMAPPA GOWDA VS. C.C. CHANDREGOWDA (DEAD) BY LRS. AND ANOTHER [(2012)5 SCC 265** wherein the Hon'ble Supreme Court has held as follows:

*"5. The plaintiff-appellant had filed a suit for partition and separate possession of landed property measuring 13 acres 20 guntas which according to his case was a joint family property wherein the partition had not taken place and as the defendants- respondents had failed to arrange for partition and separate possession of the plaintiffs half share in the schedule property, the plaintiff was compelled to file a suit for partition. It was also averred in the plaint that the defendants-respondents had partitioned the property amongst themselves without giving any share to the plaintiff-appellant.*

7 However, in spite of numerous opportunities, no written statement was filed by the defendants-respondents. Since the defendants-respondents failed to file written statement, the trial court directed the plaintiff to lead evidence. The plaintiff filed his evidence by way of affidavit along with certain documents which were marked as Ex.P1 to P10. However, the plaintiff was neither cross-examined by the defendants nor the defendants had filed the written statement as already stated hereinbefore.

8. Since the defendants neither filed written statement nor cross-examined the plaintiff, the learned Judge vide judgment and order dated 28.01.2004 on the basis of the pleadings and the ex-parte evidence adduced by the plaintiff in support of his case, decreed the suit in favour of the plaintiff-appellant and was thus held entitled to a decree of partition to the extent of half share in the landed property.

11. The High Court by its interim order dated 30.05.2005 had also refused to grant stay of execution of the decree in favour of the plaintiff-appellant and directed that the trial court may conclude the final decree proceedings. However, it was observed that if the preliminary decree is given effect to and the property is divided and allotted in the final decree proceedings, the same shall be subject

to the result of the appeal. Thereafter during pendency of the appeal before the High Court, the defendant No.1 died whose legal representatives were brought on record.

15. Contesting the appeal, it was urged on behalf of the defendants/respondents that the suit of the plaintiff-appellant has been decreed only on the basis of the averments in the plaint which was legally impermissible for even if the suit has been decided in the absence of written statement, the trial court ought not to have decreed the suit without cross-examination of the plaintiffs witness and without appreciation of evidence and, therefore, it has rightly been set aside by the High Court. Elaborating on this part of his submission, it was contended that the trial court was bound to independently examine the case of the plaintiff and satisfy itself as to the correctness of the plaintiffs claim even in the absence of written statement which evidently has not been done. In these circumstances, the High Court has rightly exercised its discretion and allowed the defendants-respondents to file their written statement.

16. To reinforce his submission, it was further supplemented that a duty is cast upon the court to examine the plaintiff and satisfy itself as to the correctness of the averments of the pleadings and the trial court ought not to

*have adopted the plaint without even cross-examination of the plaintiff.*

*18. Learned counsel in this context has specifically placed reliance on the observations of this Court which is of great relevance and value wherein it was held as follows:- As pointed out earlier, the court has not to act blindly upon the admission of a fact made by the defendant in his written statement nor should the court proceed to pass judgment blindly merely because a written statement has not been filed by the defendant traversing the facts set out by the plaintiff in the plaint filed in the court. In a case, specially where a written statement has not been filed by the defendant, the court should be a little cautious in proceeding under Order 8 Rule 10 CPC. Before passing the judgment against the defendant it must see to it that even if the facts set out in the plaint are treated to have been admitted, a judgment could possibly be passed in favour of the plaintiff without requiring him to prove any fact mentioned in the plaint. It is a matter of the courts satisfaction and, therefore, only on being satisfied that there is no fact which need be proved on account of deemed admission, the court can conveniently pass a judgment against the defendant who has not filed the written statement. But if the plaint itself indicates*



*that there are disputed questions of fact involved in the case regarding which two different versions are set out in the plaint itself, it would not be safe for the court to pass a judgment without requiring the plaintiff to prove the facts so as to settle the factual controversy. Such a case would be covered by the expression the court may, in its discretion, require any such fact to be proved used in sub-rule (2) of Rule 5 of Order 8, or the expression may make such order in relation to the suit as it thinks fit used in Rule 10 of Order 8."*

11 In **SHANTILAL GULABCHAND MUTHA VS. TATA ENGINEERING AND LOCOMOTIVE COMPANY LTD. AND ANOTHER [(2013)4 SCC 396]**, the Hon'ble Supreme Court has held as follows:

*"5. This Court in Balraj Taneja & Anr. V. Sunil Madan & Anr., AIR 1999 SC 3381 dealt with the issue and held that even in such fact-situation, the court should not act blindly on the averments made in the plaint merely because the written statement has not been filed by the defendant traversing the facts set out by the plaintiff therein. Where a written statement has not been filed by the defendant, the court should be little cautious in proceeding under Order VIII, Rule 10, CPC.*

*Before passing the judgment against the defendant it must ensure that even if the facts set out in the plaint are treated to have been admitted, a judgment could possibly be passed in favour of the plaintiff without requiring him to prove any fact mentioned in the plaint. It is a matter of Courts satisfaction and, therefore, only on being satisfied that there is no fact which need be proved on account of deemed admission, the court can conveniently pass a judgment against the defendant who failed to file the written statement. However, if the plaint itself indicates that there are disputed questions of fact involved in the case regarding which two different versions are set out in the plaint itself, it would not be safe for the Court to pass a judgment without requiring the plaintiff to prove the facts so as to settle the factual controversy. The power of the court to proceed under Order VIII, Rule 10 CPC is discretionary.*

*6. The court in Balraj Taneja case, further held that judgment as defined in Section 2(9) CPC means the statement given by the Judge of the grounds for a decree or order. Therefore, the judgment should be self-contained document from which it should appear as to what were the facts of the case and what was the controversy which was tried to be settled by the court and in what manner.*

*The process of reasoning by which the court came to the ultimate conclusion and decreed the suit should be reflected clearly in the judgment."*

9. In view of the above, it appears to be a settled legal proposition that the relief under Order VIII Rule 10 CPC is discretionary, and court has to be more cautious while exercising such power where defendant fails to file the written statement. Even in such circumstances, the court must be satisfied that there is no fact which need to be proved in spite of deemed admission by the defendant, and the court must give reasons for passing such judgment, however, short it be, but by reading the judgment, a party must understand what were the facts and circumstances on the basis of which the court must proceed, and under what reasoning the suit has been decreed."

12 In **AZIZ AHMED KHAN VS. I.A. PATEL (A.I.R. 1974 (V.61,C.1) A.P.1)** the Andhra Pradesh High Court has held as follows:

*"8. The irregularities committed by the trial court do not stop at that. The judgment that it has given does not conform to the provisions of Rule 4 (2) of Order XX, C. P. C. at all. Whereas a judgment shall contain a concise*

statement of the case, the points for determination, and the decision thereon, we search in vain for any of these essentials in the impugned judgment. It is no judgment at all. The provisions of Rule 4 (2) have a set purpose. The form is designed to ensure that while pronouncing the orders or judgments. They should apply their minds to the facts of the case and the points at issue and give a reasoned judgment thereon so that not only their own conscience may be satisfied but also the litigants should have satisfaction that all their evidence has been evaluated and their contentions and arguments duly considered. This is of vital importance inasmuch as the whole edifice of confidence of the litigants in Courts is built upon the quality of judgments. The Courts , therefore, have to necessarily take care that their judgments conform to the provisions of law and are products of sound reasoning. In the instant case the judgment of the trial Court which we have extracted above is no judgment at all. The appeal must be allowed on that basis also."

9. The result would be that, that testimony cannot be used as evidence by its own force against the defendant unless it be so permitted under any of the provisions of the Evidence Act. Of course, the testimony of the plaintiff recorded when the proceedings were



*ex parte* constituted evidence in the case. Indeed it was the statement of a witness in a judicial proceeding. But the natural result of the *ex parte* decree being set aside was that the parties were relegated back to the same position as they occupied before the non-appearance of the defendant. That testimony no longer remained as evidence in the case thereafter."

13. Following the decision of the Hon'ble Supreme Court, the Division Bench of this court in ***M/s.MEENAKSHI SUNDARAM TEXTILE VS. VALLIAMMAL TEXTILE LTD.*** [2011-3 L.W.80], has considered Section 2(9) of C.P.C. and held as follows:

"7. Section 2(9) relates to judgment, which states that every judgment should contain a concise statement of the case, the points for determination, decision thereon and the reason for such decision. The whole process of reasoning has to be set out for deciding the case one way or the other. There is more so, as could be seen from Order XX Rule (6A), which was substituted by the Code of Civil Procedure (Amendment) Act, 1999 with effect from 1.7.2002, to the preparation of a decree, which reads as under:-

*"6-A. Preparation of decree:-- (1) Every endeavour shall be made to ensure that the decree is drawn up as expeditiously as possible and, in any case, within fifteen days from the date on which the judgment is pronounced.*

*(2) An appeal may be preferred against the decree without filing a copy of the decree and in such a case the copy made available to the party by the Court shall for the purpose of Rule 1 of Order XLI be treated as the decree. But as soon as the decree is drawn, the judgment shall cease to have the effect of a decree for the purpose of execution or for any other purpose."*

9. The Supreme Court in *Swaran Lata Ghosh v. H.K. Banerjee*, (1969) 1 SCC 709, indicated that adjudication by a reasoned judgment of the dispute upon a finding on the facts in controversy and application of the law to the facts found, are essential attributes of a judicial trial. The relevant observation reads thus:- "6. Trial of a civil dispute in court is intended to achieve, according to law and the procedure of the court, a judicial determination between the contesting parties of the matter in controversy. Opportunity to the parties interested in the dispute to present their respective cases on questions of law as well as fact, ascertainment of facts by means of evidence tendered by the parties,

*and adjudication by a reasoned judgment of the dispute upon a finding on the facts in controversy and application of the law to the facts found, are essential attributes of a judicial trial. In a judicial trial, the Judge not only must reach a conclusion which he regards as just, but, unless otherwise permitted, by the practice of the court or by law, he must record the ultimate mental process leading from the dispute to its solution. A judicial determination of a disputed claim where substantial questions of law or fact arise is satisfactorily reached, only if it be supported by the most cogent reasons that suggest themselves to the Judge a mere order deciding the matter in dispute not supported by reasons is no judgment at all. Recording of reasons in support of a decision of a disputed claim serves more purposes than one. It is intended to ensure that the decision is not the result of whim or fancy, but of a judicial approach to the matter in contest: it is also intended to ensure adjudication of the matter according to law and the procedure established by law. A party to the dispute is ordinarily entitled to know the grounds on which the court has decided against him, and more so, when the judgment is subject to appeal. The appellate court will then have adequate material on which it may determine whether the facts are*

*properly ascertained, the law has been correctly applied and the resultant decision is just.*

*11. When the defendant is set exparte, the burden is heavy on the Court, as it would not have the advantage of defence. Therefore, the Court should be extra careful in such cases and they should consider the pleadings and evidence and should arrive at a finding as to whether the plaintiff has made out a case for a decree.*

*12 The judgment should contain the brief summary of the facts, the evidence produced by the plaintiff in support of his claim and the reasoning of the learned Judge either for decreeing the suit or its dismissal. The Civil Procedure Code does not say that the Court is bound to grant a decree in case the defendant is absent. The practice of writing a judgment indicating that the defendant was exparte and as such the claim was proved and the suit was decreed, deserves to be condemned."*

14 Therefore, in the aforesaid decisions of the Hon'ble Supreme Court as well as High Court, the definition of Section 2(9) of C.P.C. has been considered in detail and held that the judgment passed by the trial court, in the absence of defence, must contain



bare minimum facts, points for determination, evidence adduced, application of the facts and the evidence which are basis for deciding the issues, and a judgment which lacks the aforesaid details is not a judgment.

15 In **KAILASH VS. NANHKU AND OTHERS [(2005)4 SCC 480]**, wherein the Hon'ble Supreme Court has held that filing of an application under Order VIII Rule 9 C.P.C. inspite of time-limit having expired, court is not powerless to permit written statement being filed if court requires such written statement. Therefore, the appellant has to file an appropriate application before the trial court.

16 The learned counsel for the respondent/plaintiff placed reliance on the judgment in **MOHAMMED YUSUF VS. FAU MOHAMMAD AND OTHERS [(2009)3 SCC 513]**, wherein the Hon'ble Supreme Court has held in no uncertain terms that the defendants may be permitted to file written statement after the expiry of period of 90 days only exceptional situations. In the said judgment, the Hon'ble Supreme Court has held as follows:

*"9. It is urged that the provisions of Order 8 Rule 1 of the Code of Civil Procedure having been held to be directory in nature by this Court in **Kailash Vs. Nanhku and Ors.** -*

**(2005) 4 SCC 480**, this Court may not exercise its discretionary jurisdiction under Article 136 of the Constitution of India. 12. Order 8 Rule 1 of the Code of Civil Procedure reads thus: "[1. Written statement:- The defendant shall, within thirty days from the date of service of summons on him, present a written statement of his defence:

Provided that where the defendant fails to file the written statement within the said period of thirty days, he shall be allowed to file the same on such other day, as may be specified by the Court, for reasons to be recorded in writing, but which shall not be later than ninety days from the date of service of summons.] 13. Although in view of the terminologies used therein the period of 90 days prescribed for filing written statement appears to be a mandatory provision, this Court in *Kailash(supra)* upon taking into consideration the fact that in a given case the defendants may face extreme hardship in not being able to defend the suit only because he had not filed written statement within a period of 90 days, opined that the said provision was directory in nature. However, while so holding this Court in no uncertain terms stated that defendants may be permitted to file written statement after expiry of period of 90 days only on exceptional

*situation."*

12. *In view of the authoritative pronouncements of this Court, we are of the opinion that the High Court should not have allowed the writ petition filed by the respondent, particularly, when both the learned trial judge as also the Revisional Court had assigned sufficient and cogent reasons in support of their orders."*

17 The contention of the respondent/plaintiff is that the appellant has to file an application before the trial court to set aside the exparte decree and restore the suit on file. Without filing such application, the Appeal suit is not maintainable. Therefore, the Appellate court has rightly dismissed the Appeal suit.

18 In ***M/s.EMAMI LTD. VS. ATHERYA INCORPORATIONS REP. BY ITS PROPRIETOR, S.R.SUBRAMANIAN (2012(4) L.W. 643)***, this court has held

that the act of non filing of additional two applications, namely one to obtain leave to file written statement and another application to get the delay condoned along with the application under Order IX Rule 13 C.P.C. would be such as to render the defendant's step non-est in the eye of law. In the aforesaid said case, an application was filed under Order IX Rule 13 of C.P.C. without filing an

additional application to obtain leave to file written statement and another application to condone the delay in filing the written statement. In such circumstances, the judgment was rendered. The aforesaid judgment would not apply to the present case as the facts of the present case are entirely different.

19 In **GUJARAT MARITIME BOARD VS. G.C.PANDYA [(2015)12 SCC 403]** wherein the Hon'ble Supreme court has held as follows:

*"12. No doubt, the question of jurisdiction can be raised at any stage, but in the present case, there was no other forum for the plaintiff where he could have sought his remedy. The High Court has observed that the relief could not have been sought by the plaintiff before the Gujarat Civil Services Tribunal as the defendant was simply a Board and not covered within jurisdiction of said Tribunal. It was not a matter to be heard by the Central Administrative Tribunal either as the plaintiff was not a Central Government employee. As such, we do not find any error in the impugned order passed by the High Court.*

*13. In a case where the written statement is not filed, the civil court has the jurisdiction to proceed under Order VIII Rule 10 of C.P.C. However, the orders are not*



*required to be passed in mechanical manner in exercise of the powers contained in the above mentioned provision of law. In Balraj Taneja and another v. Sunil Madan and another[1], this Court has laid down law in paragraphs 25 to 27 on this point, as under: -*

*"25. Thus, in spite of admission of a fact having been made by a party to the suit, the court may still require the plaintiff to prove the fact which has been admitted by the defendant. This is also in consonance with the provisions of Section 58 of the Evidence Act which provides as under:*

*"58. Facts admitted need not be proved.- No fact need be proved in any proceeding which the parties thereto or their agents agree to admit at the hearing, or which, before the hearing, they agree to admit by any writing under their hands, or which by any rule or pleading in force at the time they are deemed to have admitted by their pleadings: Provided that the court may, in its discretion, require the facts admitted to be proved otherwise than by such admissions."*

*26. The proviso to this section specifically gives a discretion to the court to require the facts admitted to be proved otherwise than by such admission. The proviso corresponds to the proviso to Rule 5(1) Order 8 CPC.*

27. *In view of the above, it is clear that the court, at no stage, can act blindly or mechanically. While enabling the court to pronounce judgment in a situation where no written statement is filed by the defendant, the court has also been given the discretion to pass such order as it may think fit as an alternative. This is also the position under Order 8 Rule 10 CPC where the court can either pronounce judgment against the defendant or pass such order as it may think fit."*

20. When the defendant is set exparte, the court should consider the pleadings, evidence adduced by the plaintiff and render finding as to whether prima facie case has been made out to decree the suit in favour of the plaintiff. Whereas in the case in hand, the trial court in its judgment has stated as follows:

*"In order to prove the case, the plaintiff examined himself as P.W.1 and produced the original title deeds, death certificate, power deed and rough plan and they have been marked as Exs.A1 to A7. This Court upon perusal of oral and documentary evidence comes to the conclusion that the plaintiff has proved his case and entitled for the relief as prayed for. No cost."*

21. According to the learned counsel for the appellant/defendant, contrary to the provisions of Section 2(9) of C.P.C., the trial court has merely recorded that the plaintiff examined himself as P.W.1 and produced documents which are marked as Ex.A1 to A7, the trial court upon perusal of oral and documentary evidence, comes to the conclusion that the plaintiff has proved his case. Therefore, it is clear from the above judgment of the trial court that there is no discussion, there is no consideration of pleadings, no determination of the question involved there is no reason or basis upon which the suit is decreed. Without following the same, the trial court has merely passed *ex parte* judgment and decree. Thus, the trial court has failed to satisfy the definition under Order 20 Rule 4(2) of C.P.C. which visualises the judgment of the Court other than Court of Small Causes, shall contain conscious statement of the case, points for determination, decisions and the reason for the findings. A judgment unsupported by a reason, is not a judgment in the eye of law.

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22 Hence, in the light of the principles laid down by the Hon'ble Supreme Court as well as this court, the trial court without considering Section 2(9), C.P.C. which defines a meaning a formal expression of civil court. Any decision of civil court is not a decree. In a suit, court may take certain decision of objective consideration

and those decisions must contain discussion of the matter, issues in the suit, reason which led the court to pass such orders.

23 In the case of **C.N.RAMAPPA GOWDA** cited supra, the Hon'ble Supreme court has considered the issue of unreasoned judgment and decree passed by the trial court and held that it is a well-acknowledged legal dictum that assertion is no proof and hence, the burden lay on the plaintiff to prove his/her case even if there was no written statement to the contrary or any evidence of rebuttal and the Hon'ble Supreme Court observed that the trial court adopted an erroneous approach by inferring that merely because there was no evidence of denial or rebuttal, the plaintiff's case could be held to have been proved. The trial court therefore, while accepting the plea of the plaintiff ought to have recorded reasons even if it were based on exparte evidence. By placing reliance upon the judgment in **Balraj Taneja's** case, it was held that if the plaint itself indicates that there are disputed question of fact involved in the case regarding which two different versions are set out in the plaint itself, it would not be safe for the court to to pass a judgment without requiring the plaintiff to prove the facts so as to settle the factual controversy. Further, in the concluding portion of the judgment, it was held that the trial court has decreed the suit without assigning any reason how the plaintiff is entitled for half-



share in the property. Such judgment is absolutely cryptic in nature.

24 Therefore, in the light of the decisions of the Hon'ble Supreme court as well as the decision of the Division Bench of this court reported in **2011(3) L.W. 80** (supra), while passing the exparte judgment, the trial court has not satisfied the requirement under Section 2(9) of C.P.C. The trial court has passed a cryptic and unreasoned judgment in granting exparte decree in favour of the plaintiff.

25 Therefore, this court is of the view that the judgment and decree passed by the trial court in O.S.No.24 of 2012 are not in consonance with the provisions of the Code of Civil Procedure and also the principles laid down by the Hon'ble Supreme Court as well as this Court. Hence, there is an error apparent in the judgment of the trial court in O.S.No.24 of 2012 on the file of I Additional District Munsif, Salem and the same is liable to be set aside. The lower appellate Court also without considering the aforesaid provisions and settled principles of law, has dismissed the appeal. Therefore, the judgment and decree passed by the lower appellate Court is also set aside. Therefore, the questions of law as framed in the present Second Appeal are answered in favour of the

**D.KRISHNAKUMAR, J.**

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appellant/ defendant. It is made clear that the Second Appeal decided in favour of the appellant only in respect of passing of exparte judgment in the suit.

26 In view of the above, the Second Appeal is allowed. The judgment and decree passed in O.S.No.24 of 2012 on the file of I Additional District Munsif, Salem is hereby set aside. Consequently, judgment and decree passed in A.S.No.52 of 2013 by the II Additional Sub Court, Salem confirming the judgment and decree passed by the trial court in O.S.No.24 of 2012 is also set aside and remanded to the trial court to pass a reasoned judgment after considering the oral and documentary evidence placed on record. No costs. Consequently, connected miscellaneous petition is closed.

6.10.2017

Speaking/Non Speaking Order

Index : Yes/No

Internet : Yes/No

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To

1. The Additional Sub Judge, Salem.

2. The I Additional District Munsif, Salem.

**S.A.No.26 of 2015**