

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 21/11/2019
C O R A M

THE HON'BLE MR.A.P.SAHI, CHIEF JUSTICE

a n d

THE HONOURABLE MR.JUSTICE SUBRAMONIUM PRASAD

Writ Appeal No.3829 of 2019

1. B. Booma Devi
 2. Karuppasami Pandian
 3. Kamatchi Priya
- Appellants/Petitioners

Vs

1. The District Collector
Kancheepuram District.
 2. The Tahsildar
Tambaram Taluk Office
Tambaram.
 3. The Commissioner
Alandur Municipality
Alandur
Chennai 600 016.
- Respondents/Respondents

Prayer : Appeal filed under Clause 15 of the Letter Patent against the order, dated 1/2/2019, passed in W.P.No.13455 of 2010.

Prayer in W.P.No.13455 of 2010:

Petition filed under Section 226 of the Constitution of India, Praying to issue a Writ of Mandamus forbearing the Respondents herein, their men, agents servants or any other person or persons claiming through them or authorized by them from in any manner interfering with the Petitioner peaceful possession and enjoyment of the property of an extent of 2.89 acres comprised in Survey No.37 in Nanganallur Village Tambaram Taluk Kancheepuram District.

For appellants ... Ms.AL.Ganthimathi

For respondents ... Mr.S.R.Rajagopal
Additional Advocate General
assisted by Mr.V.Jayaprakash Narayanan
Government Pleader

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J U D G M E N T

(Judgment of the Court was delivered by
Subramonium Prasad,J)

Instant writ appeal is directed against the order, dated 1/2/2019, passed in W.P.No.13455 of 2010.

2. Facts in brief are as follows:-

a) The properties in question being an extent of 2.89 acres, comprised in S.No.37 and 4.87 acres comprised in S.No.32 of Nanganallur Village, Alandur Taluk, originally belonged to one Vijayarangan Pillai and Mohanarangan Pillai. It is said that a temple was constructed on the said lands.

b) Lands were sold to one Duraisamy Pillai and after his death, his son Chinnathambi had taken over the temple and the lands. On the death of Chinnathambi, his son Subbaraya Pillai came into the possession of the properties.

c) Stating that the family members were not able to maintain the temple, an Association, viz., Arulmighu Pidari Pachaiaimman temple Association, was formed, which took over the management of the temple.

d) One Pandian, husband of the first appellant has entered into an agreement of sale on 06.07.1992 with the petitioner Association. After the death of said Pandian, his legal representatives/appellants herein, filed a suit for specific performance of the agreement to sale. The suit was numbered as O.S.No.742 of 2001, on the file of the Subordinate Judge, Chengalpattu. The suit was decreed ex parte. It is stated that on the basis of ex parte decree, a sale deed was registered through Court, on 28/10/2004, the appellants have taken delivery of the property through Court, on 11/4/2005.

e) It is stated that respondents herein had conducted a spot inspection to find out of the nature of the property. It is also stated that officials of the Alandur Municipality, are interfering with the possession of the appellants and also trying to put up a construction on the land.

f) The appellants, therefore, filed Writ Petition No.13455 of 2010, praying for the issuance of a writ of mandamus, forbearing the respondents therein, their men, agents and servants, or any other person or persons claiming through them or authorised by them from in any manner interfering with the petitioner's peaceful possession and enjoyment of the property of an extent of 2.89 acres comprised in S.No.37 in Nanganallur Village, Kancheepuram District.

3. The learned Single Judge, vide, order, dated 1/2/2019, dismissed the writ petition, observing that the Subordinate Judge, Chengalpattu, could not have decreed the suit, without following the procedure as laid down in the Code of Civil Procedure 1908. The learned Single Judge held that the suit has been filed nine years after the agreement to sale was entered into and also the suit is barred by time. The learned Single Judge also held that the temple was a public temple, and under Section 34 of the Hindu Religious and Charitable Endowments Department Act, the property could not have been sold without the permission of the Commissioner. The learned Single Judge also found that there was a suppression of fact, on the part of the appellants, in as much as the appellants/writ petitioners had not disclosed the filing of an earlier writ petition, and also a subsequent filing of the present writ petition. This judgement is under challenge in the instant writ petition.

4. Heard Ms.AL.Ganthimathi, learned counsel for the appellants and Mr.S.R.Rajagopal, Additional Advocate General for the respondents.

5. Ms.AL.Ganthimathi, learned counsel for the appellants would state that there was no suppression on the part of the appellants. The appellants had disclosed the filing of the earlier writ petition in the instant writ petition. The learned counsel for the appellants point out that at paragraph 6 of the affidavit, filed in support of the writ petition, it has been disclosed that the appellants had filed W.P.No.7738 of 2009, praying for a mandamus, directing the respondents 1 and 2 to transfer patta in their favour for the property in question, which is pending. The learned counsel for the appellants also contended that the action of the respondents is in violation of the Court decree and the petitioners are entitled to the relief of injunction as prayed in the writ petition.

6. We have perused the judgment passed in O.S.No.619 of 2005. The entire judgment in O.S.No.619 of 2005, on the file of the District Judge, Alandur, reads as under:-

"Suit for permanent injunction restraining the defendant, their officers and subordinates from in any manner interfering with plaintiff's possession and enjoyment of the suit property and for costs.

Records perused, claim proved and in the result the suit is decreed that the defendant or their subordinates of without due process of law. Considering the facts and circumstances of the case. No orders as to costs.

The issue which arises is whether the judgement as pronounced by the petitioner is a valid judgement in the eyes of law.

7. In the suit, the respondent has been set ex parte. The Hon'ble Supreme Court in BALRAJ TANEJA Vs. SUNIL MADAN {1999 (8) SCC - 396}, has observed as under:-

"29. 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 court's 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."

8. Similarly, the Hon'ble Supreme Court in C.N.RAMAPPA GOWDA Vs. C.C.CHANDREGOWDA (dead) BY LRS AND ANOTHER {(2012) 5 SUPREME COURT CASES - 265}, after quoting the judgment of Balraj Taneja {(1999) 8 SCC - 396}, observed as under:-

"25. We find sufficient assistance from the apt observations of this Court extracted hereinabove which has held that the effect [Ed.: It would seem that it is the purpose of the procedure contemplated under Order 8 Rule 10 CPC upon non-filing of the written statement to expedite the trial and not penalise the defendant.] of non-filing of the written statement and proceeding to try the suit is clearly to expedite the disposal of the suit and is

not penal in nature wherein the defendant has to be penalised for non-filing of the written statement by trying the suit in a mechanical manner by passing a decree. We wish to reiterate that in a case where written statement has not been filed, the court should be a little more cautious in proceeding under Order 8 Rule 10 CPC and before passing a judgment, it must ensure that even if the facts set out in the plaint are treated to have been admitted, a judgment and decree could not possibly be passed without requiring him to prove the facts pleaded in the plaint.

26. It is only when the court for recorded reasons is fully satisfied that there is no fact which needs to be proved at the instance of the plaintiff in view of the deemed admission by the defendant, the court can conveniently pass a judgment and decree 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 arising from the plaint itself giving rise to two versions, it would not be safe for the court to record an ex parte judgment without directing the plaintiff to prove the facts so as to settle the factual controversy. In that event, the ex parte judgment although may appear to have decided the suit expeditiously, it ultimately gives rise to several layers of appeal after appeal which ultimately compounds the delay in finally disposing of the suit giving rise to multiplicity of proceedings which hardly promotes the cause of speedy trial.

9. The Hon'ble Supreme Court in MAYA DEVI VS. LALTA PRASAD {(2015) 5 SUPREME COURT CASES - 588}, has observed as under:-

"41. The absence of the defendant does not absolve the trial court from fully satisfying itself of the factual and legal veracity of the plaintiff's claim; nay, this feature of the litigation casts a greater responsibility and onerous obligation on the trial court as well as the executing court to be fully satisfied that the claim has been proved and substantiated to the hilt by the plaintiff. Reference to Shantilal Gulabchand Mutha v. Telco Ltd. [(2013) 4 SCC 396 : (2013) 2 SCC (Civ) 632] , will be sufficient. The failure to file a written statement, thereby bringing Order 8 Rule 10 CPC into operation, or the factum of the defendant having been set ex

parte, does not invite a punishment in the form of an automatic decree. Both under Order 8 Rule 10 CPC and on the invocation of Order 9 CPC, the court is nevertheless duty-bound to diligently ensure that the plaint stands proved and the prayers therein are worthy of being granted."

10. In view of the above, it can be said that the appellants cannot derive advantage of the ex parte decree. In the absence of the decree, the claim of the appellants which is based solely on the decree cannot be granted. It is well settled that an agreement to sell does not convey any valid title to the agreement holder. The entire basis of the claim which is only based on the decree cannot be sustained.

11. This court does not find any infirmity with the order of the Learned Single Judge and accordingly, the writ appeal is dismissed. It is however, open to the appellants to take any other appropriate proceedings, as permitted under law. No costs.

Sd/-
Assistant Registrar(CS-VI)

// True Copy//

Sub Assistant Registrar

mvs/pkn.

To

1. The District Collector
Kancheepuram District.
2. The Tahsildar
Tambaram Taluk Office
Tambaram.
3. The Commissioner
Alandur Municipality
Alandur, Chennai 600 016.

+1CC to M/s.AL.Gandhimathi, Advocate, SR.No.97772.

Judgment made in
W.A.No.3829 of 2019

SAI (CO)
CSR: 17/12/2019