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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.10.2021

CORAM

THE HONOURABLE MRS. JUSTICE PUSHPA SATHYANARAYANA
AND
THE HONOURABLE MR. JUSTICE KRISHNAN RAMASAMY

O.S.A.No.181 of 2018

- 1.S.Ravi
- 2.Tmt.S.Gomathi
- 3.Tmt.Anjanapriya
- 4.Minor Gomatheeswaran
Rep by Mother and Natural Guardian
Tmt. Anjanapriya
- 5.Tmt.Neelavathy ..Appellants/Defendants 1 to 5

Vs.

- 1.P.Navaneetharaj ..1st Respondent/Plaintiff
- 2.The Assistant Commissioner,
(ULT) Mylapore, Chennai - 4
- 3.The Collector,
Chennai District,
Chennai - 600 001.
- 4.The District Revenue Officer,
Chennai District,
Chennai - 600 001.
- 5.The Tahsildar,
Mylapore - Triplicane Taluk,
Mylapore, Chennai - 600 004.
- 6.The Tamil Nadu Wakf Board
Rep. by its Chief Executive Officer,
No.1, Jaffer Syrang Street,
Vallal Seethakadi Nagar,
Mannady, Chennai - 600 001. ..Respondent 2 to 6/Defendants
6 to 10

Prayer : Original Side Appeal filed under Order XXXVI Rule 9 of
O.S. Rules r/w Clause 15 of Letters Patent against the Judgment
and Decree dated 09.10.2017 in C.S. No.694 of 2012.



C.S. No. 694/2012 filed under order VII Rule 1 of CPC R/W order IV rule 1 of the O.S. Rules for the reliefs.

a) for a declaration declaring the decree dated 11.03.2010 passed in C.S. No.185 of 2008 as null and void and not binding on the plaintiff;

b) to pass a preliminary decree for partition and separate possession of plaintiff's half share in the suit property morefully described in the schedule hereunder;

c) for appointment of an Advocate Commissioner to divide the suit property by metes and bounds and for allotment of plaintiff's undivided half share in the suit property;

d) for permanent injunction restraining the defendants herein, their men, agents, servants or any other person claiming through them from interfering with the plaintiff's peaceful possession, occupation and enjoyment of the suit property by the plaintiff;

e) for the costs of this suit.

For Appellant : Mr.T.M.Hariharan
M/s.Ravichandran Sundaram

For R2 to R5 : Mr.Edwin Prabhakar
State Govt. Counsel

For R6 : Mr.Avinash Wadhwani
for Mr.V.Raghavachari

For R1 : No Appearance

J U D G E M E N T

PUSHPA SATHYANARAYANA, J.

The above original side appeal is preferred by defendants 1 to 5, who were also the cross-objectors in C.S. No.694 of 2012. The plaintiff/the first respondent herein is the son of one Ponnappa Pillai @ Perumal and Govindammal. The first and second defendants are son and daughter of the plaintiff's brother one P.Subramani. The 3rd and 4th defendants are wife and son of one S.Prabhakaran, who is the brother of first defendant. The fifth defendant is the mother of defendants 1 and 2 and the said S.Prabhakaran and wife of P.Subramani.



2. One Kalappa Naidu in the year 1915, had conveyed an extent of 116.13 grounds in Survey Nos.2252 and 2253 and Re-survey Nos.2024 and 2025 in Mylapore village in favour of plaintiff's father Ponnappa Pillai. In 1953, the mother of the plaintiff and wife of Ponnappa Pillai, namely Govindammal, died. Thereafter, the said Ponnappa Pillai @ Perumal had settled the entire properties in favour of his eldest son P.Subramani by a registered Settlement Deed on 29.07.1955. In the year 1957, the said Ponnappa Pillai died and the defendants who are the legal heirs of the said P.Subramani are in possession of the property. While so, the suit is filed by the plaintiff, who is the second son of Ponnappa Pillai for declaration that the decree in C.S. No.185 of 2008, as null and void and for a preliminary decree for partition and separate possession of the suit property. As the defendants 1 to 5 are already in possession in their own right, they had filed a written statement along with a counter claim.

3. As per the counter claim, the defendants 1 to 5 had prayed for a declaration that they are the absolute owners of the property, which is a vacant land measuring about 90 grounds and 75 sq.ft. in R.S. No.2024 and paid the relevant court fees also. It is also admitted that, out of the original 116.13 grounds, a portion of the same had been occupied by a mosque and also used as a burial ground for Muslims. Therefore, the Wakf Board and the Revenue Authorities were impleaded by the court suo motu.

4. The plaintiff, who is the first respondent herein, alleged to have executed a settlement deed on 02.02.2007 in favour of the first defendant's father Subramani. Within a month, on 06.03.2007, the said Settlement Deed was cancelled unilaterally by him, for the reasons best known to him. The said property was settled by the original owner Ponnappa Pillai in favour of P.Subramani. The defendants 1 to 5, who are the legal heirs of P.Subramani, had filed C.S. No.185/2008 for a partition, which ended up in a compromise. A final decree was passed in terms of the compromise dated 11.03.2010, which is also exhibited as Ex.D8. There was yet another suit filed by one Dilshad. Both the plaintiff and the defendants in the present suit, were arrayed as parties in the above said suit. The appellants herein had filed an application under Order VII Rule 11 CPC for rejection of the said plaint, which was rejected by this court and an appeal filed by the plaintiffs therein in O.S.A. No.121/2014 was dismissed for non-prosecution. Yet another appeal filed by the appellants herein in O.S.A. No.20/2016 was also closed on 30.06.2016.



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8. The trial court, has proceeded to dispose of the suit, even without framing an issue to find out the areas of dispute. In fact, the day when the issues are framed, is deemed to be the first hearing of the suit. As the issues would determine, whether each party admits or denies the allegation made mutually. Being a suit for partition, whether they are plaintiff or the defendants, the status of the parties are the same. Only when the defendant has no defence and submit to the decree, the issues need not be framed. If the averments made in the plaint are admitted in the written statement also, an issue need not be framed. However, without framing an issue on the disputed question of facts and also the counter claim made by the defendants, the learned single Judge, had simply dismissed the suit, as a vexatious litigation, without even advertng to the documents and came to the conclusion that the parties are in collusion.



9. In this regard, reliance can be placed on the decision of the Hon'ble Apex Court in *Pratima Sinha and Others vs. Shashi Kumar Narain Sinha and Others* reported in (2004) 13 SCC 599, wherein the Hon'ble Apex Court held that the trial Court should have framed issues arising out of the pleadings in accordance with Procedure under Order XIV Rule 1 of CPC and thereafter, it should have decided such issue. Trial court for having not followed this procedure, the matter was remanded to the trial for deciding the suit afresh. Paragraphs 9 and 10 of the said Judgment, read thus :

"9. However, we do not intend to decide the matter on merits at all. We are of the view that the Subordinate Judge should have framed the issues arising out of the pleadings in accordance with the procedure of Order 14 Rule 1 of the Civil Procedure Code. After framing all the issues, if the trial Judge is of the view that any of the issues raised would dispose of the suit either wholly or in part then the Judge can on the basis of the provisions of Order 14 Rule 2 decide such issue. The Subordinate Judge not having followed this procedure, we do not think that it would be appropriate to uphold the decision of the Subordinate Judge.

10. Therefore we dispose of this appeal by setting aside the decision of the High Court on the ground that the revisional application was incompetent. At the same time we set aside the order of the Subordinate Judge and remand the matter back to the trial court for redeciding the suit strictly in compliance with the observations in this judgment. No costs.

10. In *Kalyan Singh Chauhan v. C.P. Joshi* reported in (2011) 11 SCC 786, reiterating the importance and object of framing of issues, the Hon'ble Apex Court, observed as follows:

21. This Court in *Bachhaj Nahar v. Nilima Mandal*, (2008) 17 SCC 491, held as under: (SCC pp. 496 & 500, paras 12-13 & 23)

"12. The object and purpose of pleadings and issues is to ensure that the litigants come to trial with all issues clearly defined and to prevent cases being expanded or grounds being shifted during trial. Its object is also to ensure that each side is fully alive to the questions that are likely to be raised or considered so that they may have an opportunity of placing the



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relevant evidence appropriate to the issues before the court for its consideration.

13. The object of issues is to identify from the pleadings the questions or points required to be decided by the courts so as to enable parties to let in evidence thereon. When the facts necessary to make out a particular claim, or to seek a particular relief, are not found in the plaint, the court cannot focus the attention of the parties, or its own attention on that claim or relief, by framing an appropriate issue... Thus it is said that no amount of evidence, on a plea that is not put forward in the pleadings, can be looked into to grant any relief.

23. The jurisdiction to grant relief in a civil suit necessarily depends on the pleadings, prayer, court fee paid, evidence let in, etc."

22. In J.K. Iron & Steel Co. Ltd. v. Mazdoor Union [AIR 1956 SC 231] , this Court observed: (AIR p. 235, para 24)

"24. ... It is not open to the tribunals to fly off at a tangent and, disregarding the pleadings, to reach any conclusions that they think are just and proper."

23. Order 14 Rule 1 CPC reads:

"1. Framing of issues.-(1) Issues arise when a material proposition of fact or law is affirmed by the one party and denied by the other."

Following the above ratio, we are of the view that non-framing of issues is fatal to the instant case.

11. The Hon'ble Supreme Court in Shivaji Balaram Haibatti v. Avinash Maruthi Pawar, (2018) 11 SCC 652, has held that the parties to the suit cannot travel beyond the pleadings so also the court cannot record any finding on the issues which are not part of pleadings and it was made clear that the court has to record the findings only on the issues which are part of the pleadings on which parties are contesting the case. Ultimately,



any documents or evidence have to be set aside and sent back for fresh trial.

12. In the light of the above, the appeal is allowed, the judgment and decree dated 09.10.2017 made in C.S. No.694 of 2012 are set aside and the matter is remitted back to the learned single Judge. The learned single Judge is directed to frame appropriate issues and conduct a de novo trial and dispose of the suit, in accordance with law. The parties shall bear their own costs. Considering the fact that the suit is of the year 2012, the trial may be completed at the earliest and the suit may be disposed of within a period of six months.

-s/d-

Assistant Registrar(CS-II)

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Sub-Assistant Registrar

Asr

To

The Sub Assistant Registrar
Original Side
High Court, Madras 104.

+1 CC to Mr. Ravichandran Sundaresan, Advocate sr 53032.

+1 CC to The Special Government Pleader(CS) sr 53422.

O.S.A. No.181 of 2018

PPA(CO)
SP(27/10/2021)