



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.08.2021

CORAM

THE HON'BLE MR.JUSTICE M.M.SUNDRESH
and
THE HON'BLE MRS.JUSTICE S.KANNAMMAL

O.S.A.Nos.257, 263 to 267 of 2021

O.S.A.No.257 of 2021

Vijay Nahar

.. Appellant in all the OSA's

Vs

1. Anil Nahar
2. Trans World Exports (P) Limited,
Represented by its Director,
Anil Nahar,
New No.21, Kannadasan Road,
T.Nagar, Chennai - 600 017.

.. Respondents in all the OSA's

Appeals filed under Order 36 Rule 19 of O.S.Rules r/w Clause 15 of Letters Patent against the judgment and decree dated 26.03.2021 made in Appl.Nos.798, 799, 802, 803, 805 and 807 of 2019 in C.S.No.86 of 2004.

Prayer in A.No.798 of 2019 : Judge's Summons filed under order XIV Rule 8 of the High Court Original Side rules read with section 151 of the Code of Civil Procedure praying to re-open the evidence of plaintiff in C.S.No.86 of 2004.

Prayer in A.No.799 of 2019 : Judge's Summons filed under order XIV Rule 8 of the High Court Original Side rules read with Order VII Rule 14(3) and Section 151 of the Code of Civil Procedure praying to permit the plaintiff to file two additional documents, being the Report of Mr.M.Maninmani dated 16.12.2018 and 27.12.2018.

Prayer in A.No.802 of 2019 : Judge's Summons filed under Order XIV Rule 8 of the High Court Original Side rules read with Order XI Rule 14(3) and Section 151 of the Code of Civil Procedure praying to direct the defendants/respondents, namely, (1) Ex.D.2-Being the returns filed by the 2nd defendant Company which was signed by my father, besides, D-6, D-41 and D-42 being the returns filed by the 2nd defendant Company with the Registrar of



Companies for comparison with Ex.D.19, Ex.D.48, Ex.D.55, Ex.D.56, Ex.D.57 and Ex.D.58.

Prayer in A.No.803 of 2019 : Judge's Summons filed under order XIV Rule 8 of the High Court Original Side rules read with Order XI Rule 14 and Section 151 of the Code of Civil Procedure praying to direct the defendants to produce the books containing the minutes of the Annual General Body Meeting of the 2nd defendant for the period from 28.10.1995 to 30.09.2014 and 31.03.1995 to 22.12.2014 marked as Ex.D.52, Ex.D.53 and Ex.D.54.

Prayer in A.No.805 of 2019 : Judge's Summons filed under order XIV Rule 8 of the High Court Original Side rules read with Order XXVI Rule 10A and Section 151 of the Code of Civil Procedure praying to direct examination of the papers contained in Ex.D.52, Ex.D.53 and Ex.D.54 by an Expert appointed by this Court to ascertain the age of the sheets and the writing thereon pertaining to the entries under which transfer of shares owned by Mr.D.C.Nahar in favour of the family members of the 1st defendant were entered.

Prayer in A.No.807 of 2019: Judge's Summons filed under order XIV Rule 8 and Order XVI Rule 1 of the High Court Original Side rules read with Order XVI Rule 1 and Section 151 of the Code of Civil Procedure praying to issue subpoena to the Manager Vijaya Bank, Triplicane Branch, Chennai, to produce all records in relation to the Savings Bank Account/Current Account of the 2nd defendant having PAN No.47-041-CN-0765(Circle II (2)-GIR No.35/I) more specifically the signature of late D.C.Nahar as available in their records for being compared with the disputed signatures in Exhibits D-19, Ex.D.48, Ex.D.55, Ex.D.56, Ex.D.57 and Ex.D.58 filed before this Court.

Prayer in C.S.No.86 of 2004 :Civil Suit filed under Order IV Rule 1 and Order XXIV of the Original Side Rules read with Order VII Rule 1 of the Code of Civil Procedure praying for declaration declaring the plaintiff's half share in the suit schedule properties, for appointing a Commissioner for division of the properties and allot half share in the suit schedule properties by metes and bound, for an injunction restraining the defendant, their men, agents, assignees from encumbering or alienating the suit schedule properties, for appointing an Advocate Commissioner to ascertain the mean profits in respect of the suit schedule properties and direct the 1st respondent to render accounts of the same and direct payment of such sum ascertained towards mean profits to the plaintiff for three years from the date of filing of the suit with costs.



For Appellant
(in all cases)

: Ms.Chitra Sampath
Senior Counsel for
Mr.V.G.Suresh Kumar

For Respondents
(in all cases)

: Mr.P.H.Arvinth Pandian
Senior Counsel for
Mr.K.Ramu

COMMON JUDGMENT
(Delivered by M.M.SUNDRESH, J.)

The appellant is the applicant before the learned Single Judge. Incidentally, the appellant is also the plaintiff in the suit filed in C.S.No.86 of 2004 seeking the following reliefs:-

"a) To declare the plaintiff's half share in the suit schedule properties;

b)To appoint a Commissioner for division of the properties and allot half share in the suit schedule properties by metes and bounds;

c)To grant an injunction restraining the defendant, their men, agents, assignees from encumbering or alienating the suit schedule properties; and

d)To appoint an Advocate Commissioner to ascertain the mean profits in respect of the suit schedule properties and direct the 1st respondent to render accounts of the same and direct payment of such sum ascertained towards mean profits to the plaintiff for 3 years from the date of filing of the suit;

e)Directing defendant to pay cost of the suit; and

f) For such further or other reliefs as this Hon'ble Court may deem fit and proper in the circumstances of the case"

2. The applications filed have been filed by the appellant seeking to re-open his evidence which was closed few years before and so also the evidence of the defendants. Incidentally, Application No.799 of 2019 has been filed to permit the appellant to file two additional documents being the report of one Mr.Maninmani Rajan to show that the share transfer



3. Application No.802 of 2019 has been filed seeking a direction to the respondent to produce the originals of certain documents. Application No.803 of 2019 has been filed once again to produce the books containing the minutes of the Annual General Body meeting. Another application has been filed in A.No.805 of 2019 invoking Order 26 Rule 10A read with Section 151 C.P.C. to direct the examination of the papers contained in Exs.D52 to D54 by an expert appointed by this Court. Yet another application has been filed in A.No.807 of 2019 to issue subpoena to the Manager, Vijaya Bank to produce the records under his custody for the purpose of comparing with the disputed signature in Exs.D19, D48, D55, D56, D57 and D58.

5. Learned Senior Counsel appearing for the appellant contended that the re-opening sought for in A.No.798 of 2019 is only for the purpose of marking the documents to a private expert to establish his case that the signature contained in the documents filed aforesaid by the first respondent are forged. Therefore, the other applications also ought to have been allowed since the suit filed is one for partition and mere delay by itself cannot be a ground to reject them. Though, there was denial on the share holding of the father, the particulars of transfer as alleged were not furnished at the earliest point of time.

7. Upon perusal of the materials including the order passed by the learned Single Judge, we do not find any reason to interfere with the ultimate conclusion arrived at. Apart from



the fact that the applications have been filed belatedly, the documents marked on behalf of the respondents are to be proved necessarily by them. Therefore, there is no need for invoking Order 26 Rule 10A read with Section 151 CPC for sending the documents to the expert to verify the signature of the deceased father in the documents marked transferring the shares. We need not reiterate the settled position of law that the even assuming there is a report, this can only a piece of evidence to be appreciated by the Court. Thus, looking from any perspective, we do not find any reason to interfere with the order passed.

8. Thus, while doing so, we are inclined to observe that the party which marks the document has to prove it. Therefore, even on that count, the appellant cannot have any grievance. On the question as to whether the suit is maintainable and could there be an partial partition are the matters to be decided by the learned Single Judge. We do not wish to say anything on the right of the appellant to file appropriate application seeking to implead the other persons in whose names transfers have been made. We would only observe that in that eventuality neither the order the learned Single Judge nor the order passed by us will not stand as such applications will have to be decided on their own merits.

9. With the above observations, the original side appeals stand dismissed. No costs.

Sd/-

Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

mmi/ssm

To

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

O.S.A.Nos.257, 263 to 267 of 2021

PA (CO)

K.RK. (17.09.2021)