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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.06.2022

CORAM :

THE HON'BLE MR.JUSTICE M.DURAI SWAMY
AND

THE HON'BLE MR.JUSTICE SUNDER MOHAN

O.S.A.NO.88 OF 2021

AND

C.M.P.NOS.3732, 3736, 3742, 3745,
3747 & 16634 OF 2021

AND 4987, 4988, 4990, 4992 & 4993 OF 2022

Somnath Mukherjee

...Appellant / 6th Defendant

Vs.

1.The Kennel Club of India,
(Registration No.16/1959)
Represented by its Secretary cum Treasurer
C.V.Sudarshan (aged 72 years)
Registered Office at Old No.89, New No.28,
AA Block First Street,
Anna Nagar, Chennai - 600 040.

...1st Respondent / Plaintiff

2.The Government of Tamil Nadu,
Represented by its Secretary to Government,
Commercial Taxes & Registration Department,
Secretariat, St.George Fort,
Chennai - 600 009.

3.The Inspector General of Registration
No.120, Santhome High Road,
Bharathi Nagar, Raja Annamalaipuram,
Chennai 600 028.

4.The District Registrar (Admin)
AIG Cadre,
Chennai Central,
Chennai 600 014.

5.Capt.Sunny Jacob

6.Partha Sekhar Chatterjee

7.Mrs. Nagina



8.R.Chockalingam @ R.C.Lingam

9.D.Krishnamurthy

10.Vikram Dhamodaran

11.The Registrar General,
High Court of Madras,
Chennai.

(R-11 suo moto impleaded as party respondent vide
Court Order dated 26.2.2021 in O.S.A.No.88/21 and
C.M.P.Nos.3732, 3736, 3742, 3745, 3747 of 2021)

...Respondents / Defendants 1 to 5, 7 to 10

Original Side Appeal filed under Clause 15 of Letters Patent
and Order 36 Rule 11 of Original Side Rules to set aside the
Judgment and decree dated 16.12.2020 passed in C.S.No.339 of
2020.

Prayer in C.S.No.339 of 2020 : (a) Declaring that the plaintiff
is registered Society No.16/1959.

(b) pass an order of permanent injunction restraining the
defendants 1 to 3 their men, subordinates, officers, agents,
etc., from taking any action against the plaintiff society based
on any proceedings taken or orders passed regarding Society
Registration No.276/97.

(c) Declare that the order dt.07.10.2020 passed by the 3rd
defendant in proceedings No.1845/D2/2020 in respect of the
affairs of Society Registration No.276/97 is illegal, unlawful
and not binding on the plaintiff.

(d) Declare that order dt.18.08.2020 of the second defendant
passed in proceedings No.Na.Ka.22921/II/2019 is illegal and
unlawful and not binding on the plaintiff.

(e) Declare that the show cause notice dt.29.10.2020 issued by
the first defendant in letter No.5097/MI/2020-2 is illegal,
unlawful and not binding and enforceable against the plaintiff.

(f) award the costs of the suit to the plaintiff.

For Appellant : Mr.S.L.Sudharsanam

For Respondents : Mr.R.Srinivas
for Mythili Srinivas - R1
Mr.Edwin Prabhakar, Sp.G.P. - R2 to R4
Mr.S.S.Rajesh - R5, R7 to R10
No Appearance - R6
Mr.Karthik Ranganathan - R11



JUDGMENT

(Order of the Court made by M.DURAI SWAMY, J.)

Challenging the order passed by the learned Single Judge in C.S.No.339 of 2020, the 6th defendant has filed the above Original Side Appeal.

2. The 1st respondent-plaintiff has filed the suit in C.S.No.339 of 2020 for the following reliefs:-

a.declaring that the plaintiff is registered Society No.16/1959 ;

b.pass an order of permanent injunction restraining the defendants 1 to 3 their men, subordinates, officers, agents etc., from taking any action against the plaintiff society based on any proceedings taken or orders passed regarding Society Registration No.276/97 ;

c.declare that the order dated 07.10.2020 passed by the 3rd defendant in proceedings No.1845/D2/2020 in respect of the affairs of Society Registration No.276/97 is illegal, unlawful and not binding on the plaintiff;

d. declare that order dated :18.08.2020 of the second defendant passed in proceedings No.Na.Ka.22921/II/2019 is illegal and unlawful and not binding on the plaintiff ;

e. declare that the show cause notice dt:29.10.2020 issued by the first defendant in letter No.5097/MI/2020-2 is illegal, unlawful and not binding and enforceable against the plaintiff; and

f. award the costs of the suit to the plaintiff.

3. The learned Single Judge, by Judgment and decree dated 16.12.2020 decreed the suit. Challenging the same, The 6th defendant has filed the above Original Side Appeal.

4. Mr. S.L. Sudharsanam, learned counsel appearing for the appellant submitted that the defendants including the Government of Tamil Nadu were not given an opportunity to file written statement or to let in oral evidences before decreeing the suit. Further the learned counsel submitted that even the plaintiff was not given an opportunity to let in oral and documentary evidences in the suit.



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5. Mr. R.Srinivas, learned counsel appearing for the 1st respondent-plaintiff submitted that since the order impugned in the Civil Suit dated 07.10.2020 is patently illegal, the same was rightly set aside by the learned Single Judge in the Civil Suit.

6. On a perusal of the Judgment passed in the Civil Suit it is clear that none of the defendants were set ex parte, however, they were not given an opportunity to file their written statement disputing or admitting the averments stated in the plaint. In fact, the State Government was also not given an opportunity to file their written statement.

7. It is settled law that in any suit, the parties should be given opportunity to file written statement, thereafter, issues to be framed and after conducting the trial, the suit can be decided either way. In the case on hand, the learned Single Judge decreed the suit without affording an opportunity to the defendants to file written statement and not recording oral and documentary evidences of the plaintiff as against the settled law.

8. In the Judgment reported in 2013(4) CTC 545 [Chitrakala v. P. Mahesh and others] the Division Bench of this court, following the ratio laid down by the Hon'ble Supreme Court in the Judgment reported in 2012(5) SCC 265 [C.N. Ramappa Gowda v. C.V. Chandregowda (Dead) by Lrs and another] held that when there are disputed questions of fact involved in the case giving rise to two versions, it is not 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. It is also well acknowledged by the legal dictum that assertion has no proof and hence, the burden lies on the plaintiff to prove that the property is available for partition. Even if there was no written statement to the contrary or any evidence of rebuttal, the burden is on the plaintiff to prove his case.

9. In the case on hand admittedly, neither the plaintiff nor the defendants were given an opportunity to let in oral and documentary evidences. When the defendants are contesting the suit, others should have been given an opportunity to file written statement and contest the suit, in accordance with law.

10. The ratio laid down in the Judgment reported in 2013(4) CTC 545 [cited supra] squarely applies to the facts and circumstances of the present case.

11. Following the ratio laid down in the Judgment cited supra, without expressing any opinion with regard to the merits of the case, the Judgment and decree passed in C.S.No.339



of 2020 is set aside and the matter is remitted back to the learned Single Judge for fresh consideration. The learned Single Judge shall give sufficient opportunity to the defendants to file their written statement and after recording the oral and documentary evidences of both sides, decide the suit on merits and in accordance with law.

With the above observations, Judgment and decree passed in C.S.No.339 of 2020 is set aside and the Original Side Appeal is allowed. We request the learned Single Judge to dispose of the suit in C.S.No.339 of 2020 as expeditiously as possible, preferably, within a period of four months from the date of receipt of a copy of this Judgment. No costs. Consequently, the connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar (CS-IX)

// True Copy //

Sub Assistant Registrar

Rj
To

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

2.The Registrar General,
High Court of Madras,
Chennai.

+1cc to M/s.S.L.Sudharsanan, Advocate Sr.No.34477

+1cc to the Government Pleader Sr.No.34928

O.S.A.No.88 of 2021
and C.M.P. Nos.3732, 3736, 3742, 3745,
3747 & 16634 of 2021 and 4987, 4988,
4990, 4992 & 4993 of 2022

VG-II (CO)
RVM(06/07/2022)