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SA.No.1080 of 2007

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.11.2023

CORAM

THE HON'BLE Mr.JUSTICE **C.KUMARAPPAN**

S.A.No.1080 of 2007

and

MP.No.2 of 2007

S.Anandhathandavan (Died)

2. A.Senthamil Chelvi

3. Selva Ganapathy

4. A.Sivagama Sundari

5. Vijayalakshmi

(Appellants 2 to 5 brought on record as LR's of the
deceased sole appellant vide order dated 26.11.2019
made in CMP.Nos.25313, 25316 & 25318/2019)

... Appellants

- Vs -

A/M Senguntha Vinayagar Temple,
Chidambaram

rep. by its Hereditary Trustees,

1. Ganesa Mudaliar

2. Ramamani Mudaliar (died)

3. C.Shanmugam Mudaliar (died)

4. R.Shanmuga Mudaliar (died)

5. R.Sankar

6. S.Chidambaram

7. S.Vasudevan

(R5 to R7 are substituted as Trustees in the place of
R2 to R4 vide Court order dated 16.11.2023
in CMP.No.2675/2022)

... Respondents



SA.No.1080 of 2007

Second Appeal is filed under Section 100 of the Civil Procedure Code against the judgment and decree dated 22.01.2006 made in A.S.No.6 of 2005 on the file of the Additional District Court (Fast Track Court No.1 of Cuddalore) at Chidambaram, reversing the Judgement and Decree dated 17.06.2022 made in O.S.No.121 of 1992 on the file of the Sub Court at Chidambaram.

For Appellants : Mr.S.Subramaniya
for Mr.Sathish Rajan

For Respondents : Mr.S.T.Bharath Gowtham
for Mr.T.R.Rajamani for R1, R5 to R7
R2 to R4 – died (substituted).

JUDGMENT

The plaintiffs are the respondents herein and the first appellant is the defendant before the Court below.

2. For the sake of convenience, the parties will be referred according to their litigative status before the Trial Court.

The brief facts, which give rise to the instant second appeal is as follows:-

3. The plaintiffs filed a suit for the relief of declaration and injunction in respect of the property in S.F.No.717 and 812/B of Sabanayagar Street in Chidambaram Town. According to the plaintiffs, the suit property is the



SA.No.1080 of 2007

WEB COPY

absolute property belongs to the plaintiffs' Temple. The plaintiffs further submits that since the defendant is a trespasser and illegally occupying the suit property. They filed a suit for declaration and for recovery of possession.

4. The said suit was resisted by the defendant, by contending that the suit property in S.F.No.812/B belongs to the Government and that S.F.No.717 though belongs to the Temple, they have been in long and continuous possession and that they perfected the title against the plaintiffs. It is also the submission of the defendant that S.F.No.812/B is not at all belongs to the plaintiffs.

Evidence, Documents and findings of the Courts below:-

5. Before the Court below, the plaintiffs examined 5 witnesses as PW1 to PW5 and marked as many as 45 documents as Exs.A1 to A45. On behalf of the defendant, 3 witnesses were examined as DW1 to DW3 and marked 11 documents as Exs.B1 to B11.

6. The Trial Court, after considering both oral and documentary evidence and having considered the submissions made by either side, has dismissed the suit on the ground that the defendant has perfected title by adverse possession. Aggrieved with the same, the plaintiffs preferred an appeal, wherein the First Appellate Court found that both the properties



SA.No.1080 of 2007

belong to the Temple and reversed the judgment of the Trial Court and decreed the suit. Aggrieved with the said finding, the defendant is before this Court.

Substantial Question of Law

7. At the time of admission on 30.10.2007, this Court has formulated the following substantial question of law:-

“1) When the Counsel for the defendant reported no instructions in the First Appeal, whether the appellate Court can hear and decide the appeal on merits, without issuing a fresh notice to the parties?”

2) Whether the Judgment of the Appellate Court is not vitiated by complete failure to consider any of the defendant's side documents or evidence?”

Submissions of either side:-

8. The learned counsel for the defendant, before going to the merits of the matter, would submit that, when the defendant reporting no instruction before the Appellate Court, by virtue of Order 41 Rule 21 of CPC, the only option available to the Lower Appellate Court is to pass the *ex-parte* order. Therefore, it is the submission of the learned counsel for the appellants that the order passed by the First Appellate Court on merits is liable to be



SA.No.1080 of 2007

WEB COPY

interfered with. Therefore, the learned counsel for the appellants/defendant prayed to remit back the matter for fresh consideration before the First Appellate Court after giving due notice to both the plaintiffs and defendant.

9. Per contra, the learned counsel for the plaintiffs would vehemently submit that the suit property is the absolute property of the Temple and that the defendant, being the encroacher, only to delay the proceedings, has reported no instructions. It is the submission of the learned counsel for the plaintiffs that only if the appellant is absent, the First Appellate Court has to dismiss the appeal for default and if the respondent to the First Appeal is absent, then the First Appellate Court can proceed with the matter on merits. Therefore, it is the submission of the learned counsel for the plaintiffs that the appeal has to be disposed of on merits.

10. I have given my anxious consideration to the submissions made by either side.

Analysis of the submissions:-

11. In order to decide the first substantial question of law, the learned counsel for the appellants relied upon the judgment of this Court in ***Vasu Thevar & others Vs. Rukmani Ammal & Another*** reported in ***CDJ 2000 MHC 064***, through which the learned counsel for the appellants would



SA.No.1080 of 2007

submit that whenever a party [here in this case, the respondent] reported no instructions before the Court, and if the Court is satisfied with the reporting of no instructions as *bona fide*, the only option available for the Court before proceed with the matter is, to issue notice to the concerned party against whom counsel has reported no instructions. It is the submission of the learned counsel for the appellants that such practice has not been followed in the instant case by the First Appellate Court.

12. This Court has perused the judgment of the First Appellate Court. Where the First Appellate Court has simply recorded about the reporting of no instructions of the respondent and there is no reference about the issuance of any notice to the respondent. The relevant portion of the *Vasu Thevar's* case (cited supra) is paragraph 15 and the same reads as follows:-

“15. In a matter like this, i am of the view that reporting of "no instructions" should not be for the asking and it should be permitted only if the counsel satisfies the judicial conscience of the Court that for the compelling reasons he was posed to plead "no instructions". The Court should first satisfy itself that there is sufficient cause for the counsel to withdraw from the case and on such withdrawal being permitted the Court should order notice to the party whose counsel has reported "no instructions". I am also of the



SA.No.1080 of 2007

WEB COPY

view that it is the duty of the Court whether the matter is unrepresented without sufficient cause. If sufficient cause is shown, then it is the duty of the Court to issue notice to the person concerned informing him that his advocate has revoked his vakalath and thereby call upon him to take appropriate steps as necessary for him to defend his case. In my opinion, it is always the duty of a counsel before pleading no instructions to inform the party that for, a particular reason he shall not be appearing in the case and may plead no instructions. The confidence deposited by parties in the counsel is most important. A person who is not present in Court pre-supposes that because of engagement of a counsel his interest would be properly looked after. It is the duty of a counsel to inform him before he proceeds to plead no instructions. In our case, when the matter is pending before the lower appellate Court, the counsel for respondents therein reported no instructions. In such a circumstance, it was the duty of the Court to enquire from the counsel concerned as to why and under what circumstances he was pleading no instructions. The Court cannot be a silent spectator to the scene which is staged in the Court. The judicial conscience of the Judge should always be satisfied before he permits a lawyer either to withdraw or to retire from the case. In the instant case, it does not appear from the proceedings that the learned Judge had taken all necessary steps to ensure that the



SA.No.1080 of 2007

WEB COPY

counsel had sufficient reason not to appear for the party who engaged him or to plead no instructions. A party who reposes confidence and relies on counsel is entitled to be under the belief that his interest would be looked after properly by the counsel. A Judge ordinarily should not permit a lawyer to plead no instructions unless the lawyer satisfies the judicial conscience of the Court that for the compelling reasons he was posed to plead no instructions. I have already observed that there is nothing on record to show as to whether the appellants had the notice of hearing of the case on that date. As observed by Their Lordships of the Hon'ble Supreme Court when the counsel withdrew from the case, the interests of justice required, that a fresh notice for actual date of hearing should have been sent to the parties. Such recourse has not been followed by the Court below.”

13. As per the above judgment, this Court is of the firm view that the First Appellate Court ought to have issued notice to the respondent before proceeding with the matter on merits. Since the First Appellate Court has failed to issue notice to the respondents, this Court deems it appropriate to interfere with the said order.



SA.No.1080 of 2007

WEB COPY

14. At this stage, the learned counsel for the plaintiffs would submit that the suit is of the year 1992, for the default of the respondent, the Court should not shell out the money from the exchequer. Though the submission of the learned counsel for the plaintiffs appears to be reasonable, in the case on hand, the First Appellate Court has consciously recorded the no instructions. Therefore, recording of no instructions by the First Appellate Court is after *bona fide* satisfaction of the difficulty expressed by the learned counsel for the respondent therein. Therefore, nothing wrong in ascertaining as to whether the reporting of no instructions is with the knowledge of the respondent or not. Therefore, having the First Appellate Court satisfied the recording of no instructions, this Court is of the view that the issuance of notice to the respondents is very much required, where the First Appellate Court has failed.

15. Considering the above aspect, this Court deems it appropriate to allow this Second Appeal by setting aside the order of the First Appellate Court in A.S.No.6 of 2005 and ordered to remit back the matter for a fresh consideration by the First Appellate Court according to law. As rightly submitted by the learned counsel for the appellants, since the suit is of the year 1992, the First Appellate Court is directed to restore the A.S.No.6 of



SA.No.1080 of 2007

2005 to its file and dispose of the same as expeditiously as possible, within a period of three (3) months from the date of receipt of a copy of this judgment.

It is also made clear that both the parties are directed to co-operate with the early disposal of the matter.

16. In the result, this Second Appeal is allowed as indicated herein above. There shall be no order as to costs. Consequently, connected MP is also closed.

16.11.2023
(2/2)

kmi

Index : Yes/No

Speaking Order : Yes/No

NCC : Yes/ No

To

1. The Additional District Court,
(Fast Track Court No.1 of Cuddalore)
Chidambaram.

2. The Sub Court,
Chidambaram.



WEB COPY



SA.No.1080 of 2007

C.KUMARAPPAN,J

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MP.No.2 of 2007

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