

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON: 21.02.2023

DELIVERED ON: 06.04.2023

CORAM

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

C.R.P.(MD).No.326 of 2020

and

CMP(MD).No.1848 of 2020

S.Sinraj

Represented through its Power Agent his father

T.Subramanian

...Petitioner

Vs

1.Thiyagarajan

2.Ponnusamy

3.The State of Tamil Nadu

Represented by

The District Collector

Collector Office

Thanjavur District

4.The Tahsildar

Taluk Office

Orathanadu Taluk

Thanjavur District

...Respondents

PRAYER: Civil Revision Case is filed under Article 227 of Constitution of India, to set aside the order and decretal order dated 08.11.2019 made in I.A.No.289 of 2019 in O.S.No.45 of 2006 on the file of the District Munsif Court Cum Judicial Magistrate, Orathanadu.

For Petitioner : Mr.M.P.Senthil
For Mr.R.Pon Karthikeyan

For R1 : Mr.D.Gnanasekaran

For R2 : Mr.C.Mahadevan

For R3 & R 4 : Mr.C.Baskaran
Government Advocate

ORDER

The second defendant in a suit for declaration of title, permanent injunction and mandatory injunction is the revision petitioner.

2.The first respondent herein as plaintiff had filed O.S.No.45 of 2006 on the file of the District Munsif Cum Judicial Magistrate Court, Orathanadu for the relief of declaration of title, permanent injunction and for mandatory injunction as against the revenue authorities for mutation of revenue records in favour of the plaintiff. The said suit was decreed as prayed for. As against the same, the second defendant has filed A.S.No.22

of 2011 before the Sub Court, Pattukottai.

3.The learned Subordinate Judge was pleased to set aside the judgement and decree of the trial Court and remitted the matter back to the trial Court with liberty to both the parties to let in oral and documentary evidence.

4.After remand, the second defendant had filed I.A.No.289 of 2019 under Order 8 Rule 9 C.P.C seeking permission of the Court to file an additional written statement. The said application was dismissed by the trial Court on 08.11.2019. As against the said order, the present revision petition has been filed by the second defendant.

5.According to the revision petitioner/second defendant, the second defendant was a minor and he was represented by his mother and guardian Mariammal. Since the mother had not evinced any interest, the Court had appointed an Advocate as a Court guardian and he had filed a written statement. Based upon the said written statement and the submissions made by the said advocate guardian, the trial Court found that the plaintiff has established his case and decreed the suit. He had further contended that the First Appellate Court in Paragraph No.13 has found that though the minor had attained majority, it was not brought to the notice of

the trial Court and the trial was proceeded by the Court guardian. Only in the first appeal, the defendant had chosen to file Exhibits B1 to B16 documents

6. Based upon the said reason, the First Appellate Court had set aside the judgement and decree of the trial Court and had remitted the matter back to the trial Court with liberty to the second defendant to mark these documents before the trial Court. The trial Court had further granted liberty to both the parties to let in oral and documentary evidence.

7. The learned counsel for the petitioner had further contended that after remand, if the documents Exhibits B1 to B16 have to be marked, there should be a pleadings to the said effect. That apart, the written statement originally filed by the Court guardian is bereft of any material, since he could not get instruction either from the minor or from his mother who was not evincing any interest in defending the suit.

8. According to the learned counsel for the petitioner, a perusal of the original written statement will clearly indicate that it is nothing but denial of all the averments in the plaint without putting forward the case of the second defendant. Therefore, unless the second defendant was permitted to file an additional written statement, the order of remand

cannot be complied with.

9. According to the learned counsel for the petitioner, the order of remand which permitted the second defendant to mark Exhibits B1 to B16 has not been challenged by the plaintiff. When the second defendant was a minor, the suit has been disposed of on the basis of the appointment of Court guardian who was not aware of the facts of the case. Therefore, the trial Court had erroneously dismissed the application for filing of additional written statement taking a technical view that the order of remand is only for the purpose of finding whether the sale deed dated 13.06.2002 is valid or not. Hence, he prayed for allowing the revision petition.

10. Per contra, the learned counsel appearing for the respondents had contended that all the documents had already been marked before the First Appellate Court and the issues have also been framed and therefore, it is not necessary to file any additional written statement after the order of remand. The remand order did not give any opportunity to any one of the parties to file the additional pleadings. The First Appellate Court has permitted to let in oral and documentary evidence alone. Therefore, filing

of application under Order 8 Rule 9 is outside the scope of the order of remand. Hence, he prayed that the order of the trial Court may be sustained.

11.I have considered the submissions made on either side and perused the materials available on record.

12.A perusal of the plaint indicates that it is the case of the plaintiff that the suit schedule properties were allotted to the share of his father Lakshmanan in a partition deed dated 15.12.1986. Based upon the said partition, his father Lakshmanan and his brother Subramanian were enjoying the property as joint family property. The plaintiff had further claimed that his father Lakshmanan has executed a registered partition deed on 01.09.1988. In the said partition deed, 'A' schedule property was allotted to the share of the plaintiff and 'B' schedule property was allotted to the share of his brother Muthusamy. Since the plaintiff and his brother Muthusamy were minors at the time of partition, their mother Sundarammal was taking care of the said properties. The plaintiff had further contended that the first defendant has mutated patta for the first item of the property in his favour and based upon the said patta, he has executed a sale deed in favour of the second defendant. Based upon the

said allegation, the plaintiff had filed a suit for declaration of title, permanent injunction and mutation of revenue records in his favour.

13.A perusal of the written statement filed by the Court guardian indicates that all the averments in the plaint have been vaguely disputed, but no specific case was projected on the side of the second defendant. A perusal of Paragraph No.7 of the trial Court judgement clearly indicates that though the mother was appointed as a guardian of the second defendant, she has not come forward to defend the suit and therefore, an Advocate was appointed as a guardian and he had filed a written statement.

14.The trial Court has decreed the suit as prayed for. It could also be seen that the second defendant has become a major on 24.10.2008, 3 months before passing of the judgement by the trial Court. However, no steps have been taken to declare the second defendant as a major or to discharge the guardianship.

15.The second defendant had filed the First Appeal. In the said first appeal in Paragraph No.13,the First Appellate Court was pleased to hold that the Court appointed guardian has not filed any document on behalf of the second defendant. Exhibits B1 to B16 were marked before

the First Appellate Court as additional documents in order to establish the case of the second defendant. Therefore, the First Appellate Court had decided to set aside the judgement and decree of the trial Court and remitted it back to the trial Court to enable the second defendant to mark Exhibits B1 to B16 and also to decide whether the sale deed dated 13.06.2002 in favour of the second defendant is a valid document or not. The First Appellate Court had further permitted both the parties to let in oral and documentary evidence. This order of remand has not been challenged by the plaintiff in the suit.

16.It is settled position of law that no amount of evidence could be looked into in the absence of pleadings. Therefore, where the second defendant has been permitted to mark Exhibits B1 to B16, it would be of no use to mark these documents without having the pleadings to support the said documents. The written statement had been filed by the Court guardian when a second defendant was a minor. The Court guardian having not received any instruction either from the mother or from the minor, had filed the written statement simply disputing the plaint averments without projecting the case of the second defendant. Therefore, it is clear that even though the order of remand has not specifically

mentioned about the filing of additional pleadings, letter and spirit of the order of remand is only permitting the defendant to file the additional pleadings. As per Order 32 Rule 3(4) of C.P.C before appointing a Court guardian, the Court has to issue notice to the guardian of the minor and only after hearing his objection, an order could be passed. In the present case, there are no records to establish that either the mother namely Mariammal was served with a notice nor the father namely Subramanian was served with any notice. Therefore, the appointment of Court guardian under Order 32 Rule 3 of C.P.C is clearly is not in accordance with the provisions of C.P.C.

17.Though the second defendant had become a major pending suit, neither the plaintiff nor the Court guardian has brought to the notice of the Court about the majority of the second defendant. The plaintiff has proceeded to get a decree from the trial Court taking advantage of the minority of the second defendant and filing of a vague written statement by the Court guardian. Therefore, this Court is of the opinion that the written statement filed by the Court guardian without receiving any instruction from the natural guardian of the minor cannot be considered to be a proper defence on the side of the minor.

18.Considering the fact that the First Appellate Court has permitted for marking of additional documents on the side of the minor, naturally the pleadings are required for backing of the said evidence.

19.In view of the above said deliberations, the order of the trial Court rejecting the applications of quondam minor to file an additional written statement in consonance with the order of remand is not legally sustainable and liable to be set aside. The order passed by the trial Court in I.A.No.289 of 2019 in O.S.No.45 of 2006 on the file of the District Munsif cum Judicial Magistrate Court, Orathanadu is hereby set aside and this Civil Revision Petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

20.The trial Court is directed to dispose of the suit on or before 31.12.2023.

06.04.2023

Index : Yes/No
Internet : Yes/No
NCC : Yes/No
msa

To

1.The District Munsif Cum Judicial Magistrate
Orathanadu

2.The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.

C.R.P.(MD).No.326 of 2020

R.VIJAYAKUMAR, J

msa

Pre-delivery order made in
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