



AS. No.290 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.02.2024

CORAM:

THE HON'BLE MRS.JUSTICE T.V.THAMILSELVI

AS. No. 290 of 2023

1.Marappan
2.Palaniyammal
3.Saravanan
4.Vijayalakshmi

...Appellants

Vs.

1.Thiyagarajan
2.S.Gopalakrishnan

...Respondents.

PRAYER : This first appeal is filed under section 96 of the Civil Procedure Code, to set aside the judgment and decree in O.S No. 178 of 2014 dated 12.06.2019 on the file of the Principal District Judge, Namakkal and dismiss the suit.

For Appellants : Mr.S.Muthukrishnan

For Respondents: Mr.S.Senthil



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JUDGMENT

This appeal is filed to set aside the judgment and decree passed by the Principal District Judge, Namakkal in O.S No. 178 of 2014 dated 12.06.2019.

2. The respondents herein filed the suit in O.S No. 178 of 2014 for the relief of declaration and for recovery of possession against the four defendants, wherein defendants 1 and 2 filed written statement and other defendants called absent and set exparte. Thereafter, the case was posted on 19.03.2018 for final hearing and defendants 1 and 2 not appeared, P.W.1 was examined in chief and the Trial Judge adjourned the case in order to cross examine P.W.1 by the defendants 1 and 2 as no representation on the side of the defendants the trial judge passed the judgment by invoking Order 17 Rule 2 of CPC and also declared the plaintiff as absolute owner of the suit property and directed the defendants to hand over the possession within six months. Aggrieved the same the defendants preferred this appeal.

3. The learned counsel for the appellants submitted that by relying the pleadings in the written statement alone the Trial Judge passed the judgment on merits without any supporting evidence and decreed the suit in



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favour of the plaintiff by invoking Order 17 Rule 2 of CPC as such is totally erroneous and liable to be set aside. Hence, he prays to allow this petition.

4. The learned counsel for the respondents submits that several opportunity was given to the defendants to adduce their evidence but they have failed to adduce the same. After careful consideration of the available evidence the Trial Court pronounced the judgement on merits as per Order 17 Rule 2 of CPC which needs no interference. Hence, he prays to dismiss this petition.

5. Considering the submissions on either side and also on perusal of records, it reveals that the plaintiffs filed the suit for declaration and for recovery of possession against the defendants stating that suit property was originally belongs to the first defendant mother Kaliasammal, and she bequeathed the said property to her son/first defendant through Will dated 25.05.1968 thereafter she died in the year 1976 as per Will the first defendant became the absolute owner and enjoyed the same along with second defendant. While so, to sell the suit property they gave the power of attorney in favour of One S.T.Padmbanaban who sold the property in favour of the plaintiff for valid consideration of Rs.4,90,000/- on 26.07.2007, from that onwards the plaintiff enjoyed the property as absolute owner. But, on



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29.02.2008 the defendant broke open the house illegally occupied the house by took possession of the suit property through unlawful means against which the plaintiff gave complaint and they undertook to vacate the premises but the they failed hence, the suit. Notice served to the defendants they appeared but defendants 1 and 2 alone filed elaborate written statement stating that denying power of attorney with S.T.Padhbanabam by submitting various defence the defendants admits that the property belongs to his mother as per the will he became the absolute owner and it is house property wherein he along with his wife and the children jointly enjoyed the property except that he denied other allegations that he gave to Padmanaban for valid consideration.

6. On perusal of the written statement it reveals that contention of the defendant is that one Somasundharam Chettiya and his wife Chellappa borrowed a sum of Rs. 4,00,000/- from first and second defendants, through which they came to know about the Padmanaban who mediate the loan transaction between the first and second defendant and Somasundaram. On the other hand, said Padmanaban agreed to repay the said loan amount as he was insisted for money get money to perform marriage to his daughter to discharge the mortgage loan he get money from the Padmanaban as a



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security for said loan transaction the power of attorney was executed in favour of the first and second defendants. Though they were not inclined for same at the coercion of said Padmnaban as power of attorney was executed in his favour thereby totally denied the execution of the power of attorney the defendant also contend that in the year 2007 said Padmanaban and his son cable saravanan compelled the Defendants 1 and 2 obtained signature in blank papers. They came to know that with the help of promissory not the sale deed was executed in favour of the plaintiff. In fact, value of the property is feeble lesser alleged sale deed was executed moreover, the second plaintiff is advocate. since the second plaintiff advocate defendants not able to lodge the complaint in Namakkal Police station so they gave a complaint on 02.11.2011 before the land grabbing cell but it was not taken on file, so they filed the writ petition seeking direction in respect of that direction no FIR was filed. The defendants 1 and 2 raised objection to transfer the records in favour of plaintiff with the help of revenue officials defendants threatened by the said Pandmanabal and the plaintiff, and to get over the criminal action the plaintiff filed the present false case he prayed to dismiss the suit on merits as no cause of action. After filing the written statement the Trial Court fixed the date for final hearing on 19.03.2019 on



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that day on the side of the plaintiff advocates appeared and D3 and D4 set exparte. The counsel appearing for D1 and D2 already filed written statement but not cross examined P.W.1 so the trial judge closed the defence evidence as no representations by invoking Order 17 Rule 2 of CPC and pronounced the judgement. Challenging the same the defendants filed this appeal.

7. Furthermore, on perusal of the entire judgment, the Trial judge decreed the suit in favour of the plaintiff by relying the evidence of P.W.1 chief as well as the document marked on the plaintiff side and written statement filed by the defendants. Moreover, on seeing the paragraphs 11, 12, 13, 14 of the judgment it reveals that the trial judge passed the judgement based on the written statements of the defendants 1 and 2 and concluded that defendants 1 and 2 received money from the Padmanaban and executed general power of attorney as such is valid, so also based on that purchase made by the plaintiff is also valid. The Judgement reveals that the Trial Judge passed the judgement only based on written statement averments without any evidence as such the Trial Court decreed the suit by invoking Order XVII Rule 2 by granting relief in favour of plaintiff on merits as such is totally erroneous one. Moreover, Order XVII Rule 2 speaks as



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follows:

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Order XVII Rule 2 . Procedure if parties fail to appear on day fixed.

Where, on any day to which the hearing of the suit is adjourned, the parties or any of them fail to appear, the Court may proceed to dispose of the suit in one of the modes directed in that behalf by Order IX or make such other order as it thinks fit.

Explanation - Where the evidence or a substantial portion of the evidence of any party has already been recorded and such party fails to appear on any day to which the hearing of the suit is adjourned, the Court may, in its discretion, proceed with the case as if such party were present.

8. The above provision clearly states that there must be evidence or substantial portion of evidence of the party has already been recorded but the case in hand P.W.1 alone was examined and there has been no evidence was adduced on the side of the defendant side. Even P.W.1 also not been cross examined but the Trial Judge passed the judgment based on the written statement filed by the defendants without any defendants side evidence as such is erroneous and liable to be set aside.

9.As discussed above, to invoke Order XVII Rule 2 of CPC, if the portion of evidence of any party ought to have been recorded based on that evidence the Trial Court can proceed with the case. However, the case in



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hand the Trial Judge passed the judgment based on the written statements of defendants which is only pleadings and not amount to evidence.

Admittedly, it is only a statement made by the defendant, without evidence, therefore the judgment pronounced by the Trial Judge by invoking Order XVII Rule 2 of CPC is erroneous. Therefore, the findings rendered by the Trial Court is set aside. Accordingly, appeal is allowed and this Court remand this matter back to the Trial Court for fresh consideration and both parties are directed to adduce their evidence before the Trial Court and the Trial Court shall dispose the same on merits within a period of three months from the date of receipt of a copy of this order. Even on perusal of the judgment it reveals that the Trial Judge rendered the judgment without application of mind. Hence, the Registry is directed to educate the concerned judge as how to write the judgement.

10. In the result, this appeal is allowed. No Cost. Consequentially, connected miscellaneous petition is closed.

15.02.2024

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To
The Judicial Academy,
Chennai.



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T.V.THAMILSELVI,J.

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To

1. The Principal District Judge, Namakkal.
2. The Section Officer,
V.R Section.

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