

(2005) 07 AP CK 0050
In the Andhra Pradesh High Court
Case No : First Appeal No. 1911 of 2001

District Collector, Ranga Reddy District and Others	APPELLANT
Vs	
Hussain Mohiuddin @ Mohd. Hussain Mohiuddin @ Qamur Khallel rep. by his G.P.A.	RESPONDENT

Date of Decision : 26-07-2005

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 7 Rule 4, Order 8 Rule 1, Order 8 Rule 10,
Order 8 Rule 5, Order 9 Rule 13

Citation : (2005) 5 ALD 799 : (2005) 5 ALT 456

Hon'ble Judges : V. Eswaraiah, J

Bench : Single Bench

Advocate : Govt. Pleader for Co-operation, for the Appellant; V. Venkata
Ramana, for B.S.S. Prasad, for the Respondent

Final Decision : Allowed

Judgement

V. Eswaraiah, J.—The appellants herein are the defendants in the suit O.S. No. 478 of 1990 on the file of the Principal Subordinate Judge, Ranga Reddy District filed by the sole respondent herein-plaintiff.

2. The suit was decreed, under Order 8, Rule 10 of CPC for non-filing of written statement vide judgment and decree, dated 6-8-1991, against which, the Appeal Suit has been filed by the defendants therein.

3. For the sake of convenience, the parties herein are referred to as arrayed in the suit.

3-A. The plaintiff filed the suit against the defendants as under

(a) to declare him as absolute owner and possessor having the title in and over the lands bearing Sy.No. 49/13, admeasuring Ac.15.00 situated at Bahadurguda village, Saroornagar revenue mandal, Rangareddy District,

(b) directing the defendants to make necessary corrections in the relevant

revenue records in respect of the above said property from the year 1962 onwards;

(c) to grant permanent injunction restraining the defendants, their agents, successors in office or anybody else claiming through them from assigning any recording the names of other persons and creating rights and title in respect of the suit schedule property in favour of third parties,

(d) to award costs of the suit,

(e) and grant any other relief or further reliefs as the Hon'ble Court deems fit and proper in the circumstances of the case in the interest of justice.

Though in the prayer portion at SI.No. (a), a declaration was sought to declare the plaintiff as absolute owner in respect of Ac.15.00 of land only, but the suit schedule property shows that the agricultural land bearing Sy.No. 49/13, admeasuring Ac.27.00 gts. situated at Bahadurguda village, Saroornagar revenue mandal, Rangareddy District, bounded by East: Mansoorabad village boundary West: Land of G. Siddiqui North: Saroornagar village boundary South: Land of P. Rajan Raju

The suit was filed on 22-10-1990 and it was numbered on the next day i.e. on 23-10-1990. The docket proceedings of the said suit in the court below goes to show that summons issued to the defendants were served and the Government Pleader appearing for the defendants filed a memo of appearance for defendants on 30-11-1990. On 30-11-1990 the suit was adjourned to 24-12-1990 and on 24-12-1990 it was adjourned to 31-1-1991 for filing written statement. It was for the first time the suit was posted for filing written statement to 31-1-1991 and again it was adjourned to 15-3-1991 and from 15-3-1991 it was again adjourned to 11-6-1991. It appears that the plaintiff filed an I.A.No. 371 of 1991 for advancement of the suit and accordingly the said Interlocutory Application was allowed on 26-4-1991 advancing the suit from 11-6-1991 to 3-6-1991. Again from 3-6-1991 the suit was adjourned to 20-6-1991, 24-6-1991, and 22-7-1991 and on 8-7-1991 the request of the Government Pleader to adjourn the suit was rejected and the suit was posted to 24-7-1991 for judgment and on 24-7-1991 it was again posted to 6-8-1991 for judgment. On 6-8-1991 the judgment was pronounced decreeing the suit.

4. As per the plaint averments, it is the case of the plaintiff that he has purchased the suit schedule property through the registered sale deed, dated 26-11-1994, from the G.P.A. holder of the H.E.H. the Nizam Mir Osman Ali Khan, who is said to have been holding a G.P.A. dated 27-7-1964 and the said property is a private property of the H.E.H. the Nizam Mir Osman Ali Khan and it is one of the properties shown as personal property of the Nizam, but the said property was shown in the revenue records as "Sarkari". It is further stated that though the Ministry issued orders showing the said property as personal property of the Nizam, the said orders were not implemented, but the said property was shown as "Sarkari" in the revenue records. Therefore, an application was filed to rectify

the revenue records and accordingly the Collector, Hyderabad District, passed orders on 20-2-1962 to rectify the records and the said orders were also not implemented showing the said land as patta land of the Nizam. It is further stated that out of Ac.27.00, an extent of Ac.12.00 gts was acquired for the purpose of laying the roads and in the remaining Ac. 15.00 gts the name of the Nizam was not recorded in the revenue records, in spite of persistent applications. It is further stated that the private estate of Sarf-A-Khas sent a letter, dated 7-12-1964, to the then Tahsil office, Hyderabad East, showing the said property as a private property of the H.E.H. the Nizam. But the same was not implemented, but on the other hand, the said property was shown as "sarkari" land in the revenue records and as such, the plaintiff filed Writ Petition No. 5801 of 1980 restraining the Government from assigning certain properties in which the Government admitted that an extent of Ac.48.15 guntas is still vacantly available. It is further stated that the plaintiff has erected three rooms temporarily and the said rooms are in possession of the plaintiff. It is further stated that several other persons made an attempt to encroach the said land and, therefore, he has filed several other suits restraining them from encroaching the said lands. It is further stated that the said property is not a "Sarai Abban Saheb," but it is the private property of the then Nizam and he has having right to sell the private property which was purchased from the G.P.A. holder of the Nizam. Therefore, the case of the plaintiff is that he is entitled for the decree to declare him as absolute owner and possessor of the said land directing the defendants to rectify the revenue records and to restrain them from interfering with his peaceful possession and enjoyment over the suit schedule property.

5. The learned Judge in the Judgment stated that the suit was finally posted to 20-6-1991 for filing written statement and as a last chance, it was adjourned to 26-6-1991 and at the request of the Govt. Pleader it was posted to 8-7-1991, but the written statement was not filed in spite of adjourning several times and, therefore, the right of defendants to file written statement is forfeited.

6. A perusal of the docket proceedings of the suit goes to show that for the first time the suit was posted for filing of written statement on 31-1-1991 and from 31-1-1991 it was adjourned to 15-3-1991 and from 15-3-1991 it was adjourned to 11-6-1991. Therefore, as can be seen from the docket proceedings, it underwent only thrice. The plaintiff, even without waiting for filing written statement on 11-6-1991, has filed an I.A.No. 371 of 1991 for advancement of the suit and the record does not disclose whether any notice was served on the defendant for advancement of the suit and, therefore, there is every possibility of not noting the case proceedings of advancement to 3-6-1991 by the defendants. From 3-6-1991 it was adjourned to 20-6-1991 and the docket proceedings goes to show that a request was made to adjourn the case for filing written statement on 8-7-1991. That request of the learned Govt. Pleader was rejected and the case was posted for judgment to 24-7-1991, but the judgment was pronounced on 6-8-1991. The suit was numbered only on 23-10-1990 and, as such, there is no inordinate delay in filing the written statement. Therefore, I am of the opinion

that the trial Court should not have advanced the suit and, however, after advancing the suit from 11-6-1991 it was only posted to 3-6-1991 just three days prior to the original date and, therefore, to divert the attention of the defendants from attending the Court on a given date and within a short span of two months, the judgment was pronounced under Order 8, Rule 10 C.P.C.

6-A. The questions that arise for consideration are as to

(1) Whether the court below is justified in rejecting the request of the learned Govt. Pleader to adjourn the matter for filing written statement by an order, dated 8-7-1991, and pronouncing the judgment under Order VIII, Rule 10 C.P.C. on 6-8-1991?

(2) Whether the plaintiff was able to prove the suit claim even based on the plaint averments?

7. Both the learned Government Pleader as well as Sri Vedula Venkataramana, the learned Counsel appearing for the respondent-plaintiff cited several judgments of this Court, other High Courts and Apex Court.

8. The learned Single Judge of Bombay High Court in the case of Vittal Daulat Lad v. Ashok Govind Tawade held that, while disposing of the suit under Order VIII, Rule 10 C.P.C. the Court can either dispose of the same on the basis of the case pleaded by the plaintiff in the plaint, or the Court can require the plaintiff to prove the said case by producing necessary evidence in support thereof. If the Court proceeds to dispose of the suit without requiring the plaintiff to adduce the evidence, certainly, as rightly submitted by the learned Advocate for the respondent, the Court would be entitled to look into the documents which are annexed to the plaint and forming part of the plaint, any document filed along with plaint has to be received in evidence. Order VII, Rule 4 CPC requires the plaintiff to produce the documents on which the plaintiff sues and to annex the list of documents on which he seeks to rely upon as evidence in support of his claim. Similar obligation is cast upon the defendant under the provisions of law contained in Order VIII, Rule 1 of C.P.C. Further, Order XIII clearly provides that the parties have to produce all documentary evidence before the settlement of issues and the document which is not so produced shall not be received thereafter unless sufficient cause is shown. The documents on being produced in terms of Order XIII are required to be marked as exhibits to enable the Court to read the said documents in the evidence. There are various provisions of law comprised in the law of evidence which are also required to be followed failing which the contents of the documents are not considered as forming part of the evidence merely because the documents are marked as exhibits. Any document which has not been produced on record in accordance with the provisions of law cannot be looked into by the Court even though the matter is to be disposed of in terms of Order VIII, Rule 10 of C.P.C.

9. In the case of N. Jayaraman v. M/s. Glazo Laboratories India Ltd., Madras, the Madras High Court while considering the C.R.P. filed against the order in I.A. to

set aside the judgment which was decreed under Order 8, Rule 10 of C.P.C. in which an I.A. was filed under Order 9, Rule 13 to set aside the said decree treating that the decree passed under Order 8, Rule 10 as an ex-parte decree which was allowed by the trial Court, against which the said C.R.P. was dismissed upholding the order of the trial Court in allowing the said application in setting aside the ex parte decree. It was further held that the order passed under Order 8, Rule 10 CPC shall be treated as ex parte decree only, as the judgment under Order 8, Rule 10 CPC cannot be treated as a judgment in confirming to the requirement of the definition of a judgment u/s 2(9) C.P.C. which requires that the judgment should contain the grounds for a decree or order. The judgment pronounced under Order 8, Rule 10 C.P.C. does not satisfy the requirement of Section 2(9) of C.P.C. and, therefore, it cannot be held to be a judgment on the merits of the case. The requirement of under Order 8, Rule 10 CPC to pronounce a judgment against the party who fails to present a written statement does not indicate that the need for writing a judgment is dispensed with and that a mechanical one-sided order should be made by the court without applying its mind. Therefore, it cannot be said that it is a judgment on merits. In that case also the defendant failed to file written statement on the fixed date and an application filed to grant further time for filing written statement was rejected and, therefore, the judgment was passed under Order 8, Rule 10 C.P.C. The learned Single Judge of Madras High Court was of the opinion that it shall be deemed to be an ex parte decree only and, therefore, the petition under Order 9, Rule 13 CPC is maintainable to set aside the ex parte decree.

10. In the case of *Modula India v. Kamakshya Singh* the Apex court while considering the question, the nature of scope and rights available to a defendant, whose defence has been struck out arising out a case under West Bengal Premises Tenancy Act, held that, no oral testimony can be considered satisfactory or valid unless it is tested by cross-examination. The mere statement of the plaintiff's witnesses cannot constitute the plaintiff's evidence in the case unless and until it is tested by the cross-examination. The right of the defence to cross-examine the plaintiff's witnesses can, therefore, be looked upon not as a part of its own strategy of defence but rather as a requirement without which the plaintiff's evidence cannot be acted upon. Where a plaintiff comes to the court he must prove his case should not be whittled down even in a case where no defendant appears. The court can only do this by looking at the plaintiff's evidence and pleadings supplemented by such questions as the court may consider necessary and to completely eliminate any type of assistance from the defendant in this task will place the court under a great handicap in discovering the truth or otherwise of the plaintiff's statements. Therefore, the defendant is entitled to cross-examine the plaintiff's witnesses. Under Order 8, Rule 10 CPC when any party from whom a written statement is required fails to present the same within the time permitted or fixed by the Court, the Court "shall pronounce judgment against him or make such order in relation to the suit as it thinks fit." In certain cases, it is open for the Court to straightway pronounce the judgment

on the basis of the plaint and the averments contained therein. But the words used "shall" that the Court shall pronounce the judgment against him, it is obvious from the language of the rule that there is still an option with the Court either to pronounce judgment on the basis of the plaint against the defendant or to make such other appropriate order as the court may think fit. It is not mandatory to straightway pronounce the judgment because of non-filing of written statement. The provisions contained in Order 8, Rule 10 CPC to pronounce a judgment is not contrary to the other provisions to permit the defendants to cross-examine the witnesses of the plaintiff to demolish, disprove the plaintiff's case.

11. It is also pertinent to note that the Supreme Court in the case of *Khailash v. Nanhku* with regard to the mandatory provisions, under Order 8, Rule 1 CPC to file a written statement within the stipulated time held that it is not mandatory and the statement of objections and reading of the provision is intended to reduce the delay in disposal of civil cases and, therefore, it should be construed as directory only. It is further held that

"Our attention has been invited to a few other provisions such as Rules 9 and 10 of Order 8. In spite of the time limit appointed by Rule 1 having expired, the court is not powerless to permit a written statement being filed if the court may require such written statement. Under Rule 10, the court need not necessarily pronounce judgment against the defendant who failed to file written statement as required by Rule 1 or Rule 9. The court may still make such other order in relation to the suit as it thinks fit."

12. Though the language of Order 8 Rule 1 CPC appears to be mandatory for filing written statement within ninety days, but it does not itself provide for penal consequences to follow if the time schedule, as laid down, is not observed. Considering several other judgments, the Apex Court held that the time schedule contemplated by Order 8, Rule 1 CPC shall be the rule and departure therefrom an exception, made for satisfactory reasons only. Accordingly, the Apex Court held that, though the language under Order 8, Rule 1 CPC appears to be mandatory, but it is ineffective to the (sic. in effect) directory being a provision in the domain of processual law. The power of the Court to extend the time for filing written statement beyond the time schedule provided by under Order 8, Rule 1 CPC is not completely taken away. Under Order 8, Rule 1 is a part of processual law and hence directory.

13. In the case of *Balraj Taneja v. Sunil Madan*, the Supreme Court held that merely because the written statement has not been filed, the Court cannot proceed to pass judgment blindly. In a case, specially where a written statement has not been filed by the defendant, the Court should be a little cautious in proceeding under Order 8, Rule 10 C.P.C. Before passing the judgment against the defendant it must see to it that even if the facts set out in the plaint are treated to have been admitted, a judgment could possibly be passed in favour of the plaintiff without requiring him to prove any fact mentioned in the plaint. It is

a matter of Court's satisfaction and, therefore, only on being satisfied that there is no fact which need be proved on account of deemed admission, the Court can conveniently pass a judgment against the defendant who has not filed the written statement. But if the plaint itself indicates that there are disputed questions of fact involved in the case regarding which two different versions are set out in the plaint itself, it would not be safe for the Court to pass a judgment without requiring the plaintiff to prove the facts so as to settle the factual controversy. Such a case would be covered by the expression "the court may, in its discretion, require any such fact to be proved" used in Sub-rule (2) of Rule 5 of Order 8, or the expression "may make such order in relation to the suit as it thinks fit" used in Rule 10 of Orders.

14. In the instant case, the judgment was pronounced only on the ground that the written statement was not filed. Having pronounced the judgment under Order 8, Rule 10 CPC and admittedly no oral evidence has been adduced by the plaintiff and in spite of not adducing any oral evidence, it has been held that the suit claim of the plaintiff is proved and held that they are the owners and possessors of the suit schedule property and, therefore, they are entitled for the relief as prayed for to the extent of Ac.27.00 as prayed for. In fact, in the prayer, as already stated, it is only for an extent of Ac.15.00. Even for Ac.15.00 on prayer No. (a) of the plaint, the alleged documents filed by the defendant have not been marked and they have not proved and admittedly there is no evidence to show that the said land was the private property of the H.E.H. the Nizam and, therefore, the H.E.H. the Nizam was entitled to sell away the said land. All through it was shown as "sarkari" land. Unless the revenue records are rectified, it cannot be said that the plaintiff has acquired right and title over the said land. There is no evidence to prove that the plaintiff is in continuous possession and enjoyment of the said land. Even according to the plaint averments, he has constructed only three rooms. Even in respect of three rooms the so-called permission has not been filed. Therefore, it cannot be said by any stretch of imagination that the plaintiffs have proved to be the owners. Therefore, it cannot be said that the judgment pronounced by the court below satisfied the requirement of the judgment as contemplated u/s 2(9) of C.P.C. "Judgment" means the statement given by the Judge on the grounds of a decree or order. No grounds are narrated in the judgment to prove the suit claim prayer. "Decree" means the formal expression of an adjudication which, so far as regards the Court expressing it, conclusively determines the rights of the parties with regard to all or any of the matters in controversy in the suit and may be either preliminary or final. There is no basis for the court below to come to the conclusion that the plaintiffs have proved the suit claim.

15. Order VII of C.P.C. deals with the particulars of the plaint in different kinds of suits and the procedure in admitting the plaint, rejection of plaint, and the production of documents on which the plaintiff sues or relies etc.

16. Order VIII of C.P.C. deals with the filing of written statement, the grounds of

defence and the procedure if the party fails to present the written statement to the Court.

17. No doubt, under Order VIII, Rule 10 of C.P.C. where the defendant fails to file written statement required to be filed under Rule 1 or Rule 9 within the permitted time by the Court, the Court shall pronounce judgment against him or make such order in relation to the suit as it thinks fit and on the pronouncement of such judgment a decree shall be drawn up. If the Court chooses to pronounce the judgment or make such order in relation to the suit, to pronounce such judgment, unless the court satisfies that the suit claim is proved it cannot pass a judgment in favour of the plaintiff. Unless the documents on which the plaintiff relied are proved and admitted in evidence and on mere reading of the averments in the plaint, it cannot be treated that the plaint averments are proved.

18. In the instant case, there is no evidence to prove that the plaintiffs are the owners and possessors of the suit claim. No document is admitted and no oral evidence is adduced and no grounds are mentioned in the Judgment, except saying that the written statement is not filed and, therefore, the suit claim is proved. No doubt Order 8 of C.P.C. deals with the filing of written statement and merely because the written statement is not filed, it cannot be said that the other steps to be taken under Orders 9 ,10 ,11 ,12 ,13 ,14, 15 ,16 ,16(a) , 17, and 18 are to be dispensed with to prove the suit claim of the plaintiff.

19. Therefore, I am of the opinion that it is not one of the cases where the trial Court is entitled to use its discretion and presume that the suit claim has been proved.

20. In the result, the appeal is allowed and the judgment and decree, dated 6-8-1991, passed in O.S.No. 478 of 1990 on the file of the Principal Subordinate Judge, Ranga Reddy District, is set aside and the matter is remitted back to the trial Court for disposal afresh in accordance with law. No order as to costs.