
(1999) 08 MAD CK 0097
In the Madras High Court

Muthukaruppan alias Velayutham

APPELLANT

Vs

Deivathadiya Pillai, Hereditary Trustee and Poojari of
Arulmighu Sree Vembadi Sudalaimadasamy. Sree
Petchiamman Temple and Shree Deivathadiya Pillai Tomb

RESPONDENT

Date of Decision : 03-08-1999

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 12 Rule 6

Citation : (1999) 3 MLJ 574

Hon'ble Judges : S.S. Subramani, J

Bench : Division Bench

Judgement

S.S. Subramani, J.—Plaintiff in O.S.No. 623 of 1996 on the file of Additional District Court, Tuticorin is the revision petitioner. Suit filed by him is one to declare that he is the elder son of 4th defendant and for further declaration that on the death of 4th defendant, he is entitled to act as hereditary trustee. The further relief in the plaint is that defendants 1 to 3 should be restrained from permanent prohibitory injunction and for costs of the suit.

2. Fourth defendant alleged to have filed a memo on 4.10.1996 wherein he has admitted that plaintiff is his elder son. On the basis of memo, an application was filed by plaintiff under Order 12, Rule 6 of CPC to pronounce judgment on admission. The same was seriously opposed by defendants 1 to 3. First defendant in the suit is the elder son and when 4th defendant died, it is he who performed the last rites and the memo that is filed is collusive and fraudulent.

3. Lower court by the impugned order dismissed the application which is challenged in this revision petition.

4. Order 12, Rule 6 of the CPC read thus:

(1) Where admissions of fact have been made either in the pleading or otherwise, whether orally or in writing, the court may at any stage of the suit, either on the application of any party or of its own motion and without waiting for

the determination of any other question between the parties make such order or give such judgment as it may think fit, having regard to such admissions.

(2) Whenever a judgment is pronounced under Sub-rule (1), a decree shall be drawn up in accordance with the judgment and the decree shall bear the date on which the judgment was pronounced.

It could be seen there from that on pronouncement of judgment, a decree is also to be drawn.

5. Learned Counsel for petitioner submitted that under Code of Civil Procedure, the court can pass more than one decree and the decree can also be passed on the basis of admission in the written statement. Reliance was placed on the decisions reported in *Heeralal v. Kalyan Mal and Ors.* (1998) 1 M.L.J.101 : (1998) 1, L. W. 340 and also *Bai Chanchal and Others Vs. Syed Jalaluddin and Others*, , both rendered by Honourable Supreme Court. I do not think that the above decisions will have any bearing to the facts of this case in hand.

6. A judgment or decree could be passed only against the living person. 4th defendant is dead long before the application was moved and no judgment or decree could be passed against him.

7. Even otherwise, petitioner cannot claim as of right that he is entitled to get decree on admission. In *State Bank of India Vs. Midland Industries and Others*, , in para 6 of the judgment, their Lordships held thus:

Undoubtedly Rule 6 of Order 12 has been couched in a very wide language. However, before a court can act under Rule 6, admission must be clear, unambiguous, unconditional and unequivocal. Furthermore, a judgment on admission by the defendant under Order 12, Rule 6 is not a matter of right and rather is a matter of discretion of the court, no doubt such discretion has to be judicially exercised. If a case involves questions which cannot be conveniently disposed of on a motion under this rule the court is free to refuse exercising discretion in favour of the party invoking it. Where the defendants have raised objections which go to the very root of the case, it would not be proper to exercise this discretion and pass a decree in favour of the plaintiff. The rule is not intended to apply where there are serious questions of law to be asked and determined. Likewise where specific issues have been raised inspite of admission on the part of the defendants the plaintiff would be bound to lead evidence on those issues and prove the same before he becomes entitled to decree and the plaintiff in that event cannot have a decree by virtue of provision of Order 12, Rule 6, C.P.C. without proving those issues.

8. The same principle was reiterated in *Smt. Radha Lal Vs. M/s. Jessop and Company*, . In that case their Lordships said that the facts require investigation and proof and decree of admission cannot be granted.

9. In *Simla Wholesale Mart Vs. Baishnodas Kishori Lal Bhalla and Others*, it is held thus:

Judgments upon admission under Order 12, Rule 6 are matters of discretion and not of right. Where the case involves questions which cannot be conveniently disposed of on a motion under Rule 6, the court should, in exercise of its discretion, refuse the motion. Before a court can act under Rule 6, admission must be clear and unambiguous and the amount due and recoverable must be due and recoverable in action in which admission is made.

10. In this case, the author of the so called memo is not alive. The authenticity of the memo is disputed by other defendants. Lower court held that it is a disputed question of fact and the very issue in the suit is whether plaintiff is elder son. Certain circumstances also brought forward by respondent to contend that the case put forward by plaintiff is not true. Taking into consideration these facts, lower court exercised discretion not to pass a decree on the basis of so called admission but to wait till evidence is over. I find that the order of the lower court is correct and the same is not liable to be interfered with in this revision petition.

11. In the result, the revision petition is dismissed. No costs. Consequently, C.M.P.No. 7189 of 1999 is also dismissed.

12. Learned Counsel for petitioner wanted necessary direction to be issued to lower court to dispose of the suit without any further delay. I direct lower court to dispose of the suit on or before 31.12.1999 and report compliance to this Court. While disposing the suit, trial court is not to take into consideration the observations in the interim order and the findings therein and the same will have to be decided only on merits of the case, based on evidence.