
(2013) 02 MAD CK 0131
In the Madras High Court
Case No : O.S.A. No"s. 7 to 9 of 2013

Vivek Goenka and Others

APPELLANT

Vs

Narendra Prasad and Others

RESPONDENT

Date of Decision : 22-02-2013

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 18 Rule 17, 151

Citation : (2013) 2 LW 537 : (2013) 3 MLJ 1

Hon'ble Judges : N. Paul Vasanthakumar, J;M.M. Sundresh, J

Bench : Division Bench

Advocate : Hema Sampath, for T.N. Seetharaman, for the Appellant; V. Lakshmi Narayanan, for the Respondent

Final Decision : Dismissed

Judgement

M.M. Sundresh, J.—These Original Side appeals have been preferred by the appellants being the defendant Nos. 24 to 27 and 29 in the suit filed in C.S. No. 410 of 1982 against the orders passed in Application Nos. 2006 to 2008 of 2012 in C.S. No. 410 of 1982 dated 18.10.2012. The Respondents 1 to 4/plaintiffs herein filed a suit on the file of this Court in C.S. No. 410 of 1982 against the appellants and other respondents for a declaration that the suit properties were held for the benefit of the plaintiffs by the first defendant (since deceased). A further relief has been claimed that the deceased first defendant did not have any right to alienate the suit properties. The plaintiffs also sought for accounting apart from other incidental reliefs.

2. The suit was taken up for hearing for final disposal in the year 2000. After hearing the counsels appearing for the parties, after the conclusion of the trial, it was posted on 19.7.2000 for pronouncement of judgment. However, the learned single Judge (as he then was), could not pronounce the judgment on the appointed day. Incidentally, he retired on 24.7.2000. Thereafter, the suit was never listed and taken up for hearing before any other learned Judge.

3. The Applications in A. Nos. 2006 to 2008 of 2012 have been filed by the Respondents 1 to 4, who are plaintiffs in the suit, in the month of June 2010. Application No. 2006 of 2012 has been filed to re-open the evidence of the plaintiffs and the defendants in the suit. Application No. 2007 of 2012 has been filed to recall the evidence of the plaintiffs and the defendants in the suit. Application No. 2008 of 2012 has been filed to permit the applicants/plaintiffs to mark the documents as shown in the annexure attached to the application.

4. It has been contended in those three applications that there is a suit pending before the High Court of Mumbai in Suit No. 4538 of 1993. The suit has been filed by the relatives and descendants of the deceased first defendant herein and Defendants 24 to 29. The appellants are parties to the suit. In the said suit, the appellants and their predecessors have filed the following documents.

List of Documents to be Marked as Additional Documents

5. The abovesaid documents would clearly substantiate the case of the plaintiffs that the defendant's father received money from the plaintiffs' father and out of the income derived from the firm of the plaintiffs' father, the suit properties have been purchased. There are also number of admissions made in the documents filed before the High Court of Mumbai, which are inclusive of the pleadings. Therefore, those documents are very vital for the purpose of deciding the present suit. The plaintiffs are not parties to the said suit. Therefore, they have applied for certified copies of the same and filed these applications thereafter. Hence, it was prayed that they should be allowed.

6. The application was resisted by the appellants herein on the ground of delay. It has been further stated that the plaintiffs were not diligent in pursuing the suit and they cannot start a fresh trial after conclusion of the earlier one. The documents sought to be marked, cannot be marked by the plaintiffs. The plaintiffs have not taken any steps to bring the suit for hearing. Therefore, the applications are liable to be dismissed.

7. The learned single Judge, on the materials available on records, was pleased to allow all the three applications. While allowing the applications, the learned single Judge has observed that the plaintiffs/respondents 1 to 4 are not responsible for the inordinate delay. The delay has been caused by the Court subsequent to the judgment reserved. In the present case, the applicants came to know about the suit in the High Court of Mumbai and obtained the certified copies of the documents sought to be marked and thereafter filed the applications. It is for them to prove the documents in the manner known to law. The documents can be allowed to be received subject to their proof and relevancy. Therefore, considering the abovesaid facts, the learned single Judge allowed the applications. Challenging the same, the present Original Side Appeals have been filed.

8. The learned senior counsel appearing for the appellants would submit that the applications are liable to be dismissed for lack of bona fides. The Respondents 1 to

4 /plaintiffs did not take any appropriate steps to bring the suit for hearing. The documents sought to be marked are not relevant. The learned single Judge has not gone into the necessity for re-opening the case. The learned single Judge has not appreciated the scope of Order 18 Rule 17 of the CPC (hereinafter referred to as "C.P.C.,). The finding given by the learned single Judge that the applications have been filed u/s 151 of C.P.C., is not factually correct. Hence it is submitted that the appeals are to be allowed.

9. Per contra, the learned counsel appearing for the respondents would submit that the appeals are not maintainable in law and facts as well by this Court judgment in A.K.D. Rangaswami Raja and Another, In Re: A.K.D. Rangaswami Raja and Another, as well as the judgment of the Honourable Apex Court in Shah Babulal Khimji Vs. Jayaben D. Kania and Another, The rights of the parties have not been determined. The orders passed by the learned single Judge are not the judgments coming under the purview of Clause of 15 of Letters Patent. Further more, even on merits, the appellants did not have a case. What has been ordered is re-opening of evidence and marking of the documents and hence, no serious prejudice would be caused to the appellants. Therefore, the appeals will have to be dismissed as devoid of merits.

10. As held by the learned single judge, the facts involved in the present appeals are not in dispute. The applicants co-operated for the disposal of the suit. That is the reason why the judgment was reserved. However, no judgment was pronounced by the learned single Judge and thereafter, he retired. For that, the applicants cannot be put on fault. It is not as if the matter was taken up thereafter by any other learned single Judge. The fact remains the case has not been posted for hearing thereafter. It is only in pursuant to the applications filed by the applicants/plaintiffs, the case was taken up. This was done due to the applications filed by the plaintiffs. In other words, the case would not have been taken up for hearing either on the miscellaneous applications or on the main suit, but for the applications filed by the applicants/plaintiffs. Therefore, this Court is of the view that the delay cannot be attributed against the applicants as admittedly on the date of the filing of the applications the suit has not been heard afresh. This Court is also quite aware of the scope of Order 18 Rule 17 C.P.C. Order 18 Rule 17 of C.P.C., has to be invoked by the Court to come to the correct decision. Merely because there is some delay, it cannot be a sole ground to reject the applications filed under Order 18 Rule 17 C.P.C., in all circumstances. It is not as if the applicants are deliberate in filing the applications. Admittedly, they are not parties to the suit in the High Court of Mumbai. Therefore, they obtained certified copies and filed the applications. Further more, all the documents have already been filed before the High Court of Mumbai. Considering all those facts alone, the learned single Judge was pleased to dismiss the applications. As rightly held by the learned single Judge, the admissibility and relevancy of the documents are different issues than the subject matter of the present appeals. The learned single Judge specifically stated that it is for the applicants to prove the documents in the manner known

to law. A further finding has been given that the documents are to be received subject to the proof and relevancy. Further more, the documents sought to be marked mostly consist of pleadings filed before the High Court of Mumbai. Even though the power under Order 18 Rule 17 of C.P.C., has to be exercised sparingly, we are of the view that the said power has been rightly exercised by the learned single Judge, in the light of the specific averments made in the affidavit filed in support of those applications that the documents sought to be marked would substantiate the case of the plaintiffs. We are of the view that the applications have been rightly ordered as it would help the Court in deciding the suit correctly. Therefore, considering the abovesaid facts, we hold that the learned single Judge has rightly exercised the discretion in allowing the applications.

11. Since we have decided the appeals on merit, we are not inclined to go into the legal issue raised by the learned counsel appearing for the respondents 1 to 4/plaintiffs on the question of maintainability of the appeals. In fine, these original side appeals are dismissed. However, we request the learned single Judge to expedite the trial and conclude the same within a period of six months from the date of receipt of a copy of this order, taking note of the long pendency of the suit. The parties are directed to co-operate with the completion of the trial. No costs. Consequently, connected miscellaneous petitions are also dismissed.