

**B.S. Narayanan Vs. B.S. Anandan and Others**

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**Court :** Chennai Madurai

**Decided On :** Mar-02-2016

**Judge :** T. Mathivanan

**Appeal No. :** CRP(MD)No.1048 of 2015(PD) & MP(MD) No.1 of 2015

**Appellant :** B.S. Narayanan

**Respondent :** B.S. Anandan and Others

**Judgement :**

(Prayer : Civil revision petition is filed against the fair order and decretal order, dated 10.4.2015 and made in I.A.No.157 of 2015 in O.S.No.116 of 2013 on the file of the III Additional District Judge, Tiruchirappalli.)

1. This memorandum of civil revision has been directed against the fair and decretal order, dated 10.4.2015 and made in the interlocutory application in I.A.No.157 of 2015 in the suit in O.S.No.116 of 2013 on the file of the III Additional District Judge, Tiruchirappalli.

2. The revision petitioner herein is the plaintiff whereas the respondents 1 to 5 are the defendants in the suit in O.S.No.116 of 2013.

3. The petitioner has filed the above suit as against the respondents seeking the relief of partition by dividing the suit properties into five equal shares and allot one such share to him and also for the consequential relief of injunction restraining the

10<sup>th</sup> defendant in the suit, who is the Special Tahsildar (Land Acquisition), National Highways, NH Office, Kulathur, from disbursing the compensation amount to the defendants 1 to 4 excluding the petitioner/plaintiff in respect of the suit lands situated at Mathur Village.

4. This suit was resisted by the respondents 1 and 2/defendants.

5. After formulating necessary issues based on the pleadings of the parties concerned, when the trial was about to be commenced, the petitioner had opted to file an application in I.A.No.49 of 2015 under Section 151 of C.P.C. to direct the respondents to adduce evidence at first instance before the commencement of recording of evidence on the part of the petitioner/plaintiff with regard to the pleas made by them in their written statement.

6. It is significant to note here that though ten defendants have been arrayed, the defendants Nos.1 and 5, who are the petitioner's brother and his son alone are contesting the suit.

7. According to the petitioner, as it is seen from the averments of his affidavit filed in support of the above said application in I.A.No.49 of 2015, the respondents 1 and 5 have admitted that all the suit properties are the joint family properties which were purchased from the ancestral income. 8. In this connection, the petitioner has stated that while admitting the nature of the properties as joint family properties, the respondents 1 and 5 have contended that there was an oral partition entered into among the parties in the year 1982 and 2007 and in view of such admissions made by the respondents 1 and 5/defendants 1 and 5 about the character of the suit properties as joint family properties and since they have pleaded about the oral partition that took place in the year 1982 and 2007, the burden is on them to prove the oral partition and if the partition is not proved, automatically the petitioner would be entitled to the share claimed by him in the plaint and therefore, he has come forward with the above said application under Section 151 of C.P.C. seeking a direction as against the respondents 1 and 5 to adduce evidence on their part prior to the commencement of recording of evidences on the part of the petitioner/plaintiff.

9. This petition was allowed by the trial Court directing the first respondent/D1 to let in evidence at first.

10. Under these circumstances, the first respondent/D1 has filed a memorandum saying that, without prejudice at this stage of the proceedings, there is no oral evidence on the part of the first defendant as well as the fifth defendants.

11. Thereafter, the petitioner/plaintiff has taken out another application in I.A.No.157 of 2015 under Order 12 Rule 6 r/w Section 151 C.P.C., to pass a preliminary decree as prayed for in the suit based on the alleged admissions made by the respondents 1 and 5/defendants 1 and 5 in their written statement.

12. The petitioner has also stated that in the written statement filed by the defendants 1 and 5 while admitting the character of the suit properties as joint family properties, the defence of D1 and D5 was that the suit properties were orally divided in the year 1982 and 2007 and therefore, when the partition was already effected, the suit for another partition is not maintainable.

13. Further, the petitioner has stated in his affidavit that the first respondent/first defendant had made an endorsement that he had no witness to adduce oral evidence. He has also stated that since no evidence has been adduced to prove the alleged oral partition and they have admitted in their written statement that all the suit properties are joint family properties, which still remains unchallenged and uncontroverted, he is entitled to get the preliminary decree for partition in view of the provisions of Rule 6 of Order 12 C.P.C.

14. This petition was vehemently resisted by the respondents 1 and 5/defendants 1 and 5 by filing their counter statement on the ground that the first and fifth respondents/defendants have never admitted the plaint issues as mentioned in the affidavit at any point of time and in contra, the petitioner/plaintiff ought to have proved his own case and he has to stick on his case.

15. They have also contended in their counter statement that the petitioner/plaintiff shall prove his case at first and only then, the burden of proof will shift on the respondents/defendants.

16. Further, they have contended that mere filing of the petition under Order 12 Rule 6 C.P.C. would not prove the case of the petitioner/plaintiff, and the petitioner is under the obligation to prove his case that the earlier partition is not acted upon till date and that the plaintiff is in joint family nucleus even on the date of filing of the suit.

17. After hearing both sides, the learned trial Judge has proceeded to dismiss that application on 10.4.2015 on the ground that the judgment on admission by the defendant under Order 12 Rule 6 C.P.C. is not a matter of right and it is a matter of discretion of the Court, which is to be judicially exercised.

18. The learned trial Judge has also found that where, the averments made in the written statement give rise to a triable issue, judgment on admission under Order 12 Rule 6 C.P.C. cannot be passed as observed by the Delhi High Court in R.K. Markan vs. Rajiv Kumar Markan (2003 A1 H 632 (633) Del.)

19. Challenging the correctness of the said order, present revision is filed by the petitioner/plaintiff after invoking the provisions of Article 227 of the Constitution of India.

20. Heard Mr.T.R.Rajagopal, learned Senior Counsel appearing on behalf of Mr.D. Ravichander, learned counsel, who is on record for the petitioner/plaintiff and Mr.A.V. Rajasekaran, learned counsel appearing for the respondents 1 and 5 and Ms. J. Ananthavalli, learned counsel appearing for the respondents 2 and 3. The fourth respondent remained ex parte.

21. Before going into the merits of the case, this Court finds that it may be better to make reference to the provisions of Rule 6 of Order 12 C.P.C.

22. Rule 6 contemplates Judgment on admissions . Sub Rule 1 of Rule 6 enacts as under:-

R.6 Judgment on admissions: (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.

23. The object of the rule is to enable the party to obtain a speedy judgment at least to the extent of the admissions of the defendant, entitled that relief to the plaintiff. The court should not unduly narrow down the meaning of this rule, as the object is to enable a party to obtain speedy judgment.

24. A bare reading of Rule 6 would indicate that the court either on the application of any party or on its own motion and without waiting for determination of any other question between the parties proceed to give judgment as it may think fit having regard to the clear and unequivocal admission. This principle is laid down in Brigadier H.S. Cheema vs. State Bank of India ((1999) 80 Del. LT 117).

25. It may be relevant to note here that this rule confers a very wide discretion on the Court. It is to be borne in mind that pleadings are not to be dissected but are to be read as a whole. 26. In a case relating to the dispute over performance of obligation under an agreement, the defendant admitted about the agreement but claimed failure to perform reciprocal promises seeking permission to file counter-claim. It was held by the Bombay High Court in Smt. Vijayanti vs. Chandrakant Thakkar (2007 (1) Mah L.J. 699 : 2007 (4) All MR 593 (Nagpur Bench) that admission of defendant was limited only to the extent of existence of agreement, but its breach was not admitted by the defendant. Therefore, a decree on such admission cannot be passed under O 12, R6 of the Code.

27. On coming to the instant case on hand, Mr.T.R. Rajagopal, learned Senior Counsel has contended that since the defendants had categorically admitted in their written statement that the suit properties were joint family properties, they were liable to be partitioned, accordingly, and that the defence set up by them that there had already been a oral partition and the parties had acted upon the same and therefore, the suit for partition was not at all maintainable, could not be accepted.

28. He has also contended that in order to establish their defence, the revision petitioner had sought the respondents 1 and 5/defendants 1 and 5 to lead

evidence at first in terms of the provisions of Order 18 Rule 1 of C.P.C., for which the respondents 1 and 5 had chosen to waive their evidence by filing a memorandum, which was recorded by the trial Court and in view of the above fact, the issue of oral partition remained unproved and hence, absolutely nothing remained in the suit to go for full-fledged trial.

29. If no triable issues were sought to be decided then the party to the proceedings had a right to get judgment and hence, he could not be compelled to undergo the ordeal of trial and the very longevity of the proceedings would be a waste of time of the Court as well as the litigant and therefore, he has urged to set aside the impugned order and to allow the application in I.A.No.157 of 2015 and to give a direction to the learned trial Judge to pass a judgment based on the admission of the respondents 1 and 5/defendants 1 and 5 as contemplated under Order 12 Rule 6 of C.P.C.

30. In support of his contention, he has placed reliance upon the following decisions:- a. Karam Kapahi and others vs. Lal Chand Public Charitable Trust and another ((2010) 4 SCC 753). b.Raveesh Chand Jain vs. Raj Rani Jain (2015) 8 SCC 428).

31. In the decision first cited supra, the Apex Court has held that the object of Order 12 Rule 6 is to give plaintiff a right to speedy judgment. A party on admission of the other party, can press for judgment, as a matter of legal right, however, court always retains its discretion in the matter of pronouncing judgment.

32. In the decision cited second supra, the Apex Court has held that Order 12 Rule 6 is not a mandatory, but discretionary provision. It confers a wide discretion on court to pass a judgment at any stage of suit on the basis of admission of facts made in pleadings or otherwise without waiting for determination of other questions arising between the parties.

33. The Apex Court has also held in this decision that the principle behind the Order 12 Rule 6 C.P.C. is to give plaintiff a right to speedy judgment so that either party may get rid of rival claims which are not in controversy.

34. On the other hand, Mr.A.V. Rajasekaran, learned Counsel appearing for the respondents 1 and 5 while advancing his arguments has invited the attention of this Court to paragraph No.4 of the written statement filed by the first respondent/D1, wherein he has stated that during his life time, the petitioner's father and the defendants 1 to 4 had acquired five categories of properties out of his hard work. They are, (a) Property in his own name, (b) Properties in common name, (c ) Properties in firm name, (d) Properties in individual name and (e) Property in the name of Jayalakshmi Ammal (mother of the plaintiff and defendants).

35. After the demise of their father, viz., B.S. Sundaravadivel Mudaliar in the year 1969, all the above said properties were enjoyed by the plaintiff and the defendants till 1982.

36. In paragraph No.5 of his written statement, the first respondent/D1 has stated that in the year 1982, the mother of the plaintiff, plaintiff and the defendants 1 to 4 had entered into an oral partition in respect of all the properties, including the properties, which are standing in the name of the plaintiff and the defendants 1 to 4. In the oral partition, the terms specified in the written statement were mutually agreed and decided by the plaintiff and the defendants 1 to 4 and the mother of the plaintiff.

37. The learned counsel has also pointed out that as stipulated under Clause 3 of the oral partition, the firm had not been included in the list of properties.

38. In his written statement at page No.3 under Clause 'a' to paragraph No.5, the first respondent/D1 has stated that the third defendant had entered into a registered sale in respect of his own portion on 18.5.1983 vide Doc. No.1125 of 1983.

39. Under Clause 'b' he has stated that on 14.3.1995, the son of the plaintiff by name Saravanan and the first defendant had entered into a registered lease agreement by incorporating the terms in respect of the first defendant's property which was allotted to the first defendant in partition in the year 1983 itself. Besides, in the lease agreement, the third defendant signed as witness No.1 and that the

said lease deed is duly registered in accordance with law.

40. In Clause 'd' the first respondent/D1 has also stated that on 11.6.2012, the first defendant had executed a gift settlement in favour of the fifth defendant on the strength of the above said oral partition.

41. Mr.A.V. Rajasekaran has also argued that the suit ought to have been filed for partition within a period of three years and since the suit was not filed within the stipulated period of three years, it was barred by law of limitation.

42. Mr.A.V. Rajasekaran has also drawn the attention of this Court to Paragraph No.7 of the impugned order, wherein, the learned trial Judge has made reference to the arguments advanced by the learned counsel for the respondents 1 and 5 before the Court below saying that the petitioner/plaintiff had admitted in the criminal case in STC No.1174 of 2013 that the partition was already acted upon and that he had prayed to consider the certified copy of the complaint lodged by the petitioner, which was marked as Ex.R1 in the application in I.A.No.521 of 2013.

43. Mr.A.V. Rajasekaran has also made reference to a private complaint filed under Sections 138 and 142 of the Negotiable Instruments Act, which was taken on the file of the learned Judicial Magistrate No.V, Trichy as C.C.No.1174 of 2013.

44. On perusal of the complaint, this Court is able to understand that this complaint seems to have been filed by the revision petitioner/plaintiff as against the respondents 2 and 3.

45. In paragraph Nos.2 and 3 of the complaint, the petitioner/plaintiff being the complainant therein has stated that all the accused along with the complainant had accepted the partition of properties in the name of Sundaravadivel Mudaliar and sons and Jayalakshmi Ammal and the properties were purchased in the name of the individuals.

46. He has also stated that the said partition had been accepted by all the accused. The properties shown in the understanding had to be partitioned and allotted to the complainant in which certain valuable properties had been allotted

to other legal heirs of Sundaravadivel Mudaliar and the properties that were built years back had been allotted to B.S. Narayanan and for the reconstruction of the old properties allotted to B.S.Narayanan all the accused had accepted to pay a sum of Rs.1,02,59,204/- to the petitioner.

47. In paragraph No.3 of the said complaint, the revision petitioner has also stated that the plot at Pondicherry had been sold for a consideration and the share of the complainant had been settled. But the share in respect of the vacant site at Keela Kosa Street, Bheema Nagar and four shops at Palakarai Main Road had not been settled.

48. Mr.A.V. Rajasekaran has also contended that as contemplated under Section 58 of the Evidence Act the facts admitted need not be proved. Further, he would contend that there was a land acquisition proceedings and the second defendant had received the compensation and no steps were taken against D2 for recovery of possession.

49. Ms. J. Ananthavalli, learned counsel appearing for the respondents 2 and 3 has adopted the arguments advanced by Mr.A.V. Rajasekaran.

50. This Court has considered the submissions made by the learned counsels on either side.

51. This Court has also perused the grounds of revision along with the impugned order and the pleadings of the parties to the suit, as well.

52. Having regard to the related facts and circumstances of the case, this Court finds that there are a lot of triable issues and as argued by Mr.T.R. Rajagopal, learned Senior Counsel no judgment can be passed based on the written statement filed by the respondents 1 and 5.

53. It is to be pointed out that the provisions of Order 12 Rule 6 cannot be construed that the Judgment on admission is a matter of right, but it is a matter of discretion of the court which is to be judiciously exercised. Further, this Court finds that the particular averments made by the respondents 1 and 5 in their written statement cannot be termed as an admission and since several triable issues are

there, it may be better to direct the parties to face the trial.

54. Accordingly, this Court does not find any merit in the revision petition.

55. It is obvious to note here that this Court while disposing the civil miscellaneous appeal in C.M.A.No.490 and 491 of 2014 has directed the III Additional District Judge, Trichy, to dispose of the suit in O.S.No.116 of 2013 within a period of two months from the date of receipt of a copy of this order. That order is still in force. However, the time limit for the disposal of the suit given by this Court is hereby extended for a further period of three months and the learned III Additional District Judge, is directed to dispose of the suit without further loss of time.

56. With the above directions, the revision petition is dismissed confirming the impugned order, dated 10.4.2015 and made in I.A.No.157 of 2015 in O.S.No.116 of 2013 on the file of the III Additional District Judge, Tiruchirapalli. However, there will be no order as costs. Connected M.P. is also dismissed.

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