

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 16.07.2015

Coram:

THE HONOURABLE Ms. JUSTICE K.B.K.VASUKI

S.A.No.1375 of 1993

1.Kani Ammal (Deceased)

2.S.Jeyaseelan

(2nd appellant brought on record as legal heir of the deceased sole appellant by the order of this Court dated 25.4.2012 made in CMP.9387/2006)

... Appellants/Plaintiff

vs.

1.Tamil Nadu Slum Clearance Board
rep. by its Chairman, Chennai-5.

2.C.A.Khaja Mohideen

3.The Tamil Nadu Wakf Board
rep. by its Secretary, Chennai -4.

... Respondents/Defendants 1 to 3

Second Appeal filed under Section 100 C.P.C against the judgment and decree dated 02.07.1993 made in A.S.No.97 of 1991 on V Additional Judge, City Civil Court, Chennai reversing the judgment and decree dated 24.04.1989 made in O.S.No.322 of 1977 on the file of the II Assistant Judge, City Civil Court, Chennai.

For Appellant : Mr.Balasubramanian

For Respondents : Mr.P.H.Aravind Pandian, AAG assisted
by Mr.S.Prabhu - R1
no representation - R2
Mr.Mohamed Fayaz Ali - R3

J U D G M E N T

The second plaintiff in the suit in O.S.No.322/1977 filed the present second appeal against the reversing judgment made in AS.97/1991. The suit was originally filed by Nallaya Nadar against the first respondent Tamil Nadu Slum Clearance Board for declaring that the plaintiff perfected title by adverse possession of the suit property and for granting injunction restraining the first defendant in any manner interfering with the plaintiff's possession and enjoyment of the suit property.

2.The claim made in the suit is that the plaintiff came to be in

the occupation of the suit property as early as in 1957 and he had been in possession and enjoyment of the same by putting up zinc sheet shed and bamboo stick fencing to an extent of 600 sq.ft. and by using the remaining extent for storing firewood, charcoal etc. and after duly obtaining requisite licence from the Corporation of Chennai for running the charcoal and firewood business, he has been in such possession and enjoyment of the property openly, notoriously and adverse to the knowledge of all and in his own right for more than the statutory period and thus perfected title by adverse possession to all including that of the owner. The cause of action for filing the suit arose on his being served with Ex.A22 notice dated 11.11.1976 by the first respondent Tamil Nadu Slum clearance Board, calling upon him to remove the superstructure put up by him in the suit property. According to the plaintiff, the first defendant has no right to interfere with his peaceful possession and enjoyment of the suit property and the plaintiff is not bound to surrender vacant possession as demanded under Ex.A22 notice.

3.The first defendant Tamil Nadu Slum Clearance Board in their written statement and additional written statement filed by them stated that the suit property forming part of large extent in Mosque street originally belonged to one C.A.Khaja Mohideen Sahib, who gave his consent to acquire the land for constructing tenements for the slum people and also authorised the Slum Board authorities to enter into the land to proceed with the construction work. The said area was declared as slum area by way of notification dated 12.4.1972 under section 3(1) of the Tamil Nadu Slum Areas (Improvement and Clearance) Act, 1971 (hereinafter shortly referred to as Act) and a Scheme called "Mosque Street Slum Clearance Scheme" was formulated in the area and the Slum Board also approved the proposal to construct 112 numbers of multi storeyed tenements with the financial assistance of HUDCO by G.O.Ms.no.54 dated 05.02.1977 and the plaintiff was given Rs.50/- as ex-gratia payment for temporary rehabilitation for removing his hut. When the construction work was about to commence, the suit came to be filed by the plaintiff without any right to do so. It is further contended therein that the plaintiff made a request to the Slum Board to permit him to run the Fire Wood Shop Depot in the same place and the same was rejected on 4.9.1976. Subsequently, a warning notice was issued to the plaintiff to remove the superstructure and the same was followed by another notice to all interested persons including that of the plaintiff, with liberty given to him to appear in person or to represent by any pleader and adduce oral and documentary evidence and make objection, if any and on their failure to respond to the same, the enquiry was completed and the same was intimated to the concerned authority. Thereafter, further proceedings was initiated by issuing draft notification under section 17(1) of the Act for declaring the same as slum clearance area. It is also contended therein that the plaintiff can make no claim without challenging the notification under section 3(1) and he estopped from making such claim by reason of his receipt of exgratia payment of Rs.50/- and the suit is also not maintainable in view of the action initiated by the prescribed authority.

4. During the pendency of the suit, one C.A. Khaja Mohideen and the Tamil Nadu Wakf Board, who had title dispute over the property in question, were also impleaded as the defendants 2 and 3 in the suit. The second defendant individual remained *exparte* and the third defendant Wakf Board did not file any written statement on their side. Even after impleadment of the defendants 2 and 3, no amendment was made in the suit plaint regarding the declaratory relief, whereas the injunction relief was amended thereby restricting the same only against the first defendant Tamil Nadu Slum Clearance Board.

5. The first plaintiff after examining himself as PW1, died and his legal heir was impleaded as the second plaintiff and the suit was further contested by the second plaintiff and the first defendant. During trial, PW1 to PW4 and DW1 and DW2 witnesses were examined and Exs. A1 to A60 and Exs. B1 to B5 documents were produced on both sides.

6. The trial court, on the basis of the available evidence, arrived at a conclusion that the plaintiffs' possession and enjoyment of the suit property for more than the statutory period, openly, continuously and uninterruptedly adverse to the knowledge of all including that of the original owner was established through Exs. A1 to 21 and A24 to A59 licence issued to the plaintiff for running charcoal business, property tax demand notice issued to the plaintiff and receipt issued to the plaintiff for payment of property tax and professional tax etc. The trial court further found that the defendants failed to prove the payment of *ex-gratia* of Rs.50/- and the plaintiffs on the basis of their exclusive possession from 1957, have prescribed title to the property and accordingly decreed the suit as prayed for.

7. Aggrieved against the same, the first defendant Slum Clearance Board preferred AS.97/1991. The lower appellate court accepted the case of the first defendant that the property in question by virtue of notification under section 3(1) and by virtue of other proceedings already vested with the Slum Clearance Board and the suit is not maintainable against the first defendant Slum Clearance Board for any relief of injunction and accordingly allowed the appeal, thereby setting aside the judgment and decree of the trial court against the first defendant Slum Clearance Board. Hence, this second appeal by the second plaintiff before this court.

8. The second appeal is admitted on the following substantial questions of law:

(1) Whether the lower appellate court committed material error in law in holding that the suit itself is not maintainable under Section 65 of the Act 11 of 1971 in the light of decision reported in 1980(2) MLJ 89 and on the facts and circumstances of this case?

(2) When the first respondent has not filed the notification under Section 17(1) of the Act 11 of 1971

(G.O.Ms.no.1391 Housing and Urban Development Department dated 26.7.1979) in the court and exhibited the same, whether the lower appellate court is correct in law in presuming that the suit property is also included in the said notification and allowing the appeal on that basis?

9.Heard the rival submissions made on both sides and perused the records.

10.During the pendency of this second appeal, the appellant/second plaintiff died and her legal heir was impleaded as the second appellant herein.

11.As already stated, the relief sought for in the suit is for declaring that the plaintiffs perfected title by adverse possession of the suit property and for permanent injunction restraining the first defendant Slum Clearance Board from in any manner interfering with the plaintiffs' peaceful possession and enjoyment of the suit property. The suit was decreed against all the defendants, but the defendants 2 and 3 did not appeal against the declaratory relief granted in favour of the plaintiffs. The appeal was filed only by the first defendant Slum Clearance Board and the lower appellate court reversed the findings of the trial court and set aside the judgment and decree of the trial court, insofar as the first defendant Tamil Nadu Slum Clearance Board is concerned.

12.The trial court while granting the suit relief, did not go into the question of legal consequences of declaring the area as slum area and the proceedings initiated by the Slum Board for removing the existence of superstructure for the purpose of putting up 112 tenements for being allotted to eligible persons, but simply on the basis of the exclusive possession and enjoyment of the deceased first plaintiff along with the second plaintiff for more than the statutory period, granted the relief of declaration as well as permanent injunction, which is not the correct approach to resolve the issue involved herein.

13.It may be true that the declaratory relief granted in favour of the plaintiffs against the defendants 2 and 3 was not challenged by them. As far as the first defendant is concerned, the documents produced on the side of the contesting defendant i.e., Ex.B1 notification issued under section 3(1) of the Act dated 14.2.1972, Ex.B2 letter dated 30.9.1975 addressed to the Chairman of the first defendant Board by the second defendant, Ex.B3 G.O.Ms.no.54 Housing Department dated 5.2.1977 and Ex.B4 approved layout plan would undoubtedly go to show that the entire extent of 19 grounds 321 sq.ft in R.S.No.3092 of Mosque Street, Mylapore, Madras forming part of which is the present suit property was declared as slum area or slum clearance area. Ex.B1 is the section 3(1) notification dated 14.3.1972 declaring the area as slum area. Exs.B2 and B5 are the letter dated 30.09.1975 addressed by C.A.Khaja Mohideen Sahib to the Chairman, Slum Clearance Board and the proceedings dated 20.7.1976 addressed by the Secretary, Tamil Nadu Wakf Board to the Chairman,

Tamil Nadu Slum Clearance Board, Chennai to the effect that both of them irrespective of the outcome of the dispute between the wakf Board and Khaja Mohideen regarding the wakf character of the lands concerned, agreed to permit the Slum Clearance Board to deposit the compensation amount in the court for acquisition of the land in question and to enter upon the land and proceed with the construction work. Ex.B3 is the Government order in G.O.ms.No.54 Housing Department dated 5.2.1977 guaranteeing repayment of principal with interest for loan of Rs.292.61 lakhs to be obtained from the Housing and Urban Development Corporation for execution of 16 slum clearance schemes as shown in the annexure to the order and the slum clearance scheme in respect of Mosque street is one of the 16 schemes covered under the annexure.

14.As rightly argued by the learned standing counsel for the slum clearance Board, the combined appreciation of the contents of the documents above referred to is sufficient enough to establish the stand taken by the slum clearance Board that the property was already declared as slum area or slum clearance area and was already acquired by the slum clearance Board and vested with the Board. In that event, the exclusive possession and enjoyment of the deceased first plaintiff and thereafter by the second plaintiff over the suit property and the prescriptive title obtained by them would entitle them only to make any preferential claim for compensation and the same would not cloth them with any right to restrain the prescribed authority under the Act to proceed with the execution of slum clearance scheme which was already approved by the Government and for the said purpose, to evict the person in the occupation of the property in whatever capacity either as owner, lessee etc. The finding rendered to that effect by the lower appellate court is but correct approach to the issue involved in the present case.

15.As far as the injunction relief is concerned, the same is hit by the relevant provisions of law under section 65 of the Act, as per which, no civil court shall have jurisdiction in respect of any matter, which the Government are, or the prescribed authority is, empowered by or under this Act, to determine and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act. As already stated, the plaintiffs were already served with Ex.A22 notice on 11.11.1976 for removal of superstructure and for surrendering the vacant possession for the purpose of execution of Scheme and the plaintiffs have, by institution of the present suit, successfully postponed the surrender of vacant possession without any right to do so. As rightly pointed out by the first defendant Slum Clearance Board, when one of the cause of actions for filing the suit was Ex.A22 notice issued by the first defendant, no suit for injunction can be entertained against such action taken by the prescribed authority, by virtue of the power given to them under the Act and the same was rightly negatived by the lower appellate court. As such, the findings of the lower appellate court in favour of the first defendant Slum Clearance Board call for no interference by this Court and the substantial questions of law are accordingly answered

against the appellants.

16.In the result, the second appeal is dismissed, with liberty given to the first respondent/Tamil Nadu Slum Clearance Board to initiate appropriate action under the Tamil Nadu Slum Areas (Improvement and Clearance) Act 1971 by issuing fresh notice to the legal heirs of the original occupant and to proceed with the same in the manner known to law after giving them due opportunity of personal hearing. No costs.

Sd/-
Assistant Registrar

True Copy

Sub Assistant Registrar

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To

- 1.The V Additional Judge, City Civil Court, Chennai.
- 2.The II Assistant Judge, City Civil Court, Chennai.

Copy to:The Section Officer, V.R.Section, High Court, Madras

- 1 cc to Mr.M.Balasubramanian , Advocate Sr.No.36137
1 cc to Mr.S.Prabhu , Advocate Sr.No.36187

SA.No.1375 of 1993

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