

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 16.07.2015

Coram:

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

S.A.Nos.1500 and 1501 of 2010

&

MP.NOs.1 and 1 of 2010 and 1 and 1 of 2013

1.Malini

2.Susila

3.Mangaleswari

4.Banu Venkatesan

... Appellants in

both SAs/Defendants 1,2,3&5

vs.

1.S.Jamunarani

... 1st respondent

in SA.1500/2010/Plaintiff

1.G.Shanmugam

... 1st respondent

in SA.1501/2010/Plaintiff

2.R.Dayalan

3.Tamil Nadu Slum Clearance Board

represented by its Chairman,

Chennai -5.

... Respondents 2 & 3

in both SAs/Ist Respondent

4th & 6th Defendant

The Second Appeals are filed under Section 100 of Code of Civil Procedure against the judgment and decree dated 18.9.2007 made in A.S.Nos.216 and 215/2007 on the file of the 7th Additional City Civil Judge, Chennai confirming the judgment and decree dated 10.7.2006 made in O.S.Nos.5352 and 5318/2000 on the file of the XIV Assistant City Civil Judge, Chennai.

For Appellants : Mr.C.Rajagopalan

For Respondents : Mr.N.Senthilkumar -R1

Mr.S.P.Prabhakaran -R3

Given up -R2

COMMON JUDGMENT

The unsuccessful defendants 1, 2, 3 and 5 in O.S.Nos.5352 and 5318 of 2000 are the appellants herein. Both the second appeals are filed against the concurrent judgment of both the courts below.

2.Both the suits in O.S.Nos.5318 and 5352 of 2000 are filed by the respective first respondent G.Shanmugam and S.Jamunarani for ejection of the defendants from the suit property or alternatively directing the Tamil Nadu Slum Clearance Board to evict the defendants from the suit property and hand over the vacant possession of the suit property to the plaintiff.

3.The subject matter of both the suits is plot nos.34 and 35 in S.No.123/1, at Door No.18-G, Draupathy Amman Koil First Street, Lakshmipuram, Velachery, Chennai. The plaintiff in both the suits, who are the husband and wife by relationship, were admittedly allotted the respective suit plot numbers by the 6th defendant/Tamil Nadu Slum Clearance Board under Exs.A1 and B1 and B2 allotment orders dated 19.5.1997 and 19.12.1997 for Rs.15,680/- and Rs.15651/- respectively subject to certain terms and conditions, one among which is that the allottees shall pay Rs.1568/- and 1565/- respectively towards first payment and shall pay the balance amount in equal monthly installments for 20 years. After such allotment, the husband and wife have been in possession and enjoyment of the same, by putting up building in the same and by assessing the property tax in their names and by paying the statutory taxes.

4.While so, the wife, who is the plaintiff in O.S.5352/2000, in the course of money dealing with the defendants 1 to 5, indebted to them and executed different nature of the documents, such as, blank stamp papers, promissory notes and sale agreement etc, in their favour and the defendants on the basis of such documents, came to occupy the suit plots and the same compelled the dispossessed allottees to send legal notice to the occupants for surrendering the vacant possession of the same. The dispossessed allottees also approached the police authorities by way of complaint and approached the sixth defendant Tamil Nadu Slum Clearance Board for taking appropriate action by removing the trespassers and for restoring them into possession. Having not found any effective response from the police authorities as well as from the sixth defendant Board, the allottees came forward with the present suits for ejectment or for directing the sixth defendant Board for taking appropriate action for eviction and for restoring them the possession of the suit plots.

5.The relief sought for in the suits was seriously resisted by the defendants both in law and on facts. In law, the legal objection raised by them is that no suit is maintainable without previous permission in writing of the prescribed authority under the Act as contemplated under section 29 of the Tamil Nadu Slum Areas (Improvement and Clearance) Act 1971 (hereinafter shortly referred to as 'Act') and no suit is maintainable for eviction of the occupant under section 65 of the Act. On facts, the

defence raised is that the possession of the suit plots was handed over to the defendants by the plaintiffs/allottees towards discharge of the amount payable by them and the second defendant has on the strength of such possession, paid few installments in the name of the plaintiffs and the occupation of the defendants was also duly recorded by the officials of the Slum clearance Board and the issue regarding re-allotment in favour of the second defendant is also pending before the Board.

6. With such pleadings, the parties faced trial and adduced oral and documentary evidence in support of their respective contentions. The trial court on the basis of the available evidence, arrived at the following conclusion that the husband and wife were the allottees of the respective plots and the defendants 1 to 5 have been in possession of the suit property as trespassers and the defendants failed to prove their case regarding the execution of Ex.B15 sale agreement and voluntary execution of pro notes and also their further theory that the defendants 1 to 5 have been put in possession of the property on account of the dispute arose between the parties in the money transaction and the plaintiffs being the owners of the property are entitled to recovery of possession of the suit plots from the defendants 1 to 5 and the suit is not barred under section 29 of the Act and the trial court accordingly decreed both the suits. Aggrieved against the same, the defendants 1 to 3 and 5 preferred AS Nos.215 and 216/2007.

7. The lower appellate court agreed with the findings of the trial court regarding the maintainability of the suits and the claim of the plaintiffs for eviction of the defendants on merits and accordingly dismissed the appeals, thereby confirming the judgment and decree of the trial court. Hence, the present two second appeals before this court by the unsuccessful defendants 1 to 3 and 5.

8. Both the second appeals are admitted on the following substantial questions of law:

(i) Whether a person in possession of the property after being inducted with the permission of the owner will not answer the meaning of the term "occupant" found in Section 29 of the Tamil Nadu Slum Areas (Improvement and Clearance) Act, 1971?

(ii) Whether the courts below have committed an error in holding that the suit is maintainable despite the fact that permission to file the suit for eviction was declined by the prescribed authority?

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

10. The findings of the courts below that the suit plots were actually allotted to the plaintiffs and they had been in

possession and enjoyment of the same by putting up construction and by obtaining property tax assessment and by obtaining family card and Exs.B3 to B14 and B16 pro notes and Ex.B15 sale agreement were forcibly obtained from the wife for the due repayment of the amount by her to the defendants 1 to 5 in the course of chit transaction conducted by her, and the possession and enjoyment of the suit plots by the defendants was not in pursuance of any legal transaction or arrangement between the parties and the possession and enjoyment of the property by the contesting second defendant is only by way of trespass or encroachment, are based on sufficient evidence and are supported by proper reasoning. Such factual findings rendered by the trial court as confirmed by the lower appellate court hence call for no interference by this court.

11.Both the courts below have granted the decree in favour of the plaintiffs by rejecting the legal objection raised by the defendants regarding maintainability of the suits for recovery of possession without obtaining any permission from the authority concerned in compliance with the mandatory requirement under section 29 of the Act 1971. The courts below held that as the suits are filed for recovery of possession by the plaintiffs in their capacity as owners against the encroachers no such permission is required and the mandatory requirement under Section 29 of the Act is not applicable to such suits and the suits are hence maintainable. Thus, the only substantial question of law remains to be decided in these two Second Appeals is as to whether the suits for recovery of possession of the occupants filed by the allottees without obtaining previous permission from the prescribed authority as contemplated under Section 29 of the Act, 1971 are maintainable or not?

12.For better understanding the definition of occupant under Section 29 of the Act is extracted below:

"Proceedings for eviction of (occupants) not to be taken without permission of the prescribed authority:-

(1)Notwithstanding anything contained in any other law for the being in force, no person shall except with the previous permission in writing of prescribed authority-

(a)institute, after the commencement of this Act any suit or proceedings for obtaining any decree or order for the eviction (an occupant) from any building or land in such area: or

(b)where any decree or order is obtained in any suit or proceeding instituted before such commencement for the eviction of (an occupant) from any building or land in such area, execute such decree or order.

(2)Every person desiring to obtain the permission referred to in sub-section (1) shall make an application in writing to the prescribed authority in such form and containing such particulars as may be

prescribed.

(3) On receipt of such application, the prescribed authority after giving an opportunity to the parties of being heard and after making such summary enquiry into the circumstances of the case as it thinks fit shall by order in writing, either grant or refuse to grant such permission.

(4) In granting or refusing to grant permission under sub section (3), the prescribed authority shall take into account the following factors, namely:-

(a) whether alternative accommodation within the means of the occupant would be available to him if he were evicted:

(b) whether the eviction is in the interest of improvement and clearance of the slum area;

(c) such other factors, if any, as may be prescribed.

(5) where the prescribed authority refuses to grant the permission, it shall record a brief statement of the reasons for such refusal and furnish a copy thereof to the applicant.

(Explanation- In this section and in sections 31, 32 and 33, 'occupant' means an occupier, not bring an owner in occupation of, or otherwise using, his land or building).

13. While according to the learned counsel for the appellants/defendants, previous permission is mandatory for initiating proceedings for eviction of the occupant by the allottees, the learned counsel for the respondents/plaintiffs would contend that the plaintiffs being the owners of the property, no previous permission is necessary and they are entitled to straight away approach the civil court for evicting the trespasser. Both the learned counsel have in order to fortify their respective contentions, cited the following authorities:

On the side of the appellant:

(2011) 1 MLJ 1152 (SC) (Laxmi Ram Pawar v. Sitabai Balu Dhotre and another.

On the side of the respondents:

Indian Kanoon-<http://indiankanoon.org/doc/120928750/> (K. Anboli and another v. Saraswathi and another)

14. It is true that the learned brother judge has in the authority cited on the side of the respondents observed that the plaintiffs therein who by virtue of the allotment of plots in their favour by Tamil Nadu Slum Clearance Board became the owners of the suit properties, as such, the suit properties no longer belonged to Tamil Nadu Slum Clearance Board and the

question of obtaining any permission whatsoever under Section 29 of the Act does not arise.

15. Whereas, the Hon'ble Apex court in the judgment cited on the side of the appellants, arising out of Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) Act 1971, was of the view that the definition of 'occupier' in section 2(e) of the 1971 Act is not exhaustive, but inclusive and as per clause (v) of Section 2(e) of Maharashtra Act, 'occupier' includes 'any person who is liable to pay to the owner damages for the use and occupation of any land or building and would surely take within its fold and sweep a trespasser since such person is not only liable for damages for an act of trespass but also liable to pay to the owner damages for the use and occupation of any land or building trespassed by him and it is immaterial whether damages for the use and occupation are in fact claimed or not by the owner in an action against the trespasser. It is further observed therein that once it is held that a trespasser is included in the definition of 'occupier' in Section 2(e)(v) of Maharashtra 1971 Act, what necessarily follows is that before initiation of any suit or proceeding for eviction of such trespasser, the previous written permission of the Competent Authority is required as mandated by Section 22(1), which starts with non obstante clause. The definition of 'occupier' under section 2(g) of the Tamil Nadu Act 1971 is pari materia of the definition of 'occupier' under section 2(e) of the Maharashtra Act 1971. Like wise, Section 29 of the Tamil Nadu Act 1971 is the same as Section 22 of Maharashtra Act 1971, which makes it clear that prior written permission of the competent authority for eviction of the occupier from any building or land in a slum area or for recovery of any arrears of rent or compensation from any such occupier or for both, is a must. In my considered view, the principle laid down by the Apex Court as stated above is squarely applicable to the facts of the present case.

16. Further, admittedly the suit plots are declared as slum area. The plots were allotted to the plaintiffs subject to certain conditions and one of the conditions is payment of cost in monthly instalments and the allotment are liable to be revoked in the event of non compliance of any of such terms and conditions. In that event, the plaintiffs cannot be permitted to contend that they became the absolute owners of the property, before the completion of payment of monthly installments. Pending payment, the Slum Clearance Board is for all practical purposes to be treated as the owner of the property and the prescribed authority under the Act is the competent authority for any act of commission and omission in respect of the property concerned. That is why, the allottees thought it fit to approach the six defendant Tamil Nadu Slum Clearance Board for initiating action for evicting the occupants/defendants from the suit property. The alternative prayer sought for in the suits is

also only for directing the Slum Clearance Board for evicting them and handing over the vacant possession to the plaintiffs. If that is so, the findings of the courts below that the plaintiffs became the absolute owners of the property on the strength of allotment orders and the properties are outside the purview of Act 1971, have no legal force. In my considered view, the property remains to be forming part of the slum area and the interest of the plaintiffs over the property partake only the character of allottees and not the absolute owners.

17. Even otherwise, so long as the property remains as slum area, the same falls within the purview of Act 1971 and the findings of the courts below contrary to the same is legally unsustainable. If that is so, the mandatory requirement under section 29 of the Act has to be complied with by the allottees before seeking eviction of the occupier which term would include trespasser from the slum area allotted to them and on their failure to obtain previous permission of the prescribed authority, the suit filed for recovery of possession of the property is not legally maintainable. The finding of the courts below regarding the maintainability of the suits is totally on misconception of law and is contrary to the principles laid down by the Hon'ble Supreme Court in the judgment above cited and is perverse and legally unsustainable. The same would compel this court to interfere with the judgment and decree of the courts below and the substantial questions of law are hence answered in favour of the appellants.

18. In the result, both the Second Appeals are allowed by setting aside the judgment and decree of the courts below, however, with liberty given to the plaintiffs in both the suits to initiate fresh proceedings in accordance with the procedure laid down under the Act. No costs. Consequently, connected miscellaneous petitions are closed.

-s/d-
Assistant Registrar (CO)
dt:14/10/2015

True Copy

Sub-Assistant Registrar

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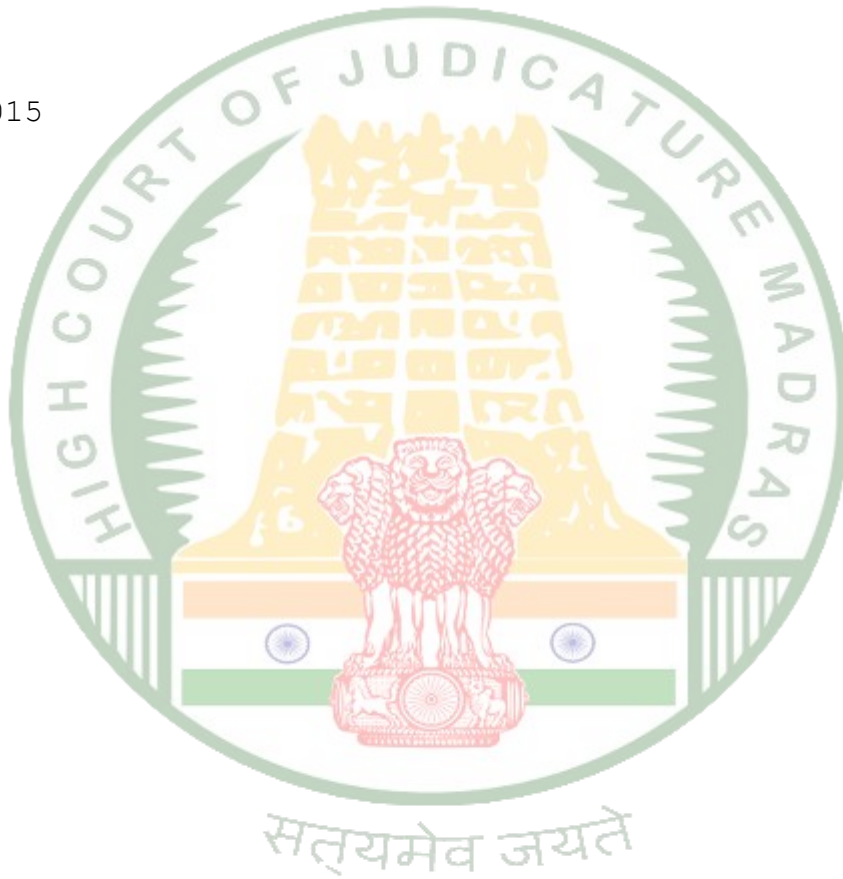
1.The 7th Additional City Civil Judge, Chennai.

2.The XIV Assistant City Civil Judge, Chennai.

+1 cc to Mr.N.Senthil Kumar Advocate sr.36200/15

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