

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.08.2016

CORAM

THE HONOURABLE MR.JUSTICE K.RAVICHANDRABAABU

Second Appeal No.697 of 2013
and
W.P.No.6033 of 2013

S.A.No.697 of 2013

1. The Managing Director
Tamilnadu Housing Board,
No.331, Anna salai,
Nandanam,
Chennai.
 2. The Executive Engineer & Administrative Officer,
Besant Nagar Division,
Tamilnadu Housing Board,
No.48, Dr.Muthulakshmi Road,
Adyar,
Chennai - 600 020
- ... Appellants/Appellants/
Defendants

-Vs-

N.Balaraman ... Respondent/Respondent/
Plaintiff

Appeal filed under Section 100 of C.P.C. against the judgment and decree dated 05.01.2013 made in A.S.No.521 of 2010 on the file of the XVII Additional Judge, City civil Court, Chennai confirming the judgment and decree dated 31.10.2007 made in O.S.No.4587 of 2004 on the file of XV Assistant Judge, City Civil Court, Chennai.

For Appellants : Mr.R.Jayaseelan

For Respondent : Mr.K.Mohanamurali

W.P.No.6033 of 2013

N.Balaraman ... Petitioner

Vs.

1. The Managing Director
Tamilnadu Housing Board,
No.331, Anna salai,
Nandanam,
Chennai.

2. The Executive Engineer & Administrative Officer,
Besant Nagar Division,
Tamilnadu Housing Board,
No.48, Muthulakshmi Road,
Adyar,
Chennai - 600 020

... Respondents

Writ Petition filed under Section 226 of the Constitution of India to issue a Writ of Mandamus directing the respondents to issue pacca sale deed in favour of the petitioner in the vacant land in Plot No.529 L.I.G-II of Velacherry allotted in letter No.AII/2346/92 dated 22.09.1992 Division No.1 of project Velacherry 79 area 50 x 20 to extent of the plot 84.54 sq.mts. with the total value of the plot Rs.34,875.00 within Corporation division No.153 A, Zone No.X on the file of the S.R.O. Velachery as claimed in his representation dated 18.01.2013.

For Petitioner : Mr.K.Mohanamurali

For Respondents : Mr.R.Jayaseelan

COMMON JUDGMENT

The appellants are the defendants. The respondent as the plaintiff filed a suit for declaration, mandatory injunction and for permanent injunction. The plaintiff sought to declare the cancellation of allotment of plot as null and void and for direction to the defendants to execute the sale deed pertaining to plot already allotted. The plaintiff also sought for injunction restraining the defendants from dealing with the plot already allotted to him in any manner.

2. The case of the plaintiff is that the suit property, a vacant plot, was allotted to him as early as in the year 1992 for total consideration of Rs.34,875/- and even though he has paid the entire amount payable to the defendants, the cancellation of allotment was made that too without notice to him by claiming that he was in arrears of Rs.1,68,250/-. Therefore, the plaintiff contended that the impugned allotment issued was in violation of the principles of natural justice and without reference to the payment already made.

3. The defendants contested the said suit by stating that the plaintiff has not made the instalment periodically and thereby committed default in making the payment to the tune of Rs.1,68,250/- apart from the amount already paid.

4. The plaintiff, in support of his case examined himself as P.W.1 and marked Ex.A1 to A10. On the other hand, the defendants neither examined any witness on their side nor marked any documents in support of their pleadings. The trial Court, considered the respective pleadings of the parties and the evidence let in by the plaintiff, decreed the suit by granting the relief of declaration and for injunction and however, refused to grant the relief of mandatory injunction on the reason that the plaintiff has to file a suit for specific performance against the defendants. The defendants preferred an appeal and the appellate Court confirmed the judgment and decree of the trial Court.

5. During the pendency of this appeal, the plaintiff filed a writ petition in W.P.No.6033/2013 which is also posted before this Court today wherein he has sought for a direction directing the defendants herein to issue the sale deed in favour of the plaintiff in respect of the plot already allotted.

6. Learned counsel appearing for the appellants contended that both the Courts below have concurrently failed to consider the fact that the plaintiff is in arrears to the tune of Rs.1,68,250/- and therefore, the concurrent findings rendered against the defendants, cannot be sustained.

7. Per contra, learned counsel for the respondent/ plaintiff submitted that the courts below have concurrently found in favour of the plaintiff based on the evidence let in by him, while the defendants have not chosen to let in any evidence disputing the case of the plaintiff. Therefore, the learned counsel contended that the decision of the Courts below need not be interfered with. Insofar as the writ petition is concerned, it is submitted by the learned counsel for the writ petitioner that when already an order of allotment is issued and the cancellation order is also set aside by the civil Court, the appellants have to execute the sale deed and therefore, the writ petition is filed seeking for such relief. Learned counsel for the respondents in the writ petition reiterated the very same contentions as raised in the above Second Appeal.

8. It is not in dispute that the plaintiff was allotted the plot as early as in the year 1992. According to the plaintiff, he has paid the entire amount payable to the Housing Board. In support of such contention, the plaintiff has examined himself

as P.W.1 and has also marked Exs.A1 to A10. Based on such contention and the evidence let in by him, both the Courts below have concurrently found that the plaintiff is entitled to the relief of declaration and also permanent injunction. However, insofar as the relief of mandatory injunction is concerned, the Courts below found that the plaintiff has to seek for specific performance by filing a separate suit. I do not think that such view of the Courts below is sustainable, especially when the Civil Court has chosen to accept the case of the plaintiff in respect of the payment made by him and consequently, to set aside the impugned order of cancellation.

9. In any event, during the course of hearing of these matters, learned counsel for the respondent/plaintiff submitted that in order to purchase peace, the plaintiff is willing to pay the so called arrears of Rs.1,68,250/- also to the Housing Board even with some amount of interest. To the said proposal, learned counsel for the appellants submitted that as on today, the amount payable would come to Rs.15,32,520/- as per the market value and not Rs.1,68,250/- I fail to understand as to how the Housing Board is justified in making such claim when they themselves had admitted before the Courts below that the plaintiff was in arrears to the tune of Rs.1,68,250/- only which in fact was not accepted by the Courts below. However, as the learned counsel for the plaintiff now has come forward to give a quietus to the whole issue once for all by offering to pay such sum also, I find that the Housing Board cannot stick on to the present market value and seek to recover the same from the plaintiff in this appeal when they have already lost before the Courts below even in respect of said sum Rs.1,68,250/-. Accordingly, I find that the factual finding rendered by the Courts below does not warrant any interference. However, the respondent/plaintiff shall pay a sum of Rs.1,68,250/- with 12% interest per annum from the month of August 2004 till this date within a period of two weeks from the date of receipt of a copy of this order. On such payment, the Housing Board shall execute the Sale Deed in favour of the plaintiff within a period of three weeks thereafter.

10. With the above directions and observations, the Second Appeal is disposed of. In view of the order passed in the Second Appeal, no further order is necessary in the Writ Petition. Accordingly, the Writ petition is disposed of. No costs.

Sd/-

Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

vsi

To

1. The XVII Additional Judge,
City civil Court,
Chennai.
2. The XV Assistant Judge,
City Civil Court,
Chennai.

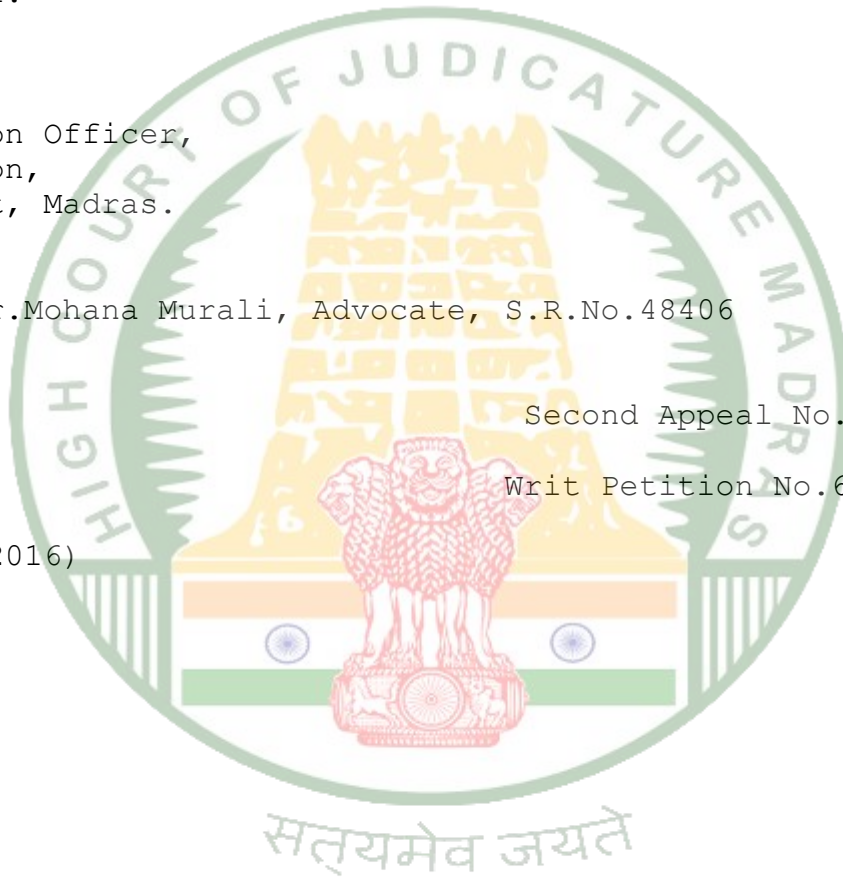
Copy To

The Section Officer,
V.R.Section,
High Court, Madras.

+1cc to Mr.Mohana Murali, Advocate, S.R.No.48406

Second Appeal No.697 of 2013
and
Writ Petition No.6033 of 2013

MG(CO)
CA(18/10/2016)



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