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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 02.02.2017

PRONOUNCED ON : 24.02.2017

CORAM

THE HONOURABLE MR. JUSTICE T.RAVINDRAN

S. A.Nos.16 & 51 of 2012

&

M.P.No.1 of 2012 in S.A.No.51 of 2012

P.Devendran ...Appellant in both the appeals

Vs.

1.P.Natarajan

2.The Tamilnadu Slum Clearance Board,

Rep.by its Chairman. ...Respondents in both the appeals

Second Appeals are filed under Section 100 of Civil Procedure Code,

(i)against the judgment and decree dated 28.10.2010 made in A.S.No.415 of 2009 on the file of the VI Additional Judge, City Civil Court, Chennai confirming the judgement and decree dated 11.12.2008 made in O.S.No.5088 of 2005 on the file of the V Assistant Judge, City Civil Court, Chennai(S.A.No.16 of 2012).

(ii)against the judgment and decree dated 28.10.2010 made in A.S.No.433 of 2009 on the file of the VI Additional Judge, City Civil Court, Chennai confirming the judgement and decree dated 11.12.2008 made in O.S.No.4887 of 2005 on the file of the V Assistant Judge, City Civil Court, Chennai(S.A.No.51 of 2012).

For Appellant(in both appeals): Mr.A.Chenchurama Reddy

For R1(in both appeals) : Mr.A.Balasingh Ramanujam

For R2(in both Appeals) : No Appearance



COMMON JUDGMENT

S.A.No.16 of 2012

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Challenge in this second appeal is made by the plaintiff against the judgment and decree dated 28.10.2010 made in A.S.No.415 of 2009 on the file of the VI Additional Judge, City Civil Court, Chennai confirming the judgement and decree dated 11.12.2008 made in O.S.No.5088 of 2005 on the file of the V Assistant Judge, City Civil Court, Chennai.
S.A.No.51 of 2012

Challenge in this second appeal is made by the first defendant against the judgment and decree dated 28.10.2010 made in A.S.No.433 of 2009 on the file of the VI Additional Judge, City Civil Court, Chennai confirming the judgement and decree dated 11.12.2008 made in O.S.No.4887 of 2005 on the file of the V Assistant Judge, City Civil Court, Chennai.

2.The first respondent has laid a suit against the appellant for possession and permanent injunction in O.S.No.4887 of 2005.

3.The appellant has a laid a suit against the first respondent in O.S.No.5088 of 2005 for mandatory injunction and permanent injunction. In both the suits, the Tamil Nadu Slum Clearance Board has been added as a formal party.

4.The evidence adduced by the respective parties would go to show that the suit property had been allotted to the first respondent by the defendant, Tamil Nadu Slum Clearance Board under Ex.A1 dated 03.07.1983. Though, the appellant would claim that even prior to the allotment made under Ex.A1, the suit property has been in the possession of Ponnusamy, the father of the appellant and the first respondent and inasmuch as the first respondent was the eldest member of the family, the allotment had been made in his name by the Tamil Nadu Slum Clearance Board, no material as such is placed by the appellant to show that Ponnusamy, the father of the appellant and the first respondent had been in the possession and enjoyment of the suit property as such. That apart, the allotment order marked as Ex.A1 also does not depict that it had been issued in favour of the first respondent in his capacity as the eldest member of the family consisting of the first respondent and the appellant.



5. Per contra, it is found that it is only the first respondent, who had been allotted the suit property by the Tamil Nadu Slum Clearance Board under Ex.A1 and pursuant to the same, it is also found that the first respondent had put up a small thatched hut in the suit property and living there with his family members. Further, it is also found that it is only the first respondent, who had paid the monthly instalments to the Tamil Nadu Slum Clearance Board in respect of the allotment made to him under Ex.A1 in respect of the suit property and accordingly the Tamil Nadu Slum Clearance Board had also given no objection to enable the first respondent for obtaining electricity connection, water connection and drainage connection etc and also for putting up super structure and therefore, it is only the first respondent, who had been paying necessary tax in respect of the suit property. All these could be seen from the documents marked as Ex.A5 to A11.

6. A perusal of Ex.A5 to A11 would go to show that it is only the first respondent, who had been exercising the absolute ownership over the suit property based upon the allotment order under Ex.A1 and by putting up thatched hut in the suit property, he is in possession and enjoyment of the same with his family members. Recognising the allotment under Ex.A1, it is also found that Tamil Nadu Slum Clearance Board has issued no objection certificates in favour of the first respondent for obtaining various civic amenities in respect of the suit property. Therefore, when voluminous records had been placed by the first respondent to show that only to him the allotment had been made and when no contra material had been produced by the appellant to show that the allotment had been issued to the first respondent in his capacity as the eldest member of the family and in the said capacity the first respondent had been enjoying the suit property on behalf of the appellant also, the case of the appellant that he is also entitled to a share in the suit property, as such cannot be accepted. It is accordingly, found that the courts below had rightly disbelieved the case of the appellant with reference to his claim of $\frac{1}{2}$ share in the suit property.

7. It is the case of the first respondent that at the request of the appellant, he had permitted him to occupy a portion of the suit property and accordingly, the appellant under his permission had put up a small thatched shed in a portion of the suit property and subsequently, against the said permission inasmuch as the appellant had sub-let a portion to the others and also attempted to put up a pucca construction, revoking the licence given to him for temporary stay, according to the first respondent, he had been necessitated to lay the suit against the appellant.

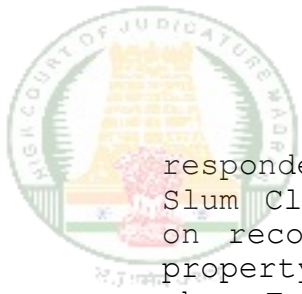


8. With reference to the above case of the first respondent, it is the contention of the appellant that the plea of permissive occupation put forth by the first respondent is false and on the other hand according to him, inasmuch as he had a share in the suit property, accordingly, in the oral partition effected between the appellant and the first respondent, $\frac{1}{2}$ share had been allotted to him and in recognition of the same, it is the case of the appellant that the first respondent had executed a document dated 17.03.1989 in his favour and accordingly, the appellant has been put in possession of his portion in the suit property and thereby the appellant had been residing in the suit property by obtaining the service connection etc and in order to give a legal effect to the above said oral partition, according to the appellant, he had been necessitated to lay the suit against the first respondent for appropriate reliefs. The oral partition set out by the appellant is not found to be established by acceptable evidence. When according to the appellant, the suit property had been allotted by the Tamil Nadu Slum Clearance Board in favour of the first respondent in his capacity as the eldest member of the family, it does not stand to reason as to why the document dated 17.03.1989 should come to be executed by the first respondent in favour of the appellant. Admittedly, the document dated 17.03.1989 marked as Ex.B3 is an unregistered document. Therefore, no legal acceptance could be made to the same.

9. It is styled as the Settlement Deed however it has not been established that pursuant to the same, the appellant had been put in possession of a portion of the suit property by the first respondent. On the other hand, it is the specific case of the first respondent that only under his permission, the appellant is residing in a portion of the suit property. Further, according to the first respondent, the permission given by him had been subsequently revoked under the legal notice marked as Ex.A3.

10. It is found by the courts below that even the appellant during the course of his evidence and also the witnesses have admitted that it is only in favour of the first respondent the allotment had been made by the Tamil Nadu Slum Clearance Board in respect of the suit property.

11. The appellant had not placed any document to evidence that he had paid any amount to the Tamil Nadu Slum Clearance Board as a co-allottee or as a sharer of the suit property. It has been admitted that there is no document with reference to the same by the appellant. Further, it has been admitted that the super structure put up in the suit property stands only in the name of the first respondent and it is only the first



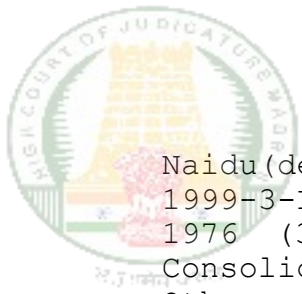
respondent, who is paying the instalments to the Tamil Nadu Slum Clearance Board. Therefore, when nothing has been placed on record to hold that the appellant has a share in the suit property or other wise has title in the manner known to law and when Ex.B3 does not have any legal acceptance, it could be seen that the appellant has laid a false claim in respect of the suit property.

12.Now according to the appellant, he claims Ex.B3 to be a partition deed. However, why he had not taken steps to register the said document from 1989 till the date of the filing of the suit has not been properly explained by the appellant. Further, the appellant claims that he had in his own right let out his portion to the third parties namely one Paliam and Maheswari. The said persons had not been examined to establish as to on what basis they had been in the possession and enjoyment of the suit property. It has not been mentioned in Ex.B3 that in recognition of the appellant's entitlement to a share in the suit property, the same had been executed in favour of the appellant. As adverted to earlier, no material is forthcoming on the part of the appellant to establish that pursuant to Ex.B3, he had been put in possession of a portion of the suit property by the first respondent.

13.Therefore, the courts below have rightly found that the appellant has not placed any material to claim the relief sought for in his suit as a lawful owner to the suit property. The appellant claims that he had marked certain electricity card, family card etc, but that would not be adequate to buttress the case of the appellant for the simple reason that when it is found that he had been in the possession of a portion of the suit property under the permissive occupation of the first respondent. The above said documents would not be adequate to hold that he had obtained the same as the original owner of the suit property. Therefore, the courts below have rightly disbelieved the documents marked on the side of the appellant.

14.Nothing has been pointed out by the learned counsel for the appellant to hold that the rejection of his claim of title to the suit property by the courts below are misdirected against the evidence on record or based upon the perverse findings and conclusions. It is therefore found that the courts below have rightly rejected the appellant's case and upheld the case of the first respondent. No infirmity is found in the judgment and decree of the courts below with reference to the same.

15.In support of his various contentions, the learned counsel for the appellant has placed reliance upon the following decisions reported in 2015(2) MLJ 154(Jayalakshmi and Others Vs. Mohankumar and Others), AIR 1994 SC 853(S.P.Chengalvaraya



Naidu(dead) by LRs. Vs. Jagannath(dead) by LRs. and others), 1999-3-LW-294(Parameswari @ Ramabai Vs. Lalitha and 4 Others), 1976 (3) SCC 119(Kale and Others Vs. Deputy Director of Consolidation and Others), AIR 1988 SC 881(Roshan Singh and Others Vs. Zile Singh and Others), 2006 (3) MLJ 567(Central Bank of India, rep. by its Manager, N.Gururajan, Chennai Vs. Antony Hardware Mart, rep. by its Proprietor, K. Subbiah, Chennai and another), AIR 2010 A.P. Page No.1(Zaheda Begum and another Vs. Lal Ahmed Khan and others), AIR 1983 ALL 450(Kaniz Fatima(deceased) and another Vs. Shah Naim Ashraf). The principles of law out lined in the above said decisions are taken into consideration and followed as applicable to the facts and circumstances of the case at hand.

16.At the end, no substantial question of law is found to be involved in these second appeals. Accordingly both the second appeals are dismissed. No costs. Consequently, miscellaneous petition is closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

To

1.The VI Additional Judge,
City Civil Court, Chennai.

2.The V Assistant Judge,
City Civil Court, Chennai.

Copy to

The Section Officer,
VR Section, High Court, Madras.

+1cc to Mr.A.Balasing Ramanujam, Advocate Sr.12070

S. A.Nos.16 & 51 of 2012

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srg 9/3/2017