

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 01.02.2017

PRONOUNCED ON : 03.02.2011

CORAM

THE HONOURABLE MR. JUSTICE T.RAVINDRAN

S. A.No.591 of 2011

and

M.P.No.1 of 2011

A.Vasanth

... Appellant/Plaintiff

Vs.

1.R.Balasubramanian

2.The Chairman

Tamil Nadu Slum Clearance Board,
Chennai.

3.The Executive Engineer,

Tamil Nadu Slum Clearance Board,
Salem Division,
Salem 636 007.

... Respondents/Defendants

Second Appeal is filed under Section 100 of Civil Procedure Code, against the judgment and decree of the II Additional Subordinate Judge of Salem dated 25.02.2011 and made in A.S.No.81 of 2010 dismissing the appeal and confirming the judgment and decree of the Principal District Munsif of Salem dated 11.06.2010 and made in O.S.No.999 of 2008.

For Appellant : Mr.Muthumani Doraisamy

For Respondent No.1 : Mr.R.Prem Narayanan

For Respondent No.2 & 3 : Mr. B.Kesavan
for M/s.S.P.Prabhakaran

JUDGMENT

Challenge in this second appeal is made by the plaintiff impugning the judgment and decree dated 25.02.2011 made in

A.S.No.81 of 2010 on the file of the Second Additional Sub Court, Salem, confirming the judgment and decree dated 11.06.2010 made in O.S.No.999 of 2008 on the file of the Principal District Munsif Court, Salem.

2. The suit has been laid by the plaintiff for declaration and permanent injunction.

3. The declaration has been sought for with reference to the proceedings of the second defendant dated 02.12.2005 as void and unenforceable and contrary to natural justice as it is based on the first defendant notarized affidavit repudiating his no objection for the transferment of allotment order in favour of the plaintiff on 17.03.2004 and the consequential relief of permanent injunction.

4. As seen from the evidence adduced in the matter, the suit property belonged to the defendants 2 & 3. It is also found that originally the suit property was allotted to Rengan by the defendants 2 & 3 under the lease cum sale scheme. Rengan is the father of the plaintiff and the first defendant. Apart from the plaintiff and the first defendant, Chandra, Janaki, Kunaalan are also the children of Rengan. Rengan's wife is Palaniammal. It is found that on the demise of Rengan as per the arrangement effected amongst his family members and also based upon the notarized affidavits submitted by the family members, the allotment made in favour of Rengan by the defendants 2 and 3 in respect of the suit property was reallocated in the name of the plaintiff and the first defendant. Subsequently, it could be seen that as per the case of the plaintiff, based upon the notarized affidavit said to have been given by the first defendant dated 11.03.2004, it appears the defendants 2 & 3 had assigned the allotment in favour of the plaintiff exclusively. Thereby, it could be seen that according to the plaintiff, inasmuch as the first defendant had expressed no objection to exclusively allot the suit property in favour of the plaintiff, the defendants 2 & 3 had allotted the suit property in her favour. However, now, it is found that on the first defendant coming to know of the scheme of the plaintiff, noting that the no objection affidavit dated 11.03.2004 had been fabricated by the plaintiff and thereby, had the allotment changed in her name exclusively, made his representation to the defendants 2 & 3 to reconsider the issue. Accordingly, it is found that the defendants 2 & 3 after issuing due notice to all concerned and after considering the matter again, reallocated the suit property in favour of the plaintiff and the first defendant under the impugned proceedings dated 02.12.2005. It is this which has been challenged by the plaintiff in the present suit.

5. It is also found that the plaintiff had earlier moved the High Court by way of writ petition challenging the above said

proceedings. However, according to the plaintiff, the High Court had directed the plaintiff to seek a remedy by way of a civil suit and hence, the suit by the plaintiff.

6. It is mainly argued by the plaintiff counsel that without adhering to principles of natural justice and without proper appreciation of the issue concerned, the defendants 2 & 3 had issued the impugned proceedings allotting the suit property in favour of the plaintiff and the first defendant. On the other hand, as seen from the evidence produced in the matter, it is found that based upon the representation given by the first defendant that the alleged notary affidavit dated 11.03.2004 had been fabricated by the plaintiff and pursuant to the same, after inviting objections from the plaintiff and others concerned, it is found that the defendants 2 & 3 have issued the impugned proceedings reallotting the suit property in favour of the plaintiff and the first defendant. It is therefore, as rightly found by the courts below, the original position had been restored in allotting the suit property in favour of the plaintiff and the first defendant after the demise of the original allottee viz., Rangan. Therefore, the Courts below have rightly rejected the plea of the plaintiff that the impugned proceedings had been issued by the defendants 2 & 3 arbitrarily and without following the principles of natural justice. No infirmity is ascribed to the above reasoning of the courts below for declining the relief of declaration sought for by the plaintiff.

7. As regards the relief of permanent injunction sought for by the plaintiff, it is found that the plaintiff and the first defendant have produced documents to evidence possession of the suit property. It is therefore, found that the Courts below considering the same held that both are in possession and enjoyment of the suit property and in such view of the matter, declined the relief of permanent injunction sought for by the plaintiff. The above reasonings of the courts below for declining the relief of permanent injunction prayed for by the plaintiff also does not call for any interference.

At the end, no substantial question of law is found to be involved in this second appeal. Accordingly, the second appeal fails and the same is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Asst.Registrar (CS VI)

/true copy/

Sub Asst. Registrar

To

- 1.The II Additional Sub Court, Salem.
- 2.The Principal District Munsif Court,
Salem.
- 3.The Chairman
Tamil Nadu Slum Clearance Board,
Chennai.
- 4.The Executive Engineer,
Tamil Nadu Slum Clearance Board,
Salem Division,
Salem 636 007.

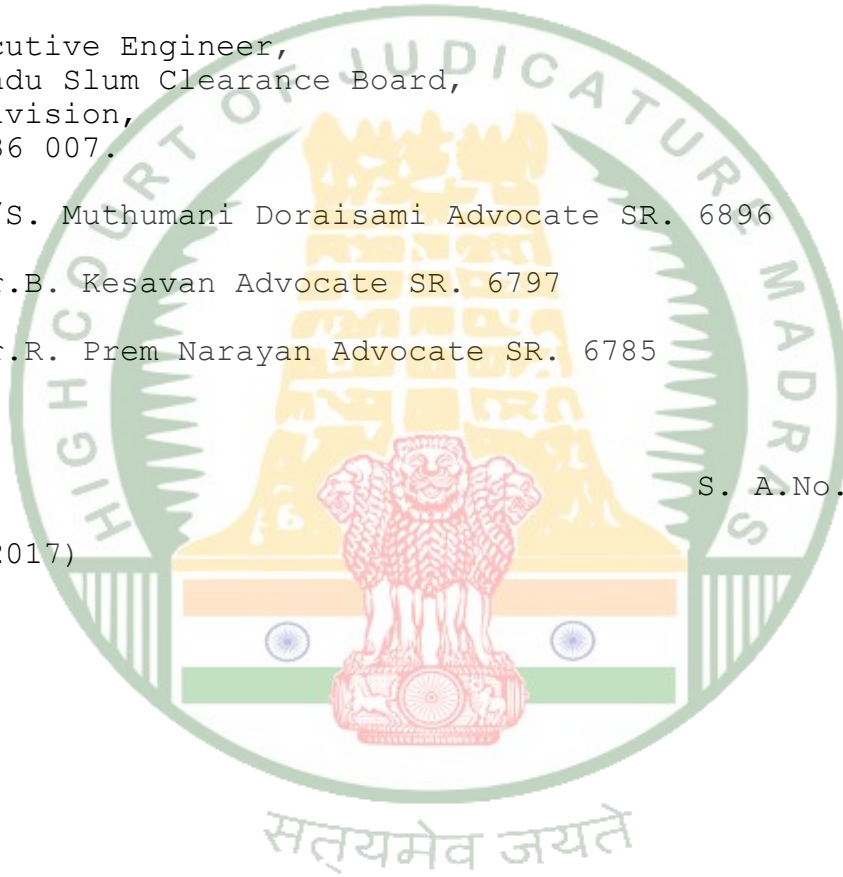
+1cc to M/S. Muthumani Doraisami Advocate SR. 6896

+1cc to Mr.B. Kesavan Advocate SR. 6797

+1cc to Mr.R. Prem Narayan Advocate SR. 6785

RK(CO)
VR(27/02/2017)

S. A.No.591 of 2011



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