

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 15.02.2017

PRONOUNCED ON : 24.02.2017

CORAM

THE HONOURABLE MR. JUSTICE T.RAVINDRAN

S. A.No.620 of 2011

and

M.P.No.1 of 2011

1.D.Loganathan

2.Devaki

...

Appellants

Vs.

1.A.Balaraman (Deceased)

2.B.Murugan

3.B.Sagadevan

4.Egavalli

5.Tamil Nadu Slum Clearance

Board,

Rep.by its Chairman

(RR2 to 4 are recorded as LRs
of the Deceased R1 Vide memo
No.Nill order of this Court
dated.06.01.2017)

...

Respondents

Second Appeal is filed under Section 100 of Civil Procedure Code, against the decree and judgment in A.S.No.552 of 2008 dated 27.10.2009 on the file of the VII Additional City Civil Judge at Chennai, reversing the Decree and Judgment dated 23.11.2007 made in O.S.No.6229 of 2004 on the file of the VIII Assistant City Civil Court at Chennai.

For Appellants : Mr.Kandasami
for M/s.RM Chandra babu

For Respondents : Mr.N.Sankaravadivel
No.R2 to 4

For Respondent : Mr.B.Kesavan
No.5.

JUDGMENT

Challenge in this second appeal is made by the defendants 1 & 2 against the decree and judgment dated 27.10.2009 made in A.S.No.552 of 2008 on the file of the VII Additional City Civil Court, Chennai, reversing the Decree and Judgment dated 23.11.2007 made in O.S.No.6229 of 2004 on the file of the VIII Assistant City Civil Court, Chennai.

2. The second appeal has been admitted and the following substantial questions of law are formulated for consideration in this second appeal:-

" (i) Whether in the absence of any leave and license agreement marked and proved by the respondents 1 to 4 or the deceased Murugammal to establish that the Bunk Shop was handed over to the appellants, the appellate Court could have given a finding that the deceased Murugammal handed over the Bunk Shop to the appellants when her husband

Balaraman was allegedly ill? and

(ii) When the alleged allotment letter dated 17.09.2004 is subsequent to the allotment letter given for the Bunk Shop to the appellants in the year 1985, whether the appellate Court is right in giving a finding that the respondents 1 to 4 and their predecessor Murugammal had a valid allotment order for the Bunk Shop?

3. The suit has been laid by the plaintiff for declaration, possession and damages.

4. The Bunk Stall described in the plaint schedule, admittedly, belongs to the Tamil Nadu Slum Clearance Board, the third defendant in the suit and according to the plaintiff, she has been allotted the suit Bunk Stall by the third defendant by an order dated 15.09.2004 on a monthly lease basis for a period of three years ending with 31.03.2007 and the said allotment order has been marked as Ex.A1. A perusal of Ex.A1 would go to show that inasmuch as the plaintiff had paid the necessary advance and other charges, it could be seen that the third defendant had allotted the suit Bunk Stall in favour of the plaintiff under Ex.A1. According to the plaintiff, she had been

running a tea stall in the suit Bunk Stall through her husband and inasmuch as her husband was hospitalized, according to the plaintiff, on leave and license basis, the suit Bunk Stall was given to the first defendant as he was helping her husband and inasmuch as the first defendant refused to hand over the suit Bunk Stall, even after the recovery of her husband, by vacating the same and on the other hand, as he had set out individual claim over the suit Bunk Stall from the second defendant, according to the plaintiff, she has been necessitated to lay the suit against defendants 1 & 2 for appropriate reliefs.

5. According to the defendants, the suit Bunk Stall was not let out to the first defendant on leave and licence basis, as contended by the plaintiff and on the other hand, it had been allotted to the second defendant by the third defendant even during the year 1985 and further, the defendants have also challenged the allotment order projected by the plaintiff, which has been marked as Ex.A1, as a fabricated document and hence, it is contended that the plaintiff is not entitled to seek the reliefs sought for in the plaint.

6. As adverted to earlier, the original owner of the suit Bunk Stall had been arrayed as the third defendant. However, the third defendant had not contested the claim of the plaintiff. The plaintiff

claims right over the suit Bunk Stall based upon the allotment order issued by the third defendant marked as Ex.A1. Ex.A1 coupled with the penalty charges and the advance amount paid by the plaintiff under Ex.A6 series would go to show that as pleaded by the plaintiff, the suit Bunk Stall is found to have been allotted to the plaintiff and therefore, it could be seen that pursuant to the same, it is only the plaintiff, who had been running a tea stall through her husband in the suit Bunk Stall. Ex.A2 is a letter sent by the second defendant to the third defendant, wherein, the second defendant had claimed that she had been allotted an apartment by the third defendant by an order dated 15.10.1985 and in the said notice, she had also averred that she had put up a small structure in the adjacent portion to the apartment allotted to her and running a tea stall and also averred in her notice that she came to know that the plaintiff and the official of the third defendant by name Paramanandham had colluded together and created the allotment order marked as Ex.A1 in favour of the plaintiff and therefore, according to her, the suit Bunk Stall has been constructed only by her and the same is in her control, in her own right and that the allotment order Ex.A1 is not a bona fide order and hence, called upon the third defendant to take necessary action against the plaintiff and the official, who had colluded with the plaintiff in creating the allotment order Ex.A1, failing which, she

would move the High Court for necessary directions by way of a writ petition. Even in the above said notice marked as Ex.A2, the second defendant has not claimed that the suit Bunk Stall had been allotted to her by the third defendant. It has not been stated that under a particular allotment order or under a particular proceeding etc., the suit Bunk Stall had been allotted to her. On the other hand, according to the tenor of the said notice, she has only averred that she has been allotted the residence at "K" Block No.9, Valleeswarar Garden, R.A. Puram, Chennai -28 by an order dated 15.10.1985 and she had occupied the adjacent suit Bunk Stall and put up the structure over the same and running a tea stall. In such circumstances, when there is nothing on record particular in Ex.A2 that the second defendant had been allotted the suit Bunk Stall by the third defendant, it does not stand to reason as to how the trial Court had proceeded to hold that the second defendant had been allotted the suit Bunk Stall by the third defendant.

7. According to the defendants 1 & 2, the structure of the suit Bunk Stall had been put up by them. Though it is, so claimed, in Ex.A2 notice, but no material, as such, has been placed by the defendants 1 & 2 with reference to the same. It is alleged in Ex.A2 that the plaintiff and the official of the third defendant had colluded

together and created Ex.A1 allotment order. Even with reference to the same, no material is forthcoming on the part of the defendants 1 & 2. In other words, no material, as such, has been placed by the defendants 1 & 2 to show that the suit Bunk Stall had been allotted to them by the second defendant. In this connection, it is to be noted that though the defendants 1 & 2 have taken various pleas in the written statement, to substantiate the same, they had not chosen to adduce any oral or documentary evidence. The second defendant, under Ex.A2, had threatened the third defendant that she would be forced to move the High Court by way of a writ petition, if the third defendant fails to take necessary action against the plaintiff and the official of the third defendant by name Paramanandham. However, as to what follow up action was taken by defendants 1 & 2, pursuant to Ex.A2, no material is forthcoming. Resultantly, it could be seen that inasmuch as the allegations put forth by the second defendant in Ex.A2 are not true and baseless, it is evident that no follow up action has been initiated by her, pursuant to the same.

8. It is also found that the third defendant had sent a letter to the police authorities marked as Ex.A3, wherein also, it has been clearly averred that the second defendant has no nexus or connection with the suit Bunk Stall and that, it had been allotted only in favour of

the plaintiff. Though it is contended that Ex.A3 is, in the nature of a xerox document and not established to be emanated from the third defendant as seen above, the third defendant has not challenged the case of the plaintiff. Even the defendants 1 & 2 have also not challenged the case of the plaintiff by adducing any oral and documentary evidence other than the filing the written statement. Therefore, without any material to contend that the plaintiff had fraudulently obtained the allotment order Ex.A1 in collusion with the official of the third defendant, as such, merits no acceptance and has to be rejected in toto. In fact, from Ex.A3, it could be seen that the third defendant has pointed out that it is only the plaintiff, who had been allotted the suit Bunk Stall and not the defendants 1 & 2. Prior to the institution of the suit, it is found that the plaintiff has also issued a notice to the first defendant, wherein, she has clearly spelt out that he had refused to hand over the Bunk Stall after the recovery of her husband and it is therefore clear that the licence granted by the plaintiff had been terminated or revoked under Ex.A4. No doubt, the defendants had sent a reply to Ex.A4 marked as Ex.A5 and therein also, they had reiterated the same stand taken in Ex.A2. However, as adverted to earlier, the various allegations put forth by the second defendant in Ex.A2 notice and the first defendant in Ex.A5 notice have not been substantiated or established by the defendants

1 & 2 and as rightly put forth by the plaintiff's counsel, inasmuch as the defendants are in the occupation of the suit Bunk Stall without any authority and only on leave and licence basis granted by the plaintiff, they are unable to place any material to substantiate their defence.

9. The counsel for the defendants 1 & 2 contended that the third defendant has remained ex parte as it is supporting the defence of the defendants 1 & 2. However, the above contention does not merit acceptance. Inasmuch as the third defendant is the owner of the suit Bunk Stall, it had been added as a necessary and proper party. Considering the genuine claim of the plaintiff as the allottee of the suit Bunk Stall, it could be seen that the third defendant had remained silent and not contested the plaintiff's suit. In such view of the matter, the inaction of the third defendant to contest the plaintiff suit cannot be taken advantage by the defendants 1 & 2 to contend that the third defendant is supporting their defence. Even to establish the said case, the defendants 1 & 2 have not cared to place any material. No reason has been given by the defendants 1 & 2 as to why they should feel shy to come forward to speak about their defence in the court by adducing necessary oral and documentary evidence. If really, their defence has any element of truth, as rightly

argued by the plaintiff's counsel, they would have endeavored to place acceptable material to fortify the same. On the other hand, the attitude of the defendants 1 & 2 seem to be fishing in troubled waters and they are making endeavors to buttress their case by picking holes in the case of the plaintiff. No doubt, it is for the plaintiff to establish her case. However as seen from the materials placed by her and as also found by the first appellate Court, it is noted that the plaintiff has established her case beyond reasonable doubt and also, in the nature of the preponderance of probabilities.

10. Much is canvassed by the defendants' counsel, as regards Ex.A11, i.e. the renewal of the allotment granted to the plaintiff for further period of 3 years by the third defendant. It is argued that the same has come to be issued in favour of the dead person and therefore, it is contended that by the said document alone, the plaintiff's case should be rejected. No doubt, by the time, Ex.A11 had come to be issued the plaintiff had died. Merely on the basis that Ex.A11 had come to be issued in the name of the deceased plaintiff, it cannot be held or construed that the original allotment order issued in favour of the plaintiff marked as Ex.A1 is also a false document. The plaintiff claims reliefs in the suit only based upon the allotment order marked as Ex.A1.

11. As rightly found by the first appellate Court, the plaintiff has established that the allotment order was issued in respect of the suit Bunk Stall only in her favour by the third defendant and the plaintiff has further established that the suit Bunk Stall had been let to the defendants 1 & 2 on leave and licence basis during the treatment of her husband and the same had been terminated by her under Ex.A4 notice. The defendants 1 & 2 have not established in any manner that the suit Bunk Stall had been allotted to them by the third defendant. The defendants have also miserably failed to establish that it is they who had put up the structure in the suit Bunk Stall. Resultantly, it could be seen that the defendants are in the occupation of the suit Bunk Stall only on the licence granted by the plaintiff and the said licence having been terminated by the plaintiff under Ex.A4, it could be seen that defendants 1 & 2 are only the trespassers of the suit Bunk Stall and liable to hand over the same to the original allottee i.e. the plaintiff. The defendants 1 & 2 have failed to establish that the suit Bunk Stall had been allotted to them by the third defendant during the year 1985. The first appellate Court has, on the proper appreciation of the evidence on record and also giving proper reasonings and conclusions, has rightly upheld the plaintiff's case and no infirmity is attributed or found in the same.

12. In view of the above discussions, the substantial questions of law formulated for consideration in this second appeal are answered against the defendants 1 & 2 and in favour of the plaintiff.

In conclusion, the second appeal fails and accordingly, the same is dismissed. No cost. consequently, connected miscellaneous petition is closed.

Index : Yes/No
Internet: Yes/No
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To

24.02.2017

1. The VII Additional City Civil Court,
Chennai.
2. The VIII Assistant City Civil Court,
Chennai.

T.RAVINDRAN,J.

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Pre-delivery Judgment in
S. A.No.620 of 2011
and
M.P.No.1 of 2011

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