

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : **30.01.2017**

CORAM

THE HON'BLE MRS.JUSTICE **PUSHPA SATHYANARAYANA**

CRP PD.No.3833 of 2016
and
C.M.P.No.19541 of 2016

Kamatchi

.. Petitioner

vs

1. Balammal

2. The Chairman
Tamil Nadu Slum Clearance Board
Kamarajar Salai
Chennai 600 005.

.. Respondents

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and decreetal order dated 17.08.2016 passed by the learned V Assistant Judge, City Civil Court, Chennai in I.A.No.3856 of 2016 in O.S.No.3022 of 2010.

For Petitioner : Mr.T.S.N.Prabhakaran

For Respondents : Mr.M.Devendran for R1
Mr.S.Prabhu for R2

ORDER

The plaintiff is the revision petitioner.

2. For the sake of convenience, the parties are referred to here under according to their litigative status and ranking in the suit.

3.The brief facts of the case is as follows:

(i) The suit is filed by the plaintiff for a declaration declaring that she is the widow of one Chinna Muniyandi, who had died in Chennai on 01.11.1998.

(ii) It is the case of the plaintiff that her husband was working in the Secretariat as Class IV employee and that he had two names i.e Kandasamy in Office and Chinna Muniyandi in the local area. Till the death of her husband he was paying the monthly charges to the Slum Clearance Board and after his death, the plaintiff has been paying the same. According to her, after the death of her husband, she had approached the second defendant to change the name in the relevant records. However, till date the second defendant has not changed the name. In the mean time, the first defendant is trying to grab the property belonging to the plaintiff by claiming that she is the widow of Muniyandi. Hence the suit.

(iii) The first and second defendants filed their written statement separately, denying the claim of the plaintiff.

(iv) When the suit is at the stage of trial and the plaintiff filed her proof affidavit, the learned Judge directed her to bring the original documents. At that time, she was able to get the photo allotment card No.03368 dated 08.04.1982 wherein her photo along with her daughter has been affixed, which has been taken before the allotment of dwelling unit in the name of her husband. Further, it is stated by the plaintiff in the plaint that when the Slum Clearance Board had surveyed the land, her husband's name was given as Chinna Muniyandi and hence, the same had been mentioned in the photo allotment order. Therefore, the plaintiff is seeking to mark the said allotment order as Ex.A20 as it is very relevant to decide the issue. It is further stated that as the same could not be produced at the time of filing of the plaint, there is no mention about the said document in the plaint. Hence the application in I.A.No.3856 of 2016 was filed under Order 7 Rule 14(3) of Code of Civil Procedure seeking leave of the Court to mark the said photo allotment order as Ex.A20.

(v) The said application was vehemently opposed by the first defendant by filing counter stating that if the plaintiff had such an allotment order, she need not even have filed the suit. Accordingly, it was contended that the application is not maintainable.

(vi) The second defendant-Slum Clearance Board also filed its counter stating that no photo allotment order as referred to by the plaintiff under Allotment No.33068 dated 08.04.1982 has been issued by the Board and the Allotment Order sought to be marked by the plaintiff is a forged one. It was further stated that the allotment card dated 08.04.1982 where the photo of the plaintiff and her daughter has been affixed could have been taken before the allotment made by the second defendant. Accordingly, the second defendant prayed for the dismissal of the application.

(vii) The trial court after considering the submissions made on either side, dismissed the application as devoid of merits.

(viii) Challenging the same, the present revision is filed.

4. Heard the learned counsel appearing for the respective parties.

5. Admittedly, the trial has been commenced and the plaintiff has also filed her proof affidavit and only during the course of cross examination, it is stated that she could lay her hands on the allotment order. It is her specific case that in the said document, she has been specified as the wife of Chinna Muniyandi. According to her, the document is very vital and the same has to be marked as Ex.A20. Since there was no mention about the said photo allotment order issued on 08.04.1982 in the plaint averments, the said document was opposed by the defendants to be received in evidence. The second defendant-Slum Clearance Board also denied the issuance of such an order to the plaintiff and contended that the said order could be a forged one. It is also pointed out that the delay in filing the document has not been mentioned in the affidavit hence, the same should not be allowed.

6. The plaintiff has specifically stated that the document now sought to be marked as Ex.A20 was not available with her at the time of drafting the plaint, but only during the cross examination she could

get the same, which goes to the root of the matter. Hence she is seeking to receive the same in evidence. The learned counsel appearing for the first defendant opposed the same by contending that the very prayer made in the suit is a misconception. The second defendant also submits that the so-called photo allotment order was never issued by the Slum Clearance Board. Therefore, the same cannot be true. Further, when there is no pleading to the effect, the receiving of the said document becomes irrelevant. It is also further stated that the Slum Clearance Board has issued direction to take criminal action against the plaintiff for fabrication of documents.

7. Even though the defendants have raised the aforesaid allegations, this Court is of the view, that it is only a document, which has been obtained by the plaintiff only after the trial had commenced, the same may be received in evidence, however, subject to proof relevancy and admissibility as held by the Hon'ble Apex Court in the judgment reported in ***AIR 2001 SC 1158 [Bipin Shantilal Panchal vs State Of Gujarat and Another]***. It is also open to the defendants to raise objection, if any, to the same and if any such objection is raised, the same may be recorded by the learned trial judge and be appropriately dealt with at the time of arguments.

8. Accordingly, the order dated 17.08.2016 passed by the learned V Assistant Judge, City Civil Court, Chennai in I.A.No.3856 of 2016 in O.S.No.3022 of 2010 is set aside and this Civil Revision Petition is allowed. No costs. Consequently, the connected miscellaneous petition is closed.

30.01.2017

vj2

Index : Yes/No

Internet: Yes

To

The V Assistant Judge, City Civil Court, Chennai

PUSHPA SATHYANARAYANA,J.,

vj2

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