

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 18.06.2018

PRONOUNCED ON : 22.06.2018

CORAM

THE HONOURABLE MR.JUSTICE T.RAVINDRAN

S.A.No.1852 of 2004

1. A.Dakshayini
2. R.A.Ashok Kumar
3. A.Parthiban
4. A.Suresh Kumar
5. A.Kavitha

...
Vs.

Appellants

The Tamil Nadu Housing Board,
Rep.by its Chairman & Managing Director,
No.331, Anna Salai, Nandanam,
chennai – 600 035.

...

Respondent

Prayer :- Second Appeal has been filed under Section 100 of CPC against the Judgement and Decree dated 29.08.2003 passed in A.S.No.55 of 2003 on the file of the Additional District & Sessions Judge, Fast Track Court No.IV, Chennai, confirming the Judgment and Decree dated 06.02.2002 passed in O.S.No.288 of 1992 on the file of the VI Assistant Judge, City Civil Court, Chennai.

For Appellants : Mr.V.K.Rajagopal
For Respondent : Mr.R.Jayasekar

JUDGMENT

In this second appeal, challenge is made to the Judgement and Decree dated 29.08.2003 passed in A.S.No.55 of 2003 on the file of the Additional District & Sessions Judge, Fast Track Court No.IV, Chennai, confirming the Judgment and Decree dated 06.02.2002 passed in O.S.No.288 of 1992 on the file of the VI Assistant Judge, City Civil Court,

2. The second appeal has been admitted on the following substantial questions of law:

" (i) Whether treating the appellants as unauthorised occupants by the respondent is valid in law when K.V.Raman's family and the appellant's family lived together as a joint family even before allotment of the suit property?

(ii) Whether both the courts below were right in rejecting the ration card, Ex.A3 and the relationship certificate, Ex.A9 of the appellants and treated them as unauthorised occupant is legally valid in law?

(iii) Whether the question of subletting arises when the appellant and K.V.Raman lived together as a joint family in the suit property?"

3. The unsuccessful plaintiffs are the appellants and the materials placed on record go to show that the suit property had been allotted to K.V.Raman for his occupation on a monthly rent by the defendant Housing Board and it is found that as per the case of the plaintiff, he being the cousin brother of the allottee K.V.Raman, lived along with K.V.Raman and it is stated further that it is only the plaintiff, who has

been paying the rent to the defendant Housing Board on behalf of the allottee and it is the case of the plaintiff that after the expiry of the allottee's wife in 1987, the allottee went astray and left the flat voluntarily without providing any information about his whereabouts and according to the plaintiff, he has also been waiting on the fond hope that the allottee would return to the Flat and join him. It is his further case that he being the cousin brother of the allottee is continuing to occupy the suit property originally allotted to K.V.Raman. It is further seen that the defendant, on coming to know that the allottee is not in occupation of the property demised to him, had issued a letter to the allottee alleging that he had sub-let the premises to the plaintiff and his family members and it is only the plaintiff and his family members, who are residing in the suit property and not the allottee and accordingly, directed him show cause notice as to why the allotment issued in his favour should not be cancelled and he be evicted from the suit property. It is found that to the said letter dated 09.08.1990 issued by the defendant and marked as Ex.A6, the allottee K.V.Raman has not sent any response and on the other hand, it is only the plaintiff, who had responded to the same by way of a letter dated 27.08.1990 marked as Ex.A7 and in the same, it has been stated by the plaintiff that the allottee had left the premises without any information and as he is the cousin brother of the allottee is continuing to occupy the premises and paying the rent without any default and accordingly, requested the defendant Housing Board to

change the allotment in his favour. With reference to the abovesaid request, it is found that the defendant Housing Board had directed the plaintiff to show proof of his relationship with the original allottee as putforth by him and in this connection, it is found that a certificate has come to be forwarded by the plaintiff issued by one Dr.Vasudevan holding that the allottee and the plaintiff are the brothers and that, he knew them for several years. However, the abovesaid certificate was not entertained by the Tamil Nadu Housing Board and accordingly, finding that the plaintiff has no authority to remain in the premises and as the allottee had sub-let the premises without any authority to the plaintiff and his family members, accordingly, issued the impugned notice dated 05.01.1991 directing the plaintiff to vacate the said premises as his occupation of the same is an unauthorised one and the said notice has come to be marked as Ex.A10. To the same, it is found that the plaintiff has sent a letter and also made representations to the higher authorities and however, as the defendant Housing Board did not accept his case, accordingly, it is found that the plaintiff had chosen to lay the suit for the reliefs of Declaration and Permanent Injunction.

4. The defendant Housing Board has contended that the allotment has been made only in favour of K.V.Raman and it is only the allottee, who is entitled to occupy the suit property and not others and as the allottee had without any authority sub-let the suit premise to the plaintiff

and left the premises and as the plaintiff is not entitled to occupy the premises and his occupation of the same is an unauthorised one, according to the defendant, the plaintiff is not entitled to obtain the reliefs sought for and the plaintiff cannot claim as a matter of right the change of allotment in respect of the suit property in his favour and further, according to the defendant, the plaintiff's request to permit him to occupy the suit property had been negatived and hence, it is stated that the suit laid by the plaintiff is devoid of merits and liable to be dismissed.

5. Though it is found that on the strength of the materials placed, the plaintiff claims to be entitled to occupy the suit property on the footing that he is the cousin brother of the original allottee K.V. Raman, however, as rightly found by the Courts below, there is no material worth acceptance to hold that the plaintiff is the cousin brother of the original allottee. Other than the certificate issued by Dr.Vasudevan marked as Ex.A9, there is no other material forthcoming on the part of the plaintiff to hold that the plaintiff is cousin brother of the original allottee. As rightly found by the Courts below, the person, who had issued the abovesaid certificate, is not shown to be competent to issue such a certificate as regards the relationship of the parties. As rightly determined by the Courts below, the plaintiff has not placed any other material worth acceptance issued by the competent authority to show the relationship between him and the original allottee.

6. Be that as it may, even assuming for the sake arguments that the plaintiff is the cousin brother of the original allottee, that by itself would not be sufficient to entitle the plaintiff to seek the change of allotment in his favour on the footing that the original allottee had left the place without providing any information. Accordingly, it is found that though the plaintiff had made several representations to the authorities concerned seeking the change of allotment in his favour, he was unable to obtain any order in his favour as regards the same and considering the defence version, as rightly put forth by the defendant, when several persons are waiting in the queue for their turn of allotment, the plaintiff cannot be allowed to seek the allotment in his favour out of turn on the footing that he had been also residing with the original allottee in the suit premise since the date of allotment. When the allotment had been made only in favour of K.V.Raman at the foremost, as rightly argued, the original allottee is not entitled to permit the others to reside in the suit property. However, insofar as this case is concerned, it is found that the original allottee had in violation of the conditions of the allotment, permitted the plaintiff and his family members to occupy the premises and thus, it is found that on that score alone, the allotment issued in favour of the original allottee is liable to be cancelled. Accordingly, it is found that the defendant noting that the plaintiff is unauthorisedly occupying the suit property, called upon the original allottee to explain the abovesaid violation. Inasmuch as there has been no proper response

to the same by the original allottee and as the plaintiff only had responded to the same as abovestated and when the materials placed on record do not entitle the plaintiff to squat in the suit property endlessly by making a request for the change of allotment in his favour on the footing that he is the cousin brother and when that criteria is not the factor for the allotment of the premises belonging to the defendant Housing Board and further, when it is also seen that neither the plaintiff nor his wife are the government servants and accordingly, the request of the plaintiff to change the allotment in his favour was not considered and declined and when the declinment of such request by the Housing board is not shown to be illegal or against the provisions of law governing the defendant Housing Board. it is found that the plaintiff being an unauthorised occupant is liable to be evicted from the suit property. Accordingly, it is found that necessary steps had been taken by the defendant Housing Board in that endeavours and to stall the same one way or the other, it is found that the plaintiff has laid the present suit.

7. As above discussed, inasmuch as the plaintiff has not placed any material to show that he is entitled to the allotment of the suit property and when admittedly the original allottee had left the suit property without any information as such, it is found that the original allottee is deemed to have vacated the suit property and accordingly, the plaintiff having no authority to continue to occupy the suit property and also the

plaintiff having failed to establish his alleged relationship with the original allottee and even the said factor also would not enure to the benefit of the plaintiff as above discussed for getting any entitlement of allotment in his favour, accordingly, it is found that inasmuch as the original allottee had unauthorisedly permitted the plaintiff to occupy the suit property in contravention of the conditions of the allotment, the defendant Housing Board is entitled to take appropriate steps to evict the plaintiff from the suit property. In such view of the matter, the same cannot be hampered by the plaintiff, accordingly, it is found that the plaintiff has no cause of action to institute the suit against the defendant Housing Board.

8. In the light of the above discussions, the judgement and decrees of the Courts below do not call for any interference. The plaintiff has been rightly declared to be the unauthorised occupant by the defendant Housing Board and accordingly, the plaintiff also unable to place any material to show his entitlement to get the allotment in his favour in respect of the suit property and the mere fact that at one point of time, the plaintiff and the original allottee had resided together would not ipso facto entitle the plaintiff to squat in the suit property endlessly, particularly, after the original allottee had left the suit property, which could only construed that he had vacated the property and accordingly, it is found that the defendant's action to vacate the plaintiff from the suit property cannot be challenged and the substantial questions of law

formulated in the second appeal are accordingly answered against the plaintiff and in favour of the defendant.

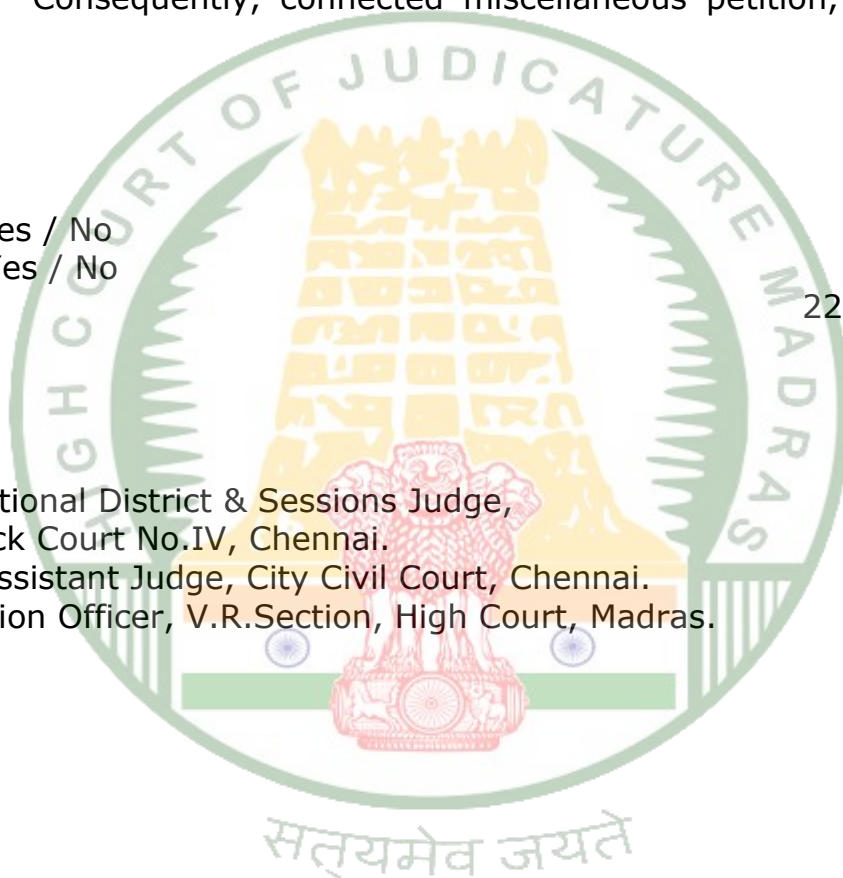
In conclusion, the second appeal fails and is accordingly, dismissed with costs. Consequently, connected miscellaneous petition, if any, is closed.

Index : Yes / No
Internet : Yes / No
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22.06.2018

To

1. The Additional District & Sessions Judge, Fast Track Court No.IV, Chennai.
2. The VI Assistant Judge, City Civil Court, Chennai.
3. The Section Officer, V.R.Section, High Court, Madras.



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T.RAVINDRAN, J.

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**Pre-Delivery Judgment made
in S.A.No.1852 of 2004**

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