

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.12.2019

CORAM

THE HON'BLE DR.JUSTICE VINEET KOTHARI
AND

THE HON'BLE MR.JUSTICE R.SURESH KUMAR
Writ Appeal No.1684 of 2015

1.J.Vimala
2.J.Vijayaraj
3.J.Paramanand
4.J.Dinesh
5.J.Madhusudhan
6.Y.Gunawanthi ... Appellants

-Vs-

1. S.Jothi
2.S.Kalavathi
3.The Chairman, Tamil Nadu Slum Clearance Board
Kamarajar Salai, Chennai-25.
4.Saraswathy
5.S.Bhoopathy ... Respondents

For Appellants : Mr.Shah

For Respondents: R1 - No appearance

R2 - Mr.A.Rajesh Kanna

R3 - Mr.R.Sivakumar

Prayer : Appeal under Clause 15 of the Letters Patent against the order of this Court dated 05.12.2014 passed in W.P.M.P.No.168 of 2014 in W.P.No.11545 of 2006.

WMP.NO.168/14 & WP.NO.11545/2006:

Petition praying that in the circumstances stated therein and in the affidavit filed therewith the High Court will be pleased to grant leave to the petitioners to file a restoration petition in writ P.No.11545/06 dated 19.3.2013 and Writ Petition filed under Article 226 of the Constitution of India praying for issuance of writ of declaration, declaring the sale deed in document No.298/2004 dated 23.01.2004 executed by the first respondent in favour of the second respondent is null and void and thereby direct the first respondent to execute sale deed in favour of the petitioners and the respondents 2 and 3 in respect

of the property at Plot No.30, Door No.155, Thillaiyadi Valliammai Nagar, Chennai-40.

J U D G M E N T

(Judgment of the Court was delivered by DR.VINEET KOTHARI, J.)

This appeal has been filed by the mortgagee appellants aggrieved by the order dated 05.12.2014 passed by the learned Single Judge dismissing W.P.M.P.No.168 of 2014 in W.P.No.11545 of 2006 holding that they were strangers to the aforesaid writ petition filed by S.Jothi and S.Kalavathi, daughters of Saraswathy, the fourth respondent herein, in whose favour the Tamil Nadu Slum Clearance Board had executed the Sale Deed in question and thereafter the property was settled to the fifth respondent S.Bhoopathy, her son and after that the respondents 4 and 5 created a mortgage in favour of the appellants J.Vimala and others, who are the legal heirs of Jagdeesh Prasad.

2. The observations made by the learned Single Judge in the order impugned before us are quoted below for ready reference.

"9. Having gone through the facts and circumstances, this Court is of the view that the petitioners herein and late Jagdish Prasad through whom, the petitioners claim right were only strangers to the writ petition and the orders passed therein. If they are creditors to the respondents 4 and 5, they can raise any independent claim by approaching proper Court, if they have any subsisting right over the property.

10.The relief sought for in the writ petition was between the Tamil Nadu Slum Clearance Board, which had allotted the property in favour of late Subramani and the legal heirs of the said Subramani, who respondents 1,2,4 and 5. The petitioners herein are strangers to the writ petition and they have no locus standi to seen an order to reopen the writ petition and to implead them as parties, since their claim is unsustainable in law.

11. If the petitioners are the legal heir of late Jagdish Prasad and had the property been mortgaged by respondents 4 and 5 in favour of late Jagdish Prasad, it is open to the petitioners to approach the proper forum, however, they cannot simply file a petition,

seeking an order of leave to reopen the writ petition that was already disposed of, for fresh disposal.

12. This Court is of the view that the relief sought for is unknown to law, since their right is based on an alleged mortgage made by the respondents 4 and 5, which cannot be decided in the writ petition, where the respondents 1 and 2 had sought the relief as some of the legal heir of late Subramani and that was decided by this Court, based on the admitted fact, to allot the share to all the legal heirs of the said Subramani, who had been the original allottee of the property.

13. On the aforesaid circumstances, this Court is of the view that the W.P.M.P.No.168 of 2014 is not legally sustainable and accordingly the same is liable to be dismissed. However, it is made clear that the petitioners are at liberty to approach the proper forum, seeking appropriate remedy, according to law. With the above observations, this petition is dismissed. No costs."

3. Learned counsel for the appellants Mr. Shah submitted that a mortgage was created in favour of the appellants and therefore the respondents 1 and 2, daughters of the fourth respondent Saraswathy could not have asked for the relief of setting aside of the Sale Deed executed by Tamil Nadu Slum Clearance Board in favour of Saraswathi, without impleading the present appellants, who have an interest in the property as mortgagees and therefore they had a right to be heard by the learned Single Judge, but the learned Single Judge has rejected the said prayer by the impugned order before this Court.

4. On the other hand, the learned counsel for the second respondent Kalavathi and the learned counsel for the third respondent Tamil Nadu Slum Clearance Board have supported the impugned order.

5. Having heard the learned counsel appearing for both the parties, we are of the opinion that the impugned order of the learned Single Judge cannot be sustained and deserves to be set aside. We are of the clear opinion that the Sale Deed once executed by the Tamil Nadu Slum Clearance Board in favour of the fourth respondent Saraswathy could not have been set aside by exercise of writ jurisdiction of this Court. The Sale Deed is

a conveyance in favour of a party and any challenge to a Sale Deed can be laid only in the properly instituted civil proceedings by way of a Civil Suit, where, after taking the relevant evidence on record, the Civil Court can make suitable declaration in the matter with regard to the validity of the Sale Deed or otherwise. The writ jurisdiction is exercised and based on mere affidavits and the same cannot be invoked to set aside Sale Deeds in such manner. While such writ proceedings themselves were not maintainable, we are of the opinion that the learned Single Judge before rejecting the W.P.M.P.No.168 of 2014, ought to have taken into consideration that the appellants are mortgagees of the property in question for which the lis is pending for setting aside the Sale Deed in favour of the mortgagor, and therefore the right of hearing could not have been denied to the appellants mortgagees.

6. In view of this, the impugned order of the learned Single Judge cannot be sustained and the Writ Appeal deserves to be allowed. We allow the Writ Appeal and setting aside the order passed by the learned Single Judge in W.P.M.P.No.168 of 2014 in W.P.No.11545 of 2006, leave the parties free to establish their respective rights in properly instituted Civil Suit in a Civil Court. No costs.

Sd/-

Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

To

The Chairman, Tamil Nadu Slum Clearance Board, Kamarajar Salai,
Chennai-25.

+1cc to Mr.Shah and Shah, Advocate sr.106394
+1cc to Mr.A.Rajesh Kanna, Advocate sr.105350

Writ Appeal No.1684 of 2015

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