

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 29.03.2019
PRONOUNCED ON : 24.04.2019

CORAM

THE HONOURABLE MR. JUSTICE T.RAVINDRAN

S.A.No.1527 of 2005
and
C.M.P.NO.19793 of 2005

- 1.Madasamy
- 2.Jayalakshmi
- 3.Anandaraj @ Kannan
- 4.Vijayaraj

....Appellants/ /Defendants 1 to 4

.Vs.

- 1.Krishnagiri LIG House Owner's Association,
Krishnagiri

- 2.Executive Engineer
TNHB, Bagalur Road
Hosur, Krishnagiri District

....Respondents/Plaintiffs/5th Defendant

Prayer:

Second Appeal filed under Section 100 of Civil Procedure Code, against the judgment and decree dated 28.04.2005 in A.S.No.74 of 2003 on the file of the Principal District Judge, Dharmapuri at Krishnagiri confirming the judgment and decree dated 25.07.2003 in O.S.No.115 of 1998 on the file of the District Munsif Court, Krishnagiri.

For Appellants : Mr.D.Shivakumaran

For Respondents : Mr.T.Thamarai Selvan for R1
No representation/No appearance
for R2
Set exparte vide
order dated 29.03.2019

JUDGMENT

Challenge in this second appeal is made to the judgment and decree dated 28.04.2005 passed in A.S.No.74 of 2003 on the file of the Principal District Court, Dharmapuri at Krishnagiri confirming the judgment and decree dated 25.07.2003 passed in

O.S.No.115 of 1998 on the file of the District Munsif Court, Krishangiri.

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

"1. When the 1st respondent / plaintiff had filed a suit for permanent injunction to restrain the defendants from putting up further construction and for mandatory injunction and when the defendants have denied the title or entitlement of the plaintiff over the suit property, in the absence of a prayer for the relief of declaration and consequential delivery of possession are the courts below correct in law in granting a decree for the relief of permanent injunction?

2. When admittedly the defendants are in possession of the suit property, can the plaintiff file the suit for permanent injunction without seeking a prayer for declaration of their title, against the defendants who claim title and ownership and admittedly the possession also?

3. Considering the scope of the issues involved between the parties as regards the subject matter lying in a narrow compass, it is unnecessary to dwell into the facts of the case in detail.

4. For the sake of convenience, the parties are referred to as per their rankings in the trial court.

5. The Suit has been laid by the plaintiff against the defendants for permanent injunction and mandatory injunction.

6. As could be seen from the materials placed on record, it is found that the Tamilnadu Housing Board had allotted 43 houses in Katikanapalli Village, Krishnagiri under the scheme proposed by it and accordingly, it is seen that the various allottees of the abovesaid 43 houses originally formed the association in the name and style of LIC House Owners Association, Krishnagiri and it could be seen that the Housing Board had allotted only 42 houses under the scheme in the area and one plot remained not allotted to any one and considering the lie of the said plot, it is found that the LIG House Owners Association, Krishnagiri, had approached the Tamilnadu Housing Board for allotting the said plot to the association and after negotiations between the parties concerned, it is found that the Housing Board had agreed to convey the said plot to the abovesaid association for a fixed sum as determined by it. Accordingly, it is seen that the

association had met and the members were directed to contribute sums for the purpose of acquiring the said plot from the Housing Board and according to the defendants, the members did not contribute the sums and on the other hand, it is stated that the in the meeting of the association held on 10.12.1989, it was decided and resolved that the same is to be left to the individual members to purchase the said plot and utilized for his own purpose and accordingly, the case has been projected by the defendants that the first defendant and one N.Vaithianathan, Natrajan, Arunachalam and Nagarajan had joined together and decided to purchase the said plot in the name of the association, accordingly, it is stated that the said plot was purchased in the name of the association by way of the transfer certificate dated 09.09.1991 and accordingly it is put forth by the first defendant that though the original sale deed in respect of the said plot had not been obtained from the Tamilnadu Housing Board, according to the first defendant, he had subsequently repaid the sums contributed by N.Vaithianathan, Natrajan, Arunachalam and Nagarajan and thereafter by utilizing his own funds had purchased the said plot from the Tamilnadu Housing Board and in such view of the matter, according to the first defendant, in particular, as per the abovesaid resolution of the association, he is entitled to utilize the said plot for his own purpose and accordingly, he has engaged in the putting up of the construction in the said plot and the same could not be prevented by anyone including the plaintiff and on the other hand, the plaintiff, in the guise of the present suit, has come forward with the false suit as if the plaintiff is the owner of the said plot without any basis and accordingly the case had been projected by the first defendant, in particular, that the plaintiff is not entitled to the reliefs prayed for in the suit.

7. The plaintiff is described as Krishnagiri LIG House Owners Association represented by its president T.Senguttuvan. According to the plaintiff, the said association was formed on 24.07.1983 and the said association has been formed only for the benefit of the members of the association i.e., for satisfying the needs of the 42 allottees of the Tamilnadu Housing Board and accordingly, it is put forth on the part of the plaintiff that the first defendant, as the president of the association formed earlier, had failed to perform his duties and the obligations and resultantly, the case has been projected by the plaintiff that the association formed by the 42 allottees earlier had become defunct and removed from the list of associations by virtue of the Tamilnadu Gazette publication dated 24.09.1997 in G.O. No.4552/E/96 and the defendants, particularly, the first defendant, taking advantage of the same is proceeding with the construction in the suit property i.e. the plot, which the Housing Board had agreed to convey in favour of the association earlier formed and as the first defendant has no absolute

interest to the said plot and the said plot only vests with the association, accordingly, it is case of the plaintiff that the suit has come to be laid against the defendants for appropriate reliefs.

8.As could be seen from the materials available on record, the LIG House Owners Association, Krishnagiri, was formed on 02.09.1983. It is found that the first defendant was the elected president of the abovesaid association. The same could be gathered from Ex.B1. As abovenoted, the said association had negotiated with the Tamilnadu Housing Board for the purpose of acquiring the plot No.43 and finally it is found that the Tamilnadu Housing Board had agreed to convey the said plot i.e, the suit property in favour of the association for a sum of Rs.25,160/- and the same could be gathered from the letter dated 24.04.1990 sent by the Tamilnadu Housing Board, to the president of the LIG House Owners Association, Krishnagiri. It is found that the cost fixed by the Tamilnadu Housing Board had been paid by the association, which could be gathered from the receipt marked in the proceedings as Ex.B6 and accordingly it is seen that the transfer certificate of the said plot had been entrusted to the President of the LIG House Owners Association, Krishnagiri by the surveyor of the Tamilnadu Housing Board and the transfer certificate has been marked as Ex.B7. Ex.B7 is dated 09.09.1991. From the abovesaid materials placed on record, it is found that the LIG House Owners Association, Krishnagiri was functioning properly under the presidency of the first defendant till the acquisition of the property from the Tamilnadu Housing Board and thereafter, failed to carry on its duties by continuing the association properly as per law and resultantly, it is found that the LIG House Owners Association, Krishnagiri had become defunct and come to be removed from the list of association vide Tamilnadu Gazette Publication dated 24.09.1997, which publication has been marked as Ex.A1. In this connection, the first defendant examined as D.W.1 would admit during the course of evidence that the plot had been allotted to the association only for the common purpose of the owners of the various plots in the area and only for the said purpose, the receipt had also been issued in the name of the association under Ex.B6 and accordingly further admitted that the said plot had been allotted only for the association and therefore, it is evident that no independent member of the association could claim any right, whatsoever, to the said plot and if at all, any right which could be exercised in respect of the said plot, it would be only the association and not anyone. In this connection, the first defendant has not placed any material to hold that he had received any communication from the Tamilnadu Housing Board acknowledging his independent title to the said plot in any manner. In such view of the matter, when the consideration in respect of the plot in question had been

acquired in the name of the association and the plan issued by the Tamilnadu Housing Board is also found to be issued only in the name of the association marked as Ex.B8 and when D.W.1, the first defendant has admitted that the property had been transferred by the Tamilnadu Housing Board only in favour of the association and he is not entitled to claim any independent right to the same, in such view of the matter, the defence projected by the first defendant that by way of contributing the sum for the property in dispute independently, he had acquired absolute interest to the suit property, as such, cannot be accepted, particularly, in the absence of any material to hold that he had acquired independent right to the same from the Tamilnadu Housing Board. Though the first defendant would put forth the case that he had repaid the amounts paid by Vaithianathan, Natarajan, Arunachalam and Nagarajan and thereafter, had paid the sum to the Housing Board in his individual capacity, however, to evidence that he had repaid the sums to the abovesaid persons and they had relinquished their interest in the subject matter and permitted the first defendant to acquire the said property independently on his own, absolutely there is no convincing proof and on the other hand, when the materials placed on record go to point out that the property had been transferred only in the name of the association and not in the name of the first defendant independently and when the claim of the first defendant that he had repaid the sums paid by the other members and thereafter paid the sum to the Tamilnadu Housing Board out of his own pocket does not have the backing of any reliable materials and on the other hand, he had clearly admitted that the Tamilnadu Housing Board had transferred the plot only in favour of the association and not in his name independently, in such view of the matter, as rightly put forth by the plaintiff's counsel, after the acquisition of the property by the association, it is found that, for obvious reasons, the first defendant had not carried out the functions of the association properly and left it go without renewal and consequently, it is found that the association formed earlier had become defunct and eventually removed from the list of association vide Tamilnadu Gazette publication and the abovesaid facts put together would only lead to the conclusion that the first defendant with a view to grab the property acquired in the name of the association, did not continue the association properly and left it go inactive and dead one way or the other and thereafter, had projected the claim of independent title to the property acquired in the name of the association.

9. In the light of the abovesaid factors, it is found that left with no other alternative, the allottees of the Tamilnadu Housing Board finding that the first defendant is misusing the property allotted to the association, for his own self, without

any justification, accordingly, chose to form the plaintiff's association on 31.03.1998 and come forward with the present suit seeking the appropriate reliefs against the defendants with a view to prevent the defendants from proceeding with the construction in the property in dispute and thereby grab the property in dispute from the association, particularly, when the property had been allotted only for the benefit of the members of the association and not to any individual member in his independent capacity.

10. The abovesaid factual aspects in the matter had been gone into by the courts below by analyzing the materials placed on record and accordingly noting that the subject matter involved in the suit having been conveyed only in favour of the association as such, the first defendant cannot be allowed to resist the plaintiff's suit on the footing that the plaintiff's association has no nexus with the earlier association formed by the allottees and therefore, the plaintiff is not entitled to maintain the suit in respect of the suit property and thereby rejected the plaintiff's contentions by holding that the first defendant had failed to carry on the association earlier formed only with the sole object of grabbing the property allotted to the association one way or the other and also having failed to establish the independent claim of title to the suit property and accordingly, the plaintiff's association having been formed with a view to protect the property belonging to the association, in such view of the matter, held that the plaintiff's association having been formed only to protect the interest of the allottees of the area and the subject matter of the suit is found to have been transferred only in favour of the association and not in favour of the first defendant independently and when the first defendant had also failed to establish his independent claim of title to the subject matter as put forth by him and when with reference to the same, there is no other material other than his ipsi dixit testimony and furthermore, when he has clearly admitted that the subject matter has been allotted only for the benefit of the association and in such view of the matter when the object of the earlier association and the present plaintiff's association are found to be the same i.e., to protect the interest of the allottees of the Tamilnadu Housing Board in the area concerned, accordingly, as determined by the courts below, the plaintiff's association formed for the well being of the members of the Tamilnadu Housing Board of the area, is entitled to protect the property allotted to the association by seeking the appropriate reliefs against the defendants. When it is seen that the defendants are proceeding with the unlawful construction in the property i.e., the subject matter, without any legal entitlement to the same, in the guise of asserting independent title to the same unlawfully, which cannot be acceded to in any manner and in such

view of the matter, the courts below are found to be justified in granting the reliefs prayed for by the plaintiff and in such view of the matter, the first defendant, in particular, is not entitled to challenge the plaintiff's suit on a technical point by contending that the plaintiff has no locus standi to institute the suit when otherwise it is seen that the plaintiff's association has been formed only for protecting the interest of the various allottees of the Tamilnadu Housing Board in the area, particularly, after the earlier association had been left go defunct deliberately by the first defendant with a view to snatch the subject matter from the association unlawfully.

11. In the light of the abovesaid factors, when the subject matter i.e., the suit property is admittedly transferred by the Tamilnadu Housing Board only in favour of the association and accordingly, the plaintiff's association has been formed only to protect the welfare of the members of the association, in such view of the matter, the plaintiff's association is found justified in seeking the reliefs prayed for and considering the admitted facts as above discussed, there is no need on the part of the plaintiff's association to seek any declaration of title to the subject matter / suit property involved in the lis. In view of the abovesaid position, the substantial questions of law formulated in this second appeal are accordingly answered in favour of the plaintiff and against the defendants 1 to 4.

12. The counsel for the defendants, in support of his contentions, placed reliance upon the decision reported in 2017 1 MWN (Civil) 493 (Ongan A.Arumugam vs. Thangammal and others). The principles of law outlined in the abovesaid decision are taken into consideration and followed as applicable to the case at hand.

13. In conclusion, the second appeal fails and is accordingly dismissed with costs. Connected miscellaneous petition is also dismissed.

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Sd/-

Assistant Registrar

//True Copy//

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Sub Assistant Registrar

To

1. The Principal District Judge,
Dharmapuri at Krishnagiri

2. The District Munsif,
Krishnagiri.

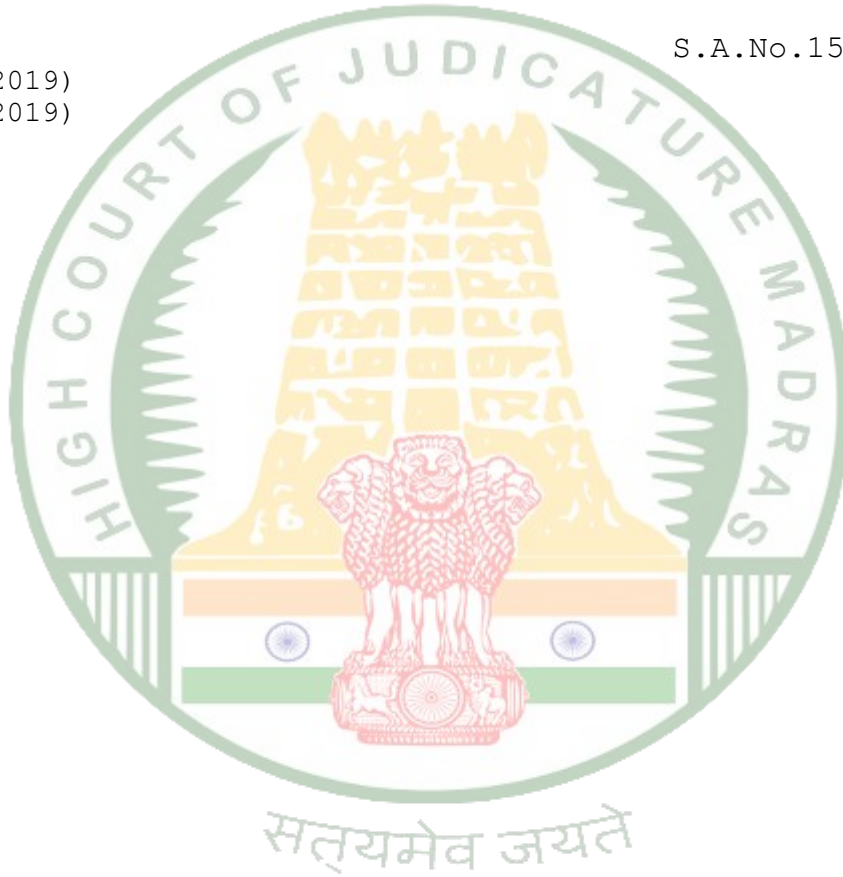
3. The Executive Engineer
TNHB, Bagalur Road
Hosur, Krishnagiri District

Copy to :-
The Section Officer,
V.R.Section,
High Court, Madras.

+lcc to Mr.D.Shivakumaran, Advocate, SR.No.39344
+lcc to Mr.R.Jayaseelan, Advocate, SR.No.39320

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