

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.06.2019

CORAM: THE HON'BLE MR.JUSTICE N.SESHASAYEE

S.A.NO.562 OF 2005

- 1.M.Vinayagam(deceased)
- 2.Vasantha
- 3.L.Vijaya
- 4.D.Devi
- 5.V.Padmapriya

...Appellants/
LRs of the Deceased Plaintiff

(Appellants 2 to 5 brought on record
as LRs of the deceased Sole Appellant
Vide order of Court dated 16.8.11
made in CMP.No.155 to 157/10 in SA.562/05)

Vs.

1. The Chairman,
Tamil Nadu Slum Clearance Board,
No.5, Kamarajar Salai, Chennai 600 005.
2. The Estate Officer No.7,
Tamil Nadu Slum Clearance Board,
K.K.Nagar, Sivaliyapuram,
Chennai 600 078.
3. The Managing Director,
Chennai Metropolitan Water Supply &
Sewerage Board,
No.1, Pumping Station Road,
Chintadaripet, Chennai 600 002.
4. The Asst Engineer,
Chennai Metropolitan Water Supply &
Sewerage Board,
Area IX Circle Office,
Saidapet, Chennai 600 015.

5. Dhanasekaran

...Respondents/Defendants

Prayer:-

Second Appeals filed under Section 100 of Civil Procedure Code against the Judgment and Decree of the lower Appellate Court namely the I Addl City Civil Court, Chennai made in

A.S.No.420/2003 dated 29.9.2004 reversing the judgement and decree made in O.S.No.4677/1999, dated 2.1.2003 on the file of XIII Asst City Civil Court, Chennai.

For Appellant : Mr.J.R.K.Bhavanantham

For Respondents : Mr.R.Sivakumar for TNSCB
Mr.I.David Singh for R3 & R4
Mr.V.Manisekaran for R5

JUDGMENT

The appellant herein is a plaintiff who was successful in his Suit for declaration of his title and for eviction of the 5th defendant from the Suit property and other ancillary reliefs, more particularly, that the Authorities/defendants shall not transfer allotment to the fifth defendant. The parties would be referred to by their ranks before the trial court.

2.The quintessence of the plaintiff's case is: The suit property and others originally belonged to the Tamil Nadu Slum Clearance Board, that some 600 sq.ft. came to be allotted to the plaintiff on a lease cum sale agreement, dated 01.09.1983. The plaintiff has put up a construction in the suit property, obtained electricity service connection and had the building assessed for property tax by the Corporation. He would further plead that the fifth defendant is his relative and he had inducted him because he is his relative but, the fifth defendant in collusion with the authorities is attempting to transfer the very allotment of the suit property to his name. While the plaintiff has paid the entire sale consideration to the second respondent/defendant yet the latter evades to execute a sale deed in his favour.

3.The defendants 1 and 2 in their written statement have admitted that the suit property was allotted to the plaintiff, that the parties have entered into a lease cum sale agreement, and that the plaintiff had paid the entire installments. However, it pleaded that plaintiff had unauthorizedly inducted the fifth defendant and hence, his allotment is liable to be cancelled.

4.In the written statement of the fifth defendant, he would allege that the plaintiff is a proxy for the fifth defendant, and had obtained the allotment and the construction put up in the suit property was put up by him at his instance, that Vide Ext.B.1, agreement dated 28.03.1988 the plaintiff and the fifth defendant entered into an agreement of sale, created to convey the property to the fifth defendant.

5.1 The dispute went for trial and the trial Court decreed the suit in toto. The trial Court has reasoned that the allotment was admittedly made in the name of the plaintiff and the fifth defendant himself has testified that he would vacate the property if the plaintiff had paid him the consideration passed under Ext.B.1.

5.2 The fifth defendant preferred an appeal against the decree of the trial Court and this was reversed by the first Appellate Court by relying on Ext.B.1 and holding that Ext.B.1 constituted an agreement under Section 53-A of the Transfer of Property Act, and inasmuch as the fifth defendant is in possession of the property, the benefit of Section 53-A of the Transfer of Property Act would be available and accordingly, dismissed the Suit. Challenging the said decree, plaintiff is before this Court.

6. The Second Appeal is admitted on the following substantial questions of law;

(1) Whether the lower appellate Court was right in holding that Ex.B.1, the alleged agreement of sale as a genuine one, in the absence of a handwriting expert opinion when the same has been disputed as rank forged one by the appellant?

(2) Whether the lower appellate Court was right in coming to the conclusion that the occupation of the 5th respondent of the suit property is a part performance of the alleged agreement of sale, namely, Ex.B.1?

(3) Whether the lower appellate Court was right in coming to a conclusion that the occupation of the 5th respondent of the suit property is a part performance of the alleged agreement of sale, namely, Ex.B.1?

(4) Whether the lower appellate Court was right in dismissing the suit by relying upon the alleged part performance of the contract according to section 53-A of the Transfer of Property Act.

7. The learned counsel for the appellant submitted that the first appellate Court has invented a case which even the fifth defendant had not pleaded, and that the fifth defendant's pleading is all about existence of Ext.B.1 agreement, and not any claim of possession under it. He submitted that when Ext.B.1 was confronted to P.W.1, the plaintiff, he denied his purported signature therein, and has thus denied execution of the said agreement. However, the first Appellate Court has taken a view

that Ext.B-1 is proved based on the testimony of D.W.2, one of its attestors, and has proceeded to record that the fifth defendant has been ready and willing to perform his part of the contract as if a plea under Section 53 A of the transfer of Property Act has been taken. In other words, the first Appellate Court has changed the entire character of the suit and the nature of plaintiff's title.

8. Per contra, the learned counsel for the fifth respondent argued that it is the 5th defendant's case that the plaintiff himself was a proxy-allottee for the 5th defendant, and that the construction was put up by him. He also relied on Ext.B-1 exhaustively to canvass his case that the fifth defendant's possession is pursuant to Ext.B.1, sale deed.

9. Let the less essentials be separated from the more essentials. The plaintiff has come forward with a straight forward case that a lease cum sale agreement was executed Vide Ex.A.1 and that a construction has been put up by him in the suit property and the property tax assessment was made in his name. This fact is admitted by the defendant's 1 and 2, the authorities constituted under the Tamil Nadu Slum Areas (Improvement and Clearance) Act, 1971. This position on facts was not even disputed by the fifth defendant. Now, except for canvassing a case that the building in the suit property was constructed by him at his cost, there is hardly any proof on the part of the fifth defendant to support it. Now, the point is, can the fifth defendant resist plaintiff's suit? In this regard even the first Appellate Court has not said that the appellant is not entitled to a decree for declaration of his title as against the fifth defendant. After all, when the plaintiff has a title, there cannot be an agreement under Ext.B.1, that the 5th defendant claims to have entered into with the plaintiff.

10. Turning to Ext.B.1, per se, it is doubtful if an allottee of a plot of land from the Slum Clearance Board is entitled to enter into a sale agreement with a stranger that too when the sale deed in his favour has not yet been executed. Clause 8 of Ext.A.1 stipulates that an allottee cannot induct anybody without the written consent of the Slum Clearance Board. Therefore, irrespective of whether Ext.B.1 at all could be entered into, the very finding of the first appellate Court that the fifth defendant has been in possession as per Section 53 A of the Transfer of Property Act itself would run counter to clause 8 of Ex.A.1. Inasmuch as the plaintiff has paid the entire sale consideration, unless the allotment came to be cancelled in the manner known to law, he is entitled to have an injunction that the allotment is not transferred to any other. Therefore, so far as relief 1 and 2 is concerned, this Court sets aside the decree of the first appellate Court and restores

the decree of the trial Court.

11. Turning to the third prayer, seeking eviction of the 5th defendant is concerned, according to the plaintiff, he is a permissive occupant. In other words, it would mean that the fifth defendant is a licensee of the suit property. Under Section 2(g)(iv) of the Tamil Nadu Slum Areas(Improvement and Clearance) Act, 1971, a licensee in occupation, namely, land or building is defined as an occupier of the building. Under Section 29(a) of the Tamil Nadu Slum Areas(Improvement and Clearance) Act, 1971, if an occupant has to be evicted, then permission in writing of the prescribed authority has to be obtained. Admittedly, this permission has not been obtained. Therefore, the third prayer seeking eviction of the 5th defendant cannot be granted. However, the plaintiff would be at liberty to evict the defendant in the manner that law mandates.

12. In conclusion, this appeal is partially allowed and in the manner indicated;

- A) Plaintiff's title against the fifth defendant is declared. Therefore, there shall be an order of injunction not to transfer allotment to the 5th defendant.
- B) The prayer seeking eviction of the fifth defendant is dismissed. No costs.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

tsg

To

1.I Additional Judge, City Civil Court, Chennai.

2.XIII Asst Judge, City Civil Court, Chennai.

Copy To

The Section Officer, VR Section,
High Court, Madras-104.

+1cc to Mr.I.David Singh, Advocate, S.R.No.50745

+1cc to Mr.J.R.K.Bhavanantham, Advocate, S.R.No.49731

+1cc to Mr.V.Manisekaran, Advocate, S.R.No.49509

+1cc to Mr.R.Sivakumar, Advocate, S.R.No.49340

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RSI (CO)

CS/18/12/2019