

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 29.03.2019

PRONOUNCED ON : 11.04.2019

CORAM

THE HONOURABLE MR.JUSTICE T.RAVINDRAN

S.A.No.950 of 2005
and CMP.NO.13135/05

Kalaiselvi Appellant/Plaintiff

Vs.

1.Tamil Nadu slum clearance Board
Rep.by its Chairman having its office
at No.5, Kamarajar Salai, Madras.

2.Krishnaveni ... Respondents/Defendants

Prayer :- Second Appeal has been filed under Section 100 of the Civil Procedure Code against the Judgement and Decree dated 16.09.2004 passed in A.S.No.134 of 2004 on the file of the VI Additional City Civil Court, Chennai, confirming the judgement and decree dated 08.10.2003 passed in O.S.No.9089 of 1994 on the file of the XII Assistant City Civil Court, Chennai.

For Appellant : M/s.V.Srimathi

For Respondent : Mr.B.Kesavan
No.1

Respondent No.2 : Notice dispensed with

JUDGMENT

Challenge in this second appeal is made to the Judgement and Decree dated 16.09.2004 passed in A.S.No.134 of 2004 on the file of the VI Additional Judge, City Civil Court, Chennai, confirming the judgement and decree dated 08.10.2003 passed in O.S.No.9089 of 1994 on the file of the XII Assistant Judge, City Civil Court, Chennai.

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

" a.Whether the courts below are
right in refusing to grant the
consequential relief of injunction

after having declared the rights of the appellant?

b. Whether the jurisdiction of the civil court is ousted in respect of matters that do not fall within the realm of decision of the statutory authorities?

c. Whether the courts below are right in dismissing the suit for injunction misreading Section 65 of the Tamil Nadu Slum Areas (Improvement and Clearance) Act of 1971?"

3. Considering the scope of the issues involved in the second appeal 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. Suffice to state that the suit has been laid by the plaintiff for the relief of declaration that the allotment order issued by the Tamil Nadu Slum Clearance Board, the first defendant, in respect of the suit property in favour of the plaintiff on 17.01.1994 is valid and for the relief of permanent injunction restraining the first defendant from cancelling the abovesaid allotment order.

5. The first defendant resisted the plaintiff's suit on various grounds.

6. Based on the materials placed on record both oral and documentary, it is found that the Courts below had granted the relief of declaration in favour of the plaintiff as prayed for, however, declined the relief of permanent injunction sought for by the plaintiff against the first defendant. Impugning the same, the present second appeal has been laid.

7. From the materials placed on record, it is found that the suit property had been originally allotted to the second defendant's husband by the Tamil Nadu Slum Clearance Board, the first defendant, and after the demise of the second defendant's husband, it is noted that the allotment had been transferred in the name of the second defendant and thereafter, it is further seen that the allotment had been transferred in favour of the plaintiff on the basis of the records produced by the plaintiff and accordingly, on 17.01.1994, the allotment order had been transferred in favour of the plaintiff. The abovesaid facts are not disputed, as such by the first defendant. Thus, it is found that the Courts below had proceeded to grant the relief of declaration sought for by the plaintiff that the allotment order issued to her in respect of the suit property dated 17.1.1994 is valid.

8.The grievance of the plaintiff is that though the allotment order had been transferred in her favour, it is put forth that the second defendant is seeking to cancel the said allotment one way or the other through the first defendant and accordingly, it is contended on the part of the plaintiff that she has been necessitated to institute the suit for seeking the relief of permanent injunction also as regards the cancellation of the allotment order issued in her favour.

9.On the basis of the materials placed on record, as rightly found by the Courts below, though the allotment order had been transferred in favour of the plaintiff on 17.01.1994, it is seen that the said transfer of allotment in favour of the plaintiff is made only on various conditions. As further noted by the Courts below, there is no proof placed on the part of the plaintiff as well as the first defendant that the plaintiff had paid the entire instalments due to be paid for the suit property and in connection with the same, the documents evidencing the full payment on the part of the plaintiff for the suit property had not been placed for consideration. In the light of the abovesaid factual matrix, as determined by the Courts below, when there is a bar of the jurisdiction of the civil Court under Section 65 of the Tamil Nadu Slum Areas (Improvement and Clearance) Act 1971, which provides that the civil Court shall not grant any injunction in respect of any matter determined or action taken or to be taken in pursuance of any power conferred on the Government or the prescribed authority by or under the abovesaid Act and when accordingly, the allotment order issued in favour of the plaintiff is circumvented by various conditions and when the conditions stipulated thereunder had not been shown to be complied with by the plaintiff in full as such and the Government or the prescribed authority of the first defendant Board is competent to institute further action against the plaintiff with reference to the same as provided under the Act and accordingly, the civil Court's jurisdiction to grant the relief of permanent injunction with reference to the same had been barred under Section 65 of the abovesaid Act, in all, it is seen that the Courts below, though had granted the relief of declaration in favour of the plaintiff, is perfect in refusing the relief of permanent injunction sought for by the plaintiff, particularly, when the plaintiff has failed to establish that the order of allotment in her favour has taken complete shape and satisfied all the requirements as provided under law and in such view of the matter, I do not find any valid reason to interfere with the refusal of the relief of permanent injunction sought for by the plaintiff by the Courts below.

10.In the light of the abovesaid discussion, the substantial questions of law formulated in the second appeal are accordingly, answered against the plaintiff and in favour of the first defendant.

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

Sd/-
Assistant Registrar (CS)

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Sub Assistant Registrar

sms

To

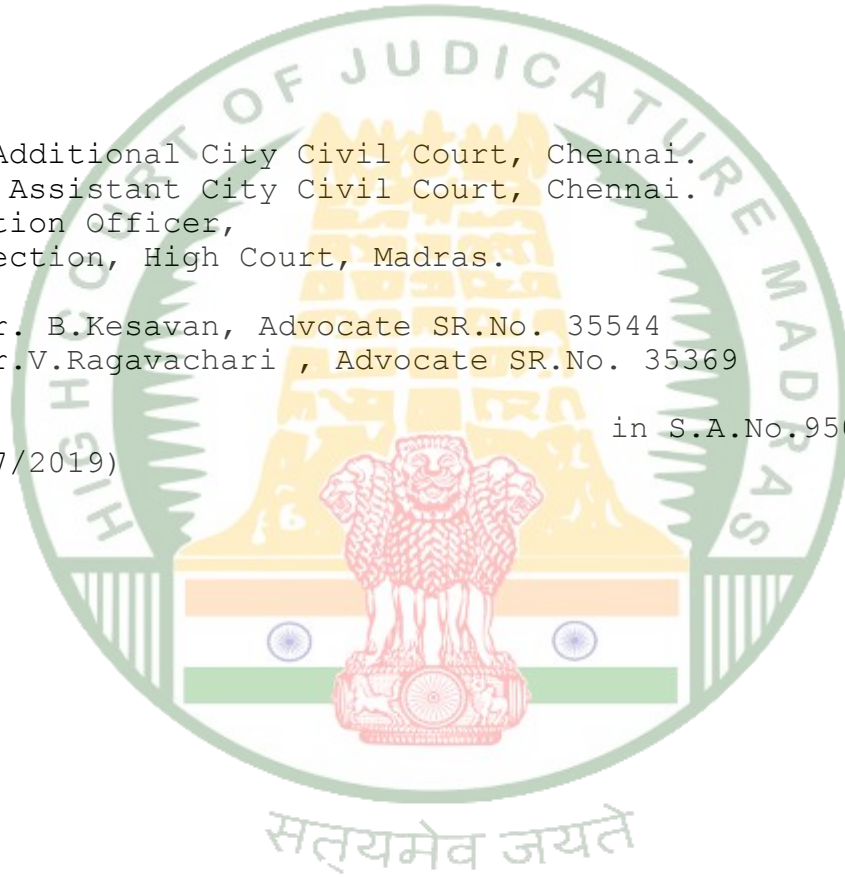
- 1.The VI Additional City Civil Court, Chennai.
- 2.The XII Assistant City Civil Court, Chennai.
- 3.The Section Officer,
V.R. Section, High Court, Madras.

+1cc to Mr. B.Kesavan, Advocate SR.No. 35544

+1cc to Mr.V.Ragavachari , Advocate SR.No. 35369

in S.A.No.950 of 2005

A.SK(18/07/2019)



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