

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.04.2019

CORAM

THE HONOURABLE MR. JUSTICE V.BHARATHIDASAN

S.A. 71 of 2018

and

C.M.P. 5367 of 2018

J.Parameswari
W/o K.Jayaraman

... Appellant/Plaintiff

Vs.

1. G.Selvaraj

2. R.P.S.Mani

3. Tamil Nadu Slum Clearance Board,
rep. by its Managing Director,
Kamarajar Salai,
Chennai-600 005.

... Respondents 1 to 3/
Defendants 1 to 3

Prayer :- This Second Appeal has been filed under Section 100 of C.P.C. against the Judgment and decree dated 28.08.2017 made in A.S. 37 of 2015 on the file of learned XIX Additional City Civil Judge, Chennai, thereby reversing the judgment and decree dated 27.11.2014 and made in O.S.No.1391/2005 passed by XIII Asst. City Civil Judge, Chennai.

For Appellant : Mr.A.Chidambaram

For Respondents : Mr.R.Gunasekaran for R1 & R2
Mr.R.Sivakumar for R3

JUDGMENT

The plaintiff is the appellant herein. She has filed a suit for injunction restraining the respondents 1 and 2 from interfering with the peaceful possession and enjoyment of property. The suit was decreed by the Trial Court. In the appeal filed by the defendants 1 and 2, the lower appellate court has reversed the judgment and decree passed by the Trial Court and dismissed the suit. Now, challenging the same, the plaintiff has filed the present Second Appeal.

2. The case of plaintiff in brief is as follows :-

The suit property at Plot No.25, Kambar Nagar, Ayyavoopuram, 10th Sector, 56th street, K.K.Nagar, Chennai, originally belongs to Tamil Nadu Slum Clearance Board, (hereinafter called as 'Board'), measuring an extent of 56 sq. metre, and the property has been allotted in favour of plaintiff by the Board. The total cost of the said plot was fixed at Rs.3000/-, and the plaintiff has to pay a sum of Rs.308/- towards first instalment, and the remaining amount of Rs.2772/- has to be paid in equal monthly instalments of Rs.30/-. The plaintiff has paid the entire cost on 05.01.1996 itself, and the Board has also given the no objection certificate for electricity, water supply and drainage connection. In pursuant to the same, the plaintiff has put up the superstructure and she is in possession and enjoyment of the same. The defendants 1 and 2 claiming to be a President of one Arulmigu Sri Devi Karumuthu Mariamman temple situated in the adjacent plot No.24, are attempting to grab the suit property and trespassed into plot. Hence, the plaintiff has filed a complaint before the K.K.Nagar Police Station. Thereafter, the present suit has been filed by the plaintiff.

3. The defendants 1 and 2 have filed a written statement contenting that the suit property was not allotted to the plaintiff by the Board, and the allotment order produced by the plaintiff is forged one. The order of allotment did not bear any date and the plaintiff had tampered the order of allotment. The plaintiff by forged and fraudulent document, now claiming right over the suit property. The defendant also denied the fact that the defendants are trying to interfere with the right of plaintiff.

4. The 3rd defendant Board has filed a written statement stating that the suit property was originally allotted to one Joseph/Samuel on 24.04.1995, thereafter, the above said Joseph/Samuel handed over the property to the board on 04.04.2003. Thereafter the suit property in Plot No.25 was allotted to the plaintiff viz., Parameswari vide Board proceedings No.32527/95/E4, dated ..01.1996, and she had also obtained no objection certificate from the Board, she has paid the entire land cost to the Board, and there is no evidence to show that the plaintiff is in possession of the suit schedule property.

5. The Trial Court called for entire records from the 3rd defendant Board regarding the allotment of plot in favour of plaintiff, which were all marked as Ex.C1 to C8. Considering all those materials, the Trial Court has come to a conclusion that plot No.25 was only allotted to the plaintiff, and decreed the

suit. Challenging the judgment and decree of the Trial Court, the defendants 1 and 2 have filed an appeal in A.S.No. 37 of 2015, on the file of XIX Addl. City Civil Judge, Chennai. The lower Appellate Court doubted the genuineness of the allotment order issued in favour of plaintiff and found that there is some tampering in the order of allotment, and doubted the very allotment in favour of plaintiff, thereby came to a conclusion that the plaintiff did not prove that the suit property was allotted to the plaintiff and consequently, allowed the appeal, thereby dismissed the suit. Now, challenging the judgment and decree passed by the lower Appellate Court, the present Second Appeal has been filed.

6. The following substantial question of law raised for consideration in the Second Appeal :-

(1) When admittedly the appellant is the allottee of the suit plot by the 3rd respondent Slum Clearance Board under Ex.A1 is the learned lower Appellate Court right in disbelieving the allotment order under Ex.A1 and also discarding the supporting documents under Exs.A2 to A6, which is against the settled principle of law that admitted facts need not be proved?

(2) Whether the judgment and decree of the lower Appellate Court is vitiated on account of perversity in ignoring and overlooking the material evidence on record, both oral and documentary and also in failing to consider the vital admitted facts and circumstances and deciding the case on extraneous consideration?

(3) Is not the lower Appellate Court wrong in rejecting Ex.A1, the original allotment order in toto while admittedly issued by the 3rd respondent Board and Ex.A1 is well corroborated and supplemented by Ex.A2 to A6, the payment receipts and the no objection certificates issued in favour of the appellant by the 3rd respondent Board though Exs.C1 to C6 had been discarded being xerox copies?

(4) Whether the lower appellate court erred in law in disbelieving and rejecting Ex.A1 and reversing the judgment and decree of permanent injunction granted by the Trial Court in favour of appellant while the 3rd respondent, the author of the document had very much admitted the issue of the same and also the receipt of the charges therefor simply believing the version of the respondents 1 and 2, who have no locus standi to state that Ex.A1 is forged, who themselves are trespassers and strangers and not even claiming possession muchless legal possession of the suit plot in their written statement?

7. Earlier, this Court ordered notice to the respondents. Today, I have heard the learned counsel appearing for the appellant as well as the learned counsel appearing for the respondents and perused the records carefully.

8. The case of the plaintiff is that the suit property, viz., Plot No.25 was originally allotted to the plaintiff by the 3rd defendant Board, and she has also paid the entire land cost and no objection certificate was also issued to the plaintiff. In pursuant to the same, she has put up a construction and residing there. The respondents 1 and 2, who have constructed the temple in the nearby plot are trying to grab the property and also interfering her possession. In order to prove her claim, she has filed an order of allotment made in her favour vide Ex.A1, and also various receipts issued by the 3rd defendant for payment of land cost, and the no objection certificate issued by the 3rd defendant to the plaintiff, and she has also examined her husband as P.W.1.

9. The 3rd defendant Board also filed a written statement stating that the originally, the plot was allotted to one Joseph/ Samuel. Thereafter, he has handed over the plot to the Slum Clearance Board, then it was allotted to the plaintiff, and she has paid the entire land cost and no objection certificate was also issued in her favour. Whereas, the defendants 1 and 2 have contented that the suit property in Plot No.25 was not allotted to the plaintiff, and the allotment order filed under Ex.A1 is a forged one, the plaintiff cannot claim right over the suit property.

10. During trial, the Trial Court has called for original records from the Board, and the records of the Board have been marked as Ex.C1 to C8. After perusing the original records, the Trial Court has come to a conclusion that the suit property in Plot No.25 was originally allotted to the plaintiff, and thereby decreed the suit. However, the lower Appellate Court had reversed the judgment and decree on the ground, that the allotment order has been tampered, and doubted the genuineness of the allotment order, thereby dismissed the suit.

11. The learned counsel appearing for the respondents 1 and 2 has vehemently contended that the Ex.A1 allotment order has been tampered by the plaintiff, and plot No.25, was not allotted to the plaintiff. In the above circumstances, this Court called for the entire records including the allotment order as well as other related records, which were marked as Ex.C1 to C8. On perusal of entire records, it is seen that originally, the plot was allotted to one Joseph/Samuel, by the 3rd defendant Board in the month of April 1995. Thereafter, Joseph/Samuel said to have

sold the property to the plaintiff by means of registered document dated 20.08.1981. On considering the same, the Board has cancelled the order of allotment made in favour of Joseph/Samuel, in and by its proceedings dated 28.12.1995. However, the plaintiff has made an application before the 3rd defendant Board on 28.11.1995 for allotting the plot in her favour and also agreed to pay the entire land cost. Considering the above application, by an order dated 28.12.1995, in Na.Ka.No.32527/95/E4, the suit property in Plot No.25 was allotted in favour of plaintiff on a monthly instalment of Rs.308/-. The order of allotment was also marked as Ex.A1. Thereafter, the plaintiff also paid the monthly instalments regularly and all the receipts have been marked as Ex.A2 and A3, subsequently, the allotment was also regularised in favour of plaintiff in and by its proceedings Na.Ka.No.32527/95, dated .. 01.1996. After regularisation, the Board has also issued a memo to the plaintiff for acknowledging the receipt of entire land cost.

12. From the perusal of original records, I am fully satisfied that after cancelling the allotment in favour of Joseph/Samuel, the Board has issued the order of allotment in favour of plaintiff, and she has also paid the entire land cost. In the above circumstances, the contention of defendants 1 and 2 that the plot was not allotted to the plaintiff cannot be countenanced. The lower Appellate Court proceeded on the basis that there is some tampering in the allotment order issued in favour of plaintiff, and doubted the genuineness of Ex.A1. A perusal of entire records, it could be seen that plot No.25 was only allotted to the plaintiff, and she is the owner of the plot, and she is entitled for the relief sought in the suit. The lower Appellate Court without considering the materials available on record in proper prospective, reversed the judgment only on suspicion, and dismissed the suit, which is liable to be set aside and the substantial question of law are answered in favour of the Appellant/Plaintiff.

13. Accordingly, the judgment and decree passed by the lower appellate court is set aside and the judgment and decree passed by the Trial Court is restored. In the result, the present Second Appeal is allowed. No costs. Consequently, the connected Civil Miscellaneous Petition is also closed.

Sd/-

Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

rpp

To

- 1.The XIX Additional Judge,
City Civil Court,
Chennai.
- 2.The XIII Assistant Judge,
City Civil Court, Chennai.

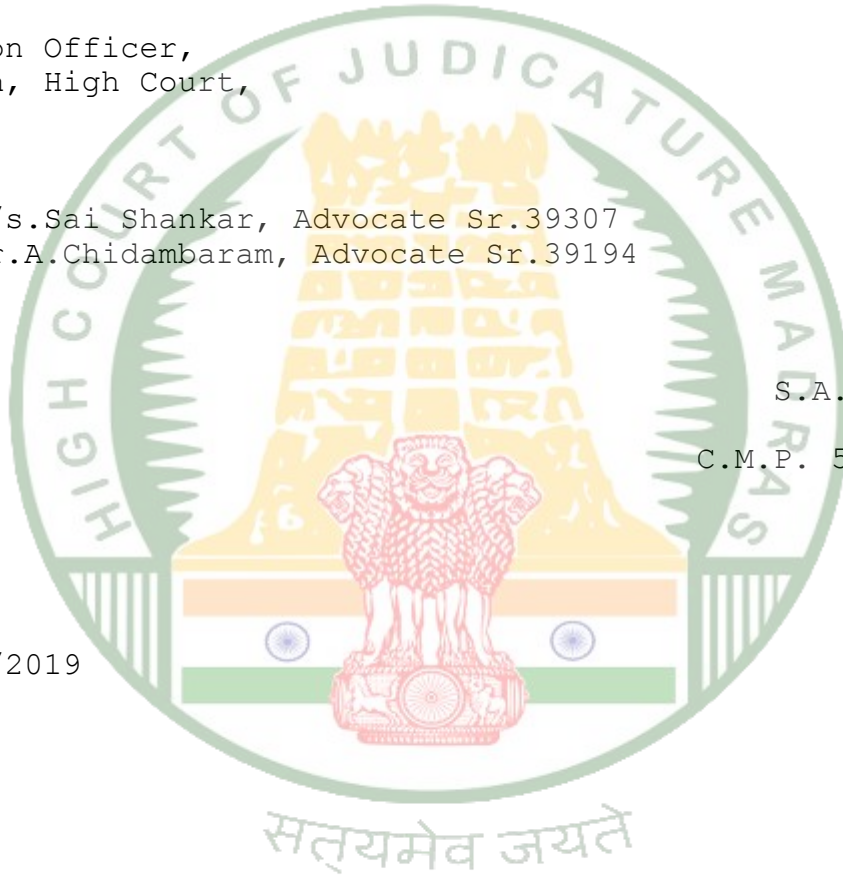
Copy to

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

+lcc to M/s.Sai Shankar, Advocate Sr.39307
+lcc to Mr.A.Chidambaram, Advocate Sr.39194

S.A. 71 of 2018
and
C.M.P. 5367 of 2018

mp[co]
srg 20/08/2019



WEB COPY