

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 09.04.2019
CORAM
THE HONOURABLE MR. JUSTICE K.RAVICHANDRABAABU
W.P.No.22124 of 2018
and
W.M.P.No.25930 of 2018

T.Kandan

... Petitioner

Vs

1. The Secretary,
Housing and Urban Development
Department,
Fort St.George,
Secretariat,
Chennai - 600 009.
2. The Chairman cum Managing Director,
Tamil Nadu Slum Clearance Board,
Kamarajar Salai,
Chepauk,
Chennai - 600 005.
3. The Estate Officer,
Estate Office,
Tamil Nadu Slum Clearance Board,
Rajaji Salai, Royapuram,
Chennai - 600 001.
4. P.Thilagam
5. K.Jothi
6. R.Kumar
(R4 to R6 impleaded vide order dt.01.03.2019 made
in W.M.P.No.5548/2019 in W.P.22124/2019 by THE HON`BLE
MR.JUSTICE K.RAVICHANDRABAABU)

... Respondents

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus to call for the proceedings of the 3rd respondent passed an impugned order in Na.Ka.No.38/P/2018/CHE/1 dated 24.05.2018 and quash the same as illegal and consequently direct the first and second respondents to issue a name transfer order from Smt.Rukmani Ammal to the petitioner for his property in accordance with law.

For Petitioner : Mr.C.Nithyash Sekhar

For Respondents : Mr.E.Balamurugan,
Special Government Pleader for r1
Mr.S.Prabhu,
Standing Counsel for R2 and R3.
No appearance for R4 to R6.

O R D E R

The petitioner is aggrieved against the proceedings of the 3rd respondent dated 24.05.2018, wherein and whereby, the petitioner's request for transferring the allotment of Plot No.360 from the name of his mother to himself, was rejected by stating that since all the legal heirs of the said Rukmaniammal have not joined together and given such request. Consequently, the petitioner seeks for a direction to the 1st and 2nd respondents to issue name transfer order to the petitioner.

2. In this writ petition, the other legal heirs of the said Rukmaniammal were arrayed as the respondents 4 to 6 and though notice was issued on them, they have not chosen to appear either in person or through counsel. Their names are printed in the cause list today.

3. The petitioner is the son of the said Rukmaniammal, who admittedly got allotment of the said Plot No.360 from the Tamil Nadu Slum Clearance Board. Even before execution of the sale deed by the Slum Clearance Board, the said Rukmaniammal, died. However, during her life time, she executed a settlement deed in favour of the petitioner on 24.06.1999 settling the subject matter property in his favour. The other legal heirs of Rukmaniammal namely, the respondents 4 and 5 herein filed O.S.No.2047/2012 on the file of the City Civil Court, Chennai, against the petitioner herein and other legal heirs, namely R.Kandan, R.Kumar and also against the Slum Clearance Board for partition and for permanent injunction. The subject matter property is also shown as the suit property therein. The said suit was contested by the respondents and the same was dismissed on merits by judgment and decree dated 20.09.2017. The trial Court has found at Paragraph No.12(ix) of the judgment as follows:

"Admittedly, the entire installments amount with respect to the suit property was not paid to the 3rd defendant and sale deed with respect to the suit property was not executed in favour of Rukmaniammal by the Tamil Nadu Slum Clearance. The ownership and title

<https://hcservices.ecourts.gov.in/hcservices/> of the land in the suit property vested

with the Slum Clearance Board. Hence, the plaintiffs and 2nd defendant cannot sought the relief of the partition with respect to the land in the suit property. The Rukmaniammal had settled her possessory right and other rights over the suit property and the super structures in the suit property in favour of the 1st defendant vide Ex.B4 Settlement deed. It was specifically state din Ex.B4 that the 1st defendant shall pay the installments amount the Tamil Nadu Slum clearance Board and that the 1st defendant shall got the name transfer in his favour. The Rukmaniammal had settled her all rights over suit property and super structures in the suit property in favour of the 1st defendant. Hence, the plaintiffs and 2nd defendant have no right over the suit property and they cannot claim partition anything with respect to the suit property. Accordingly, the issues are decided against the plaintiffs.

4. From the perusal of the findings rendered by the trial Court, it is evident that under Ex.B4 settlement deed, the deceased Rukmaniammal settled the subject matter property in favour of the petitioner with liberty for him to pay the installments and get the name transferred in his favour.

5. Learned counsel appearing for the Slum Clearance Board contended that only possessory right was given under the said settlement deed and not the entire right over the property so allotted to the said Rukmaniammal.

6. I am not able to accept the said contention, when a perusal of the settlement deed, which is placed before this Court in the typed set of papers, would disprove the said contention. It is clearly stated by the said Rukmaniammal therein that she has settled all the rights over the subject matter property in favour of the petitioner through the said Settlement deed which was also registered as Document No.99/1999.

7. When such being the intention of the Settlor, the Slum Clearance Board cannot contend that the said Rukmaniammal has not transferred all the rights in respect of the subject matter property in favour of the petitioner. Once the Civil Court has found that the other legal heirs are not entitled to the share in the said property and only the petitioner has to get the

benefit out of the said settlement deed, I do not find any justification on the part of the Slum Clearance Board to insist upon all the legal heirs to join together and make a request for name transfer. The said stand taken by the Slum Clearance Board is certainly against the judgment and decree granted by the Trial Court in the above said suit, which is said to have become final and conclusive, as no further appeal is filed by the plaintiffs therein. Even though this Court has issued notice to the 4th to 6th respondents in order to find out as to whether any appeal is pending against the said judgment and decree, they have not chosen to appear before this Court and explain their stand. Therefore, this Court is left with no other option except to accept the claim of petitioner and grant the relief based on the judgment and decree passed by the City Civil Court, Chennai, in O.S.No.2047/2012.

8. Considering the above stated facts and circumstances, I find that the reason stated in the impugned order cannot be sustained. Accordingly, the Writ Petition is allowed. The impugned order is set aside. Consequently, the respondents 2 and 3 are directed to consider the claim of the petitioner of name transfer and pass appropriate orders, if the petitioner has paid the entire installment in respect of the subject matter property. Such exercise shall be done by the 2nd and 3rd respondents within a period of eight weeks from the date of receipt of a copy of this order and also by production of other necessary documents for such transfer of name. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS)

//True Copy//

सत्यमेव जयते

Sub Assistant Registrar

vsi
To

1. The Secretary,
Housing and Urban Development
Department,
Fort St.George,
Secretariat,
Chennai - 600 009.

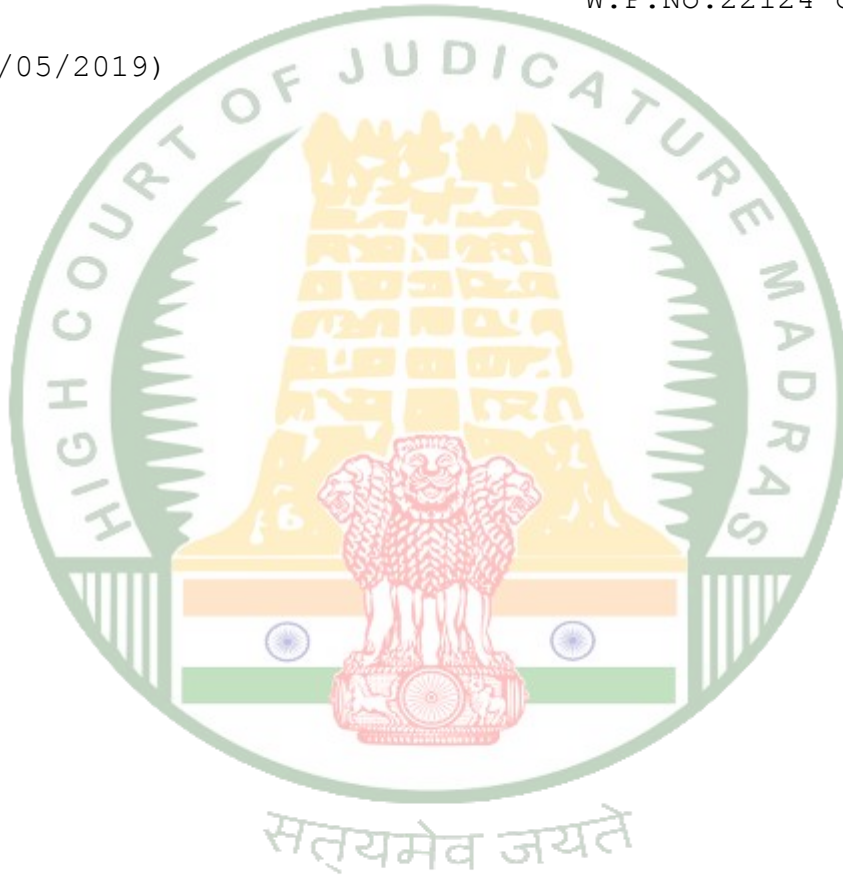
2. The Chairman cum Managing Director,
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Chepauk,
Chennai - 600 005.

3. The Estate Officer,
Estate Office,
Tamil Nadu Slum Clearance Board,
Rajaji Salai, Royapuram,
Chennai - 600 001.

+2ccs to Mr. .C.Nithyash Sekhar, Advocate SR.No. 34463
+1cc to Mr.S.Prabhu, , Advocate SR.No. 35440
+1 cc to Government Pleader SR.NO. 35289

W.P.No.22124 of 2018

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A.SK(08/05/2019)



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