

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 15.11.2019

CORAM:

THE HON'BLE MR.JUSTICE R.SUBRAMANIAN

S.A.No.1100 of 2019
and CMP Nos.23937 & 23939 of 2019

1. K.Ambigapathy
2. R.Shantha
3. S.Gowri
4. K.Nirmala
5. K.Kaunakaran ...Appellants/ Appellants/ Defendants1 to 5
Vs.

1. K.Subha
2. K.Gomathy
3. K.Kannan ... Respondents/ Respondents/ Plaintiff 1 to 3
4. The Tamil Nadu Slum Clearance Board,
Rep. By its Chairman
Kamarajar Salai,
Chennai 600 005. ...Respondent4/Respondent4/ Defendant6

PRAYER: Second Appeal filed under Section 100 of C.P.C., against the judgment and decree dated 09.07.2019 made in AS No.237 of 2018 on the file of the Learned I Additional City Civil Court, Chennai confirming the decree and judgment dated 26.02.2018 made in O.S.No.5743 of 2012 on the file of the Learned XIII Assistant City Civil Court, Chennai.

For Appellants : Mr. V.Subramani
for M/s. Dass and Viswa Associates

J U D G M E N T

The defendants 1 to 5 in OS No.5743 of 2012 having suffered a decree for partition and separate possession of the plaintiffs 1/8th share each in the suit property have come up with this Second Appeal.

2. According to the plaintiffs, the suit property was allotted to their father Kalimuthu, by the Tamil Nadu Slum Clearance Board in the year 1985. The said Kalimuthu died intestate on 25.10.1999. Thereafter, the Tamil Nadu Slum

Clearance Board, viz. the fourth respondent herein, executed a Sale Deed in favour of the first defendant wife of Kalimuthu on 26.06.2001. The first defendant had settled the property in favour of the fifth defendant on 26.04.2002, claiming that the first defendant held the property in a fiduciary capacity in trust for the heirs of Kalimuthu, the plaintiffs have come up with the suit for partition and separate possession. It is also their contention that the first defendant being only a sharer is not entitled to settle the entire property on the fifth defendant. Therefore, the plaintiffs would claim 1/8th share each in the property.

3. The suit was resisted by the defendants contending that the sale deed executed by the Tamil Nadu Slum Clearance Board, in favour of the first defendant confers an absolute title on her and as such, she is entitled to deal with the property in the manner she likes. It was also contended that the suit as framed for partition without seeking to set aside the Settlement Deed executed by the first defendant in favour of the fifth defendant is not maintainable.

4. The sixth defendant filed a separate written statement stating that the sale deed was executed in favour of the first defendant on her claim that she is the only heir of deceased Kalimuthu.

5. At trial the first plaintiff was examined as P.W.1 and the second plaintiff was examined as P.W.2. Exhibits A1 to A14 were marked on the side of the plaintiffs. The fifth defendant Karunakaran was examined as D.W.1 and Exhibits B1 to B7 were marked on the side of the defendants.

6. The Trial Court, on a consideration of evidence on record concluded that since the original allotment has been made in favour of Kalimuthu, the husband of the first defendant and father of the plaintiffs and defendant 2 to 5, the sale deed executed by the Tamil Nadu Slum Clearance Board, in favour of the first defendant would not confer absolute right on her. The Trial Court further concluded that the first defendant only held the property as a trustee for the other heirs of Kalimuthu. In doing so, the Trial Court relied upon the judgment of this Court in Rita v. C.Suseela and others made in SA Nos.1266 and 1267 of 2007 dated 21.04.2008, wherein, this Court had held that the Personal Laws of the parties will not stand excluded in cases of allotment made by the Tamil Nadu Slum Clearance Board. On the above conclusions, the learned Trial Judge decreed the suit as prayed for. Aggrieved the defendants 1 to 5 preferred an appeal before the Lower Appellate Court.

7. The Lower Appellate Court upon a reconsideration of the evidence concurred with the findings of the Trial Court and dismissed the appeal. Aggrieved defendants 1 to 5 have come up with this Second Appeal.

8. I have heard Mr.V.Subramani, learned counsel appearing for M/s.Dass and Viswa Associates, for the appellants.

9. Mr. V.Subramani, learned counsel appearing for the appellants would contend that the suit as framed without seeking a prayer for setting aside the settlement deed executed by the first defendant in favour of the fifth defendant dated 26.04.2002 marked as Ex.A6 is not maintainable. He would further contend that the Sale Deed having been executed by the Tamil Nadu Slum Clearance Board, in favour of the first defendant on 26.06.2001, the suit is barred by limitation.

10. I have considered the submissions of the learned counsel for the appellant.

11. Before going into the contentions of the learned counsel for the appellant, certain factual aspects will have to be dealt with. Admittedly, the suit property was allotted to Kalimuthu by the Tamil Nadu Slum Clearance Board, in the year 1985. Ex.A1 is an Order dated 03.09.1999, passed by the Tamil Nadu Slum Clearance Board in favour of Kalimuthu. Kalimuthu died on 25.10.1999, though a plea was raised by Kalimuthu, left a registered Will in favour of the fifth defendant, the Will was not produced. The Lower Appellate Court has found that the Will has not seen the light of the day. It is the further contention of the appellants, before the Lower Appellate Court, that the allotment in favour of Kalimuthu was cancelled and thereafter, the Sale Deed was executed in favour of the first defendant. There was no evidence to that effect. In fact Ex.A1 dispels such claim.

12. Adverting to the contentions of the learned counsel for the appellants, I do not think that those contentions merit acceptance. The Sale Deed was executed by the Tamil Nadu Slum Clearance Board on 26.06.2001. The written statement filed by the Tamil Nadu Slum Clearance Board clearly stated that the property was allotted to Kalimuthu and the sale deed was executed in favour of the first defendant as heir of Kalimuthu, since she claimed to be only heir of Kalimuthu. Therefore, the claim that the first defendant becomes the absolute owner of the property since the Sale Deed has been executed in favour of

Kalimuthu cannot be accepted. This Court has in Rita v. C.Suseela, referred to supra, held that if an allotment is made and the Sale Deed is executed in favour of one of the legal heirs of the allottee, the said legal heir will hold the property in trust for other legal heirs.

13. It is also pointed out that the Personal Laws that applied to the parties do not stand excluded in matters of allotment made by the Tamil Nadu Slum Clearance Board. Once it is found that the first defendant was holding the property as a trustee on behalf of the other heirs, she has no right to deal with the entirety of the property. The Settlement Deed executed by the first defendant in favour of the fifth defendant would be valid only to the extent of her share and it will not affect the shares of the plaintiffs and other sharers.

14. It will be pertinent to point out at this juncture that the first defendant had joined the plaintiffs in issuing a notice demanding partition. However, she did not choose to join the plaintiffs filing the suit. I am therefore unable to accept the first contention of the learned counsel for the appellant that suit as framed for partition without seeking to set aside the Settlement Deed executed by the first defendant in favour of the fifth defendant is not maintainable. Moreover the plaintiffs are not parties to the settlement deed.

15. As already pointed out that the settlement deed executed by the first defendant in favour of the fifth defendant would be valid only to the extent of her share in the property. Since the plaintiffs are not parties to the said document, they can ignore the document and sue for partition.

16. On the question of limitation, since I have held that a prayer for setting aside the settlement deed is not necessary, the suit having been filed within 12 years from the date of the execution of the sale deed, in my considered opinion, cannot be said to be barred by limitation.

17. I therefore do not find any question of law much less substantial question of law enabling me to entertain the Second Appeal. Hence the Second Appeal is dismissed without being admitted. Consequently, the connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

jv
To

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

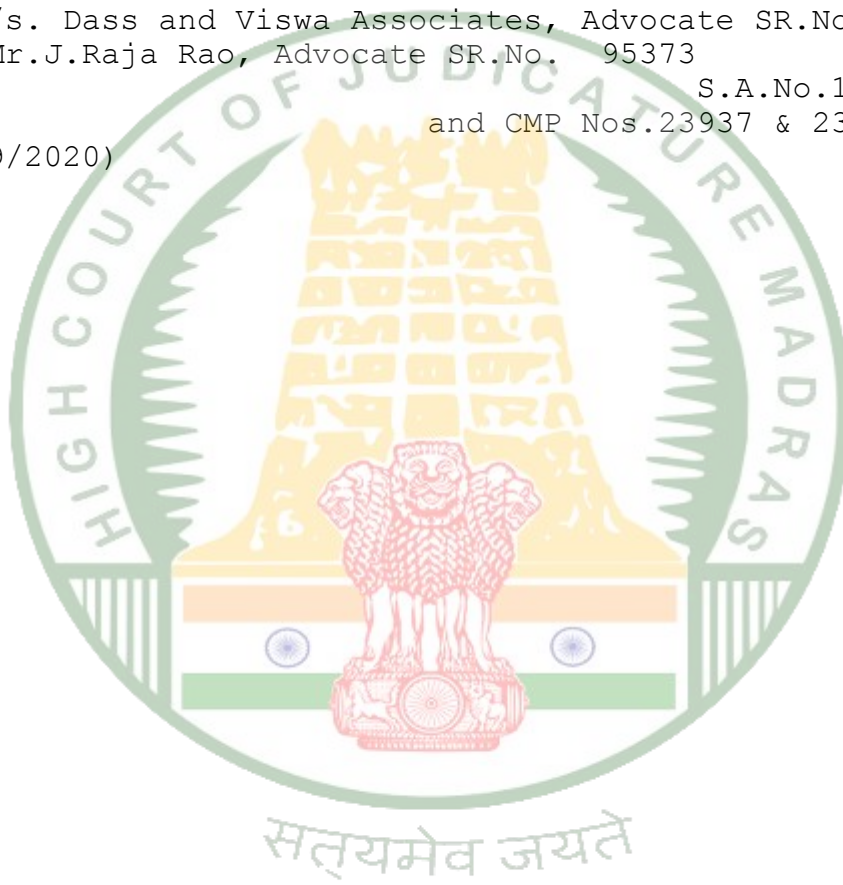
+1cc to M/s. Dass and Viswa Associates, Advocate SR.No. 95487

+3ccs to Mr.J.Raja Rao, Advocate SR.No. 95373

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A.SK(28/09/2020)



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