

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.04.2019

CORAM

THE HONOURABLE MR. JUSTICE M.GOVINDARAJ

C.M.S.A.Nos.20 and 21 of 2018
and
C.M.P.Nos.18796 and 18802 of 2018

1.R.Gowri

2.R.Santhanam

3.R.Boopathy

... Appellants/Appellants/
Obstructors in both Appeals

Vs.

A.Ramachandran ... Respondent/Respondent/Petitioner/
Decree Holder/Plaintiff

COMMON PRAYER: Civil Miscellaneous Second Appeal filed under Order 141 Rule 1 r/w Section 151 of C.P.C., praying to set aside the order and decreetal order dated 22.03.2018 passed in CMA Nos.94 & 95 of 2017 respectively by the XIX Additional City Civil Court, Chennai by confirming the order dated 27.08.2012 in E.A.No.11730 of 2010 and E.A.No.1064 of 2011 respectively passed by the X Asst. Judge, City Civil Court, Chennai.

For Appellants : Mr.P.G.Thiyagu
For Respondent : Mr.M.Muthappan
(in both the Appeals)

C O M M O N J U D G M E N T

This CMSAs are directed against the order passed in CMA Nos.94 and 95 of 2017 on the file of XIX Additional City Civil Court, Chennai.

2.One Alamelu was allotted with a plot by Tamil Nadu Slum Clearance Board viz., Plot No.6, Maduraisamy Madam Street, Perambur, Chennai. The said Alamelu died intestate on 31.10.1997 leaving behind her sons P.Ranganathan and P.Kannan as sole surviving legal-heirs. Thereafter, her son P.Kannan died on 18.03.2006. Thus, the the first son and second son's wife have become owners of the property by inheritance. The first

son Ranganathan also died intestate on 25.07.2006, leaving behind his wife and sons who are the petitioners 1 to 3. The widow of the second son is 4th petitioner. The petitioners were living in the above said property continuously. On 28.09.2010, when the first respondent came along with one Parthasarathy to take possession of the property, the appellants have objected the attempt and the bailiff filed a report indicating the objection before the Court. Thereafter, the appellants filed an Execution Application before the executing Court. The executing Court without permitting them to adduce evidence, summarily decided the issue, and dismissed the execution application. Against which, the appellants preferred CMA and lower appellate Court also failed to consider the same in proper perspective and dismissed the appeal without remanding the same. Aggrieved over the order, the appellants preferred the above second appeal on the following questions of law:-

1) Whether the finding of the Court below that the appellants are not entitled to establish the title since the Tamil Nadu Slum Clearance Board has not contested the matter is acceptable?

2) Whether the finding of the First Appellate Court that the appellants have not established how he derived the right under the allottee of plot No.196 correct?

3. The short facts leading to the case is that the first respondent filed a suit for decree of mandatory injunction to remove encroachments made, by impleading the encroacher, Corporation of Chennai and Government of Tamil Nadu as parties. The encroacher has taken a stand that he had put up hut only on the road margin and it is a Government property. The Government of Tamil Nadu defended the case on the ground that the land is a poramboke land and that they are taking steps to issue patta to the occupiers. The trial Court dismissed the suit. On appeal, the lower appellate Court, after elaborately discussing the evidence had come to the conclusion that the existence of the access through the road has been established and the existence of underground drainage line and electricity lines show that it is on the side of the road margin which proves the claim of the plaintiff and granted a decree of mandatory injunction to remove the obstructions. Against the decree and judgment of the first appellate Court, the contesting first respondent preferred second appeals in S.A.Nos.587 and 588 of 1992. The contesting party had taken a stand that the land was assigned to Slum Clearance Board and therefore, the plaintiff has no right to the suit property. The High Court having found that without placing materials as to entitlement of Slum Clearance Board, the contention raised by the appellant therein was not sustainable and confirmed the decree and judgment of the lower appellate Court by its order dated 22.02.2002.

4. Pursuant to the decree granted in his favour by the lower appellate Court in A.S.Nos.666 and 677 of 1998 dated 08.09.1989, the first respondent filed an execution petition on 21.04.2010. Since a stand was taken that the land was allotted to Slum Clearance Board, it was impleaded as party in E.A.No.5361 of 1990 but Slum Clearance Board remained ex-parte. Only when the executing Court issued orders to remove the obstructions and when the bailiff went to execute the same on 28.09.2010, the appellants claimed that they came to know of the same, they immediately filed another execution application in E.A.No.1064 of 2011.

5. The executing Court dismissed the E.A. Aggrieved over the same, the appellants preferred an appeal in CMA.Nos.94 and 95 of 2017, against the orders passed in E.A.No.11730 of 2010 and E.A.No.1064 of 2010 under Order 21 Rule 99 CPC. Before the lower appellate Court, the appellants have raised a specific plea that the execution application was dismissed in summary manner without granting ample opportunity to let in evidence and adduce evidence.

6. The question before this Court is to verify as to whether, the appellants were denied of the opportunity to let in evidence. On perusal of the adjudication, it goes to show that there are several proceedings in between the parties before filing the present Execution Application. Originally the application filed by the first respondent vide No.11730 of 2010, the appellants were set ex-parte and the petition was allowed and E.A.1064 of 2011 was dismissed for default.

7. Thereafter, the appellants preferred an appeal vide CMA Nos.85 and 86 of 2013, those appeals were also dismissed for default. Again, the appellants preferred revision against the dismissal order passed in the CMA and the same was set aside and the matter was remitted and the lower Court set aside the ex-parte order and the order dismissing E.A. for default and thereafter, the appellants have gone to execution Court. In the meanwhile, evidence of both sides were closed and the matter was at argument stage. However, we do not find any record to show that applications were filed to re-open the case for adducing the evidence. The matter was argued and based on the available materials, the execution Court has dismissed the application. This decree is binding on the Slum Clearance Board, which allotted the land to the appellants. When the appellants are depending on the title of the Slum Clearance Board, they cannot maintain the execution application by setting up an independent title.

8. It is to be seen as to whether the appellants are entitled to establish their title, when the Slum Clearance Board did not

contest the matter is acceptable or not? It is an admitted fact that the suit was filed as early as 1983, it was decreed on 15.04.1988. Till such time, the Government of Tamilnadu had taken a stand that the suit property was only poramboke land and it was not the case of the Government of Tamil Nadu the land was assigned to Slum Clearance Board. Till the date of decree, the land was not assigned to Slum Clearance Board. There are no materials even before this Court to show that the assignment made over to Tamil Nadu Slum Clearance Board even before the decree. Adding further, the Tamil Nadu Slum Clearance Board, even after being impleaded in the execution petition has failed to take any defence that the title vests in its favour. In other words, the Tamil Nadu Slum Clearance Board itself has not claimed any title. The appellants claimed title through Mother-in-law and grand-mother Alamelu. Even assuming that they are the legal-heirs, the said Alamelu shall have to perfect her title.

9. On the other hand, even before the execution of the sale deed, decree passed by competent Courts as to the nature of the property. When the property was declared as road by this Court and there was no appeal by the Government, much less by Tamilnadu Slum Clearance Board to show that it was assigned to them and it is a residential property, at this time, the decree which attained finality cannot be questioned. Once the suit property was declared as road, any allotment made by the Tamilnadu Slum Clearance Board, treating it as residential plot is illegal. The decree which is binding on the Government who is the assignor, will equally bind the Slum Clearance Board who is the assignee. In that event, the appellants by no stretch of imagination be said to have independent title that too without marking any documents to substantiate their case. As discussed above, we find no attempt is made on the side of the appellant to re-open the case to let in evidence and mark the documents. Straight away the appellants have argued the execution application. Even in appeal, no steps were taken to mark the said documents of title or to let in evidence or additional evidence. Having failed to take those steps, the appellants cannot complain that the case was conducted as a summary trial instead of allowing them to adduce evidence. In other words, the appellants have failed to avail the opportunity for adducing evidence under Order 21 Rule 99 of CPC. It is no doubt that in the absence of the Tamilnadu Slum Clearance Board, the appellants are not entitled to establish their title independently. Even assuming they are entitled, the record of proceeding shows no attempt was taken by the appellants in this direction to establish the title. In the absence of any attempt to establish their title, the questions of law are answered against the appellants. It is well settled proposition that the executing Court cannot go beyond the decree. When there is a

decree binding the Government of Tamilnadu and thereby the Tamilnadu Slum Clearance Board, it is valid and legally enforceable. When it has been declared by this Court that the suit property is a road, the appellants cannot claim that it is a private residential property.

10. Therefore, they have no right over the suit property which was said to have been allotted to their predecessors. In such circumstances, the CMSAs fail and they are dismissed. Consequently, connected miscellaneous petitions are closed. No costs.

s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

AT

To

1. The Judge
The XIX Additional City Civil Court,
Chennai.
2. The Judge
The X Assistant Judge, City Civil Court,
Chennai.
3. The VII Additional Judge
VII Additional City Civil Court
Chennai

Copy to

The Section Officer
VR Section
High Court, Madras 104.

+2 Ccs to Mr. M. Muthappan, Advocate sr 39821 & 39822.

C.M.S.A.Nos.20 and 21 of 2018

VGI (CO)
SP(20/04/2021)