

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 24.02.2020
PRONOUNCED ON: 04.03.2020

CORAM :

THE HONOURABLE MR.JUSTICE V.PARTHIBAN

S.A.No.499 of 2009

- 1.Anjalai
- 2.Ganesan
- 3.Ramamurthi
- 4.Velu
- 5.Radha

... Appellants/Appellants/Plaintiffs

Vs.

- 1.The Tamil Nadu Slum Clearance Board,
rep by its Chairman,
No.5, Kamaraj Salai, Chennai-600 005

- 2.The Estate Officer,
Tamil Nadu Slum Clearance Board,
T.Nagar, Chennai-600 017

- 3.G.Bhaskaran

- 4.M.Lakshmi

... Respondents/Respondents/Defendants

Prayer:- This Memorandum of Second Appeal filed under Section 100 of Civil Procedure Code against the Judgment and decree dated 17.07.2007 passed in A.S.No.441 of 2005 on the file of the Additional District Judge, Fast Track Court-II, Chennai confirming the judgment and decree dated 18.11.2003 made in O.S.No.5809 of 1996 on the file of First Assistant Judge, City Civil Court, Chennai.

For Appellant : Mr.M.K.Kabir, Sr. Counsel for
M/s.M.Padmavathy and
Mr.A.Dhiraviyanathan

For Respondent : Mr.M.Rajasekar for R1
Mr.S.P.Prabakaran for R2
Mr.Ashok Menon for R3 & 4

JUDGMENT

This Second Appeal has been directed against the Judgment and decree dated 17.07.2007 passed in A.S.No.441 of 2005 on

the file of the Additional District Judge, Fast Track Court-II, Chennai confirming the judgment and decree dated 18.11.2003 made in O.S.No.5809 of 1996 on the file of the learned First Assistant Judge, City Civil Court, Chennai.

2. The brief facts which gave raise to the filing of the present Second Appeal are stated hereunder:

2.1 The appellants are the plaintiffs and the defendants are the respondents. The parties are described as per their litigative status in the suit proceedings.

2.2 The appellants/plaintiffs approached the civil Court seeking declaration that the first and the second defendants had no power to cancel, modify or amend the original allotment made in favour of the first plaintiff and for the relief of mandatory injunction, directing the first and the second defendant to cancel any allotment made in favour of the third defendant and consequently to issue patta and execute sale deed in favour of the plaintiffs for the entire Plot No.293, No.12, 11th Street, Dharmapuram, T.Nagar, Chennai-17. The plaintiffs also payed for permanent injunction, restraining the third defendant from putting up any super structure in the suit schedule property.

2.3 The case of the plaintiffs was that the first plaintiff who was the husband of the second plaintiff, was the original allottee, in respect of the suit schedule property. According to the plaintiffs, the installment dues under the allotment order were regularly complied with and the final payment was remitted on 25.10.1993. On entire payment being remitted to the first defendant, the plaintiffs were entitled to be issued patta and sale deed is to be executed in their favour in respect of the plot allotted. According to the plaintiffs, the entire dues payable under allotment order were completed as early as on 25.03.1993 and despite the installments being completed, the first and the second defendants have not executed the sale deed in favour of the plaintiffs in respect of the suit schedule property.

2.4 The first defendant, while making the allotment in favour of the plaintiffs, has also issued No Objection Certificate to the plaintiffs by order dated 12.11.1991 for obtaining electricity connection to the property. Thus, the plaintiffs alone have become absolute owners to the title and interest over the suit schedule property to the exclusion of any other person. The second plaintiff being the wife of the deceased first plaintiff, the original allottee and the other plaintiffs being children, are the legal heirs. The first plaintiff's sister one Chokkammal, the third defendant in the suit proceedings, was staying with the second plaintiff due to her estrangement with her husband. She and her son were living with the plaintiffs in the same premises and their occupation in

the premises along with the plaintiffs was truly gratuitous and out of empathy and sympathy towards their plight.

2.5 While matter stood thus, it appears that the son of the third defendant, who happened to be a ruling party member, applied for allotment of a portion of the Plot No.293 in favour of the third defendant. The second defendant vide letter dated 29.04.1994 directed the plaintiffs and the third defendant to attend an enquiry in response to the request made by the third defendant's son for allotment to an extent of half of the portion in the Plot No.293. The plaintiffs and the third defendant attended the enquiry and on behalf of the plaintiffs, all the documents were produced to prove the fact that the possession of the plaintiffs was in accordance with allotment and they are alone having title to the property and the property cannot be sub divided after taking entire remittances from them.

2.6 Thereafter, the plaintiffs came to know that the second defendant issued patta in favour of the third defendant for a portion of the suit schedule plot comprising half share by illegally sub-dividing the Plot originally allotted to the first plaintiff's husband. According to the plaintiffs, that the third defendant has not remitted any amount at all entitling her to claim for allotment of a portion of the suit schedule property when the factum of the matter was that the entire dues payable for the allotment had been paid only by the plaintiffs. Therefore, the plaintiffs were constrained to approach the trial Court, seeking the reliefs as stated supra.

3. The suit was resisted by the first and the second defendants, namely, the Tamil Nadu Slum Clearance Board. According to the first and the second defendants, the third defendant was also living in the allotted portion for a considerable time and therefore, when a request was made on behalf of the third defendant, the plot was sub-divided and given half portion in the plot to the third defendant. According to the written statement, the original allotment order had been modified as per the Rules. However, in the written statement there was no denial of the fact that the entire installments payable under the allotment had been remitted only by the plaintiffs. In fact, the factum of payment of entire dues have been admitted by the defendants 1 and 2 in the written statement in para no.7, as it states that the plaintiffs may apply for the refund of the excess amount paid, it will be examined by the Board as per the Rules. The defendants 1 and 2 had also pleaded that the suit was barred in view of Section 65 of the Tamil Nadu Slum Area (Improvement & Clearance) Act 1971 (hereinafter referred to 'the Act'). Section 65 excludes the jurisdiction of civil Courts in matters of dispute arising under the Act.

4. The trial Court which went into the issues, in fact, has accepted the case of the plaintiffs that the entire dues have been paid by the plaintiffs as on 25.10.1993 and once the payment schedule was adhered to, the defendants 1 and 2 were bound to issue patta and execute the sale deed in favour of the plaintiffs in respect of the plot allotted to them. The trial Court has also found that Exs.A1 to 8 which are the receipts for payment of installments made by the first plaintiff, would establish the facts clearly that the entire dues for allotment have been remitted by the first plaintiff. The trial Court had also found that the sub-division of the Plot which was originally allotted to the plaintiffs was illegal. The trial Court had also found that the third defendant had not let in any evidence to show that she had paid any installment towards the portion of the Plot allotted to her. In fact, the third defendant was not represented in the suit proceedings and was set ex-parte. After having found that the action of the first and the second defendants was illegal and the claim of the plaintiffs was fully justified, yet, the trial Court, after referring to various decisions cited on behalf of the parties, finally concluded that in view of Section 65 of the Act, providing an explicit bar on the Civil Court to entertain the dispute arising out of the Act, the suit was not maintainable. The trial Court had also found that when alternative remedies were provided in the Act, the same have to be resorted to by the party and the Civil Court was not the remedy. In that view of the matter, the suit came to be dismissed. As Against that an appeal has been preferred in AS.No.441 of 2005 on the file of the Additional District Judge, Fast Track Court-II, Chennai.

5. The lower appellate Court which dealt with the appeal has concurred with the conclusion reached by the trial Court in regard to the maintainability of the civil proceedings. The lower appellate Court has also found that as per Section 29 of the Act, an appeal is provided to the prescribed authority and the same has to be resorted to. The lower appellate Court has also extracted Section 65 and 59 and held that the impugned judgment of the trial Court was in order and the bar as provided under Section 65 would operate against the plaintiffs. As against that the present Second Appeal has been preferred by the plaintiffs.

6. Mr.M.K.Kabir, learned Senior counsel for the appellants/plaintiffs would submit that the factum of the deceased/first plaintiff remitting the entire dues under the allotment was not in dispute at all. Exs.A1 to A8 which were the receipts of the payment made to the Slum Clearance Board, supported the claim of the plaintiffs. In fact, the trial Court has found clearly and categorically that the payments have been

made by the plaintiffs and they were entitled to be issued patta and also entitled to demand the execution of sale deed by the first and the second defendants. More over, the trial Court has also found that the sub-division of the plot in the circumstances as narrated above, was illegal and under what Rules such sub-division had taken place was not explained by the first and second defendants. After holding the issues entirely in favour of the plaintiffs, yet the trial Court dismissed the suit in view of Section 65 of the Act read with Section 59 which provided the remedy of appeal to the higher authorities. The lower appellate Court has simply accepted the decision taken by the trial court in regard to the bar of jurisdiction to the civil Court and dismissed the appeal.

7. Mr.M.K.Kabir, learned Senior counsel would also submit that when an action like the present one was taken by the Board Officials, the Courts below ought to have seen whether such action could be the subject matter of consideration in the civil proceedings. According to the learned Senior counsel, when a decision sub-dividing the Plot in the circumstance of the case, was found to be illegal and completely without any justification, it suffers from jurisdictional error and falls completely out side the scope of the Act and Rules which governed such allotment. When such action of the Board officials was undeniably not authorized by any provisions of the Act or Rules, the operation of Section 65 or Section 59 of the Act as the case may be, may not be available for the Court or for the plaintiff as the very action of the Board officials was out side the scope of the Act and the Rules framed thereunder.

8. The learned Senior counsel for the appellants would also submit that the civil Court's jurisdiction is not completely barred despite the provision as contained in the Act when the action which is put to challenge, is a nullity and suffered from jurisdictional error. In this connection, the learned Senior counsel would rely on a decision of the Hon'ble Supreme Court reported in "1993 (3) SCC 161 (Shiv Kumar Chadha versus Municipal Corporation of Delhi and others, etc.). In this case, the Hon'ble Supreme Court has held that even though the Dehli Municipal Corporation Act, 1957 provides for bar of jurisdiction, the suit questioning the order would be maintainable on the ground of jurisdictional error. The learned Senior counsel would draw the attention of this Court to para no.29 of the decision, which is extracted herein:

"29. It is well-known that in most of the cities building regulations and bye-laws have been framed, still it has been discovered that constructions have been made without any sanction or in contravention of the sanctioned plan, and such constructions have continued without any

intervention. There cannot be two opinions that the regulations and bye-laws in respect of buildings, are meant to serve the public interest. But at the same time it cannot be held that in all circumstances, the authorities entrusted with the demolition of unauthorised constructions, have exclusive power, to the absolute exclusion of the power of the Court. In some special cases where "jurisdictional error" on the part of the Corporation is established, a suit shall be maintainable. According to us:

(1) The Court should not ordinarily entertain a suit in connection with the proceedings initiated for demolition, by the Commissioner, in terms of section 343 (1) of the Corporation Act. The Court should direct the persons aggrieved to pursue the remedy before the Appellate Tribunal and then before the Administrator in accordance with the provisions of the said Act.

(2) The Court should entertain a suit questioning the validity of an order passed under section 343 of the Act. only if the Court is of Prima facie opinion that the order is nullity in the eyes of law because of any "jurisdictional error" in exercise of the power by the commissioner or that the order is outside the Act."

9. The learned Senior counsel would also rely on a decision of the Hon'ble Supreme Court reported in "(1994) 4 SCC 422 (Krishan Lal versus State of J & K)", wherein, he would draw the attention of this Court to paragraph nos.9 and 10, which are extracted hereunder:

9. Shri Mehta contends that as provision of section 17(5) of the Act was held to be mandatory by a Full Bench of Jammu & Kashmir High Court in State of Jammu & Kashmir v. Abdul Ghani Patwari, AIR (1979) J & K 17, the dismissal order has to be regarded as nullity. This submission is buttressed by referring to one of the illustrations given in paragraph 13 of Shikar Chand's case, which is that if a statute were to grant permission to a landlord to sue tenant after issuance of notice, non-issuance of the notice would render the impugned order completely invalid. It is urged that section 17(5) of the Act having provided:-

"After the Commission submits its recommendation and after the Governor arrives at a provisional conclusion in regard to the penalty to be imposed, the accused shall be supplied with the copy of proceedings of the inquiry and called upon

to show cause by a particular date why the proposed penalty should not be imposed upon him. (emphasis supplied)

the order of dismissal passed without supplying copy of the proceedings of the inquiry, which provision was held as mandatory in the aforesaid Full Bench, has to be regarded as invalid; and so. because of what was stated by the Constitution Bench in Ram Swarup's case, civil court's jurisdiction cannot be held to have been barred.

10. In support of his submission, Shri Mehta has also relied on Shiv Kumar Chadha v. Municipal Corporation of Delhi, [1993] 3 SCC 161, in which a three-judge Bench of this Court speaking through N.P. Singh, J., while examining the question of bar of civil courts' jurisdiction because of the provision contained in Delhi Municipal Corporation Act, 1957, held that the order being nullity in the eye of law, the same amounted to "jurisdictional error" because of which civil courts' jurisdiction was not barred as the impugned order was outside the Act."

10. In the above case also, the Hon'ble Supreme Court has held that when an order being a nullity in the eye of law, the Civil Court's jurisdiction is not barred. The learned Senior Counsel would also rely on the judgment of this Court passed by a learned Single Judge in S.A.No.1083 of 2011, dated 26.08.2011, wherein, the learned Single Judge has held in paragraph nos.7 and 9 as under:

"2. The respondent/ plaintiff filed a suit for damages for a sum of Rs.3, 00,000/- towards compensation. The case of the respondent/ plaintiff was that the respondent was allotted the Tenement by the appellant Board on 31.3.1987 and the Tenement is in the 3rd Floor and the respondent/ plaintiff is occupying the building along with her husband and children. The appellant did not provide any parapet wall despite the requests made by the occupants and on 12.11.1995 when the respondent's husband was taking water to his house at 3rd Floor he had fallen from the 3rd Floor as there was no parapet wall and died on the spot. Therefore, the respondent claimed compensation from the appellant and though the appellant promised to give compensation, they have not paid the compensation and the respondent/ plaintiff was given appointment on compassionate ground and that was also terminated later. Therefore, the suit was filed for compensation.

3. The appellant contested the suit stating that the suit is not maintainable as per Section 65 of the Tamil Nadu Slum Areas (Improvement and Clearance) Act, 1971. It was further stated that there was no negligence on the part of the appellant and the occupants were directed to vacate the Tenements considering the condition of the building for the purpose of effecting repairs and the respondent refused to vacate and the husband of the respondent was also a alcoholic and while he was in a drunken mood he had fallen from the 3rd Floor and therefore the appellant was not liable to pay compensation.

4. The trial Court awarded the compensation of Rs.2,50,000/- holding that the appellant was responsible in not maintaining the property in good condition and the appellant has also admitted that the parapet wall and the building were in a very bad condition and the appellants have not proved that the deceased was in a drunken mood when he had fallen from the 3rd Floor and therefore the appellant is liable to pay compensation. The trial Court relied upon the Judgement reported in 1996 (4) SCC page 332, (Poonam Verma v. Ashwin Patel and others), to award the compensation of Rs.3,00,000/-. The trial Court further held that Section 65 of the Tamil Nadu Slum Areas (Improvement and Clearance) Act, 1971 is not a bar for filing a suit for compensation. The lower appellate Court also confirmed the Judgement of the trial Court after independently appreciating the oral and documentary evidence. Hence, the Second Appeal.

5. The learned counsel for the appellant submitted that under Section 65 of the Tamil Nadu Slum Areas (Improvement and Clearance) Act, 1971, no Civil Court shall have jurisdiction in respect of any matter which the Government are, or the prescribed authority is empowered under the Act to determine and no injunction shall be granted by any Court or other authority in respect of any action taken in pursuance of any power conferred by or under this Act and submitted that as per Section 65 of the said Act, the suit is not maintainable. He further submitted that the compensation awarded is on the higher side and considering the income and age of the deceased and the fact that the respondent was given employment on compassionate ground, the Courts below ought to have awarded a lesser amount of compensation and the award of compensation of Rs.2,50,000/- is on the higher side.

"6.

"7. On the above submissions, the following substantial questions of law arise for consideration in the Second Appeal:

(1) Whether the suit is barred under Section 65 of the Tamil Nadu Slum Areas (Improvement and Clearance) Act, 1971 ?

(2) Whether the compensation awarded is on the higher side ?

"8.

9. According to me, a reading of Section 65 of the said Act, it is made clear that only in respect of matters for which the provision is made under the Act the Civil Court Jurisdiction is barred and in respect of claim of compensation there is no provision in the Act by which the authorities are competent to grant any compensation. Hence, Section 65 of the said Act is not a bar for filing a suit for compensation for tortious act committed by the appellant. Hence, the substantial question of law No.1 is answered against the appellant."

11. The learned Senior counsel would submit that all these case laws would clearly support his submissions that when the impugned action/order is questioned as being non-est in law, the civil Court's jurisdiction cannot be ousted at all despite a specific bar in the enactment. When the action is being questioned which action does not fall within the frame work of the enactment, the provision Section 65 in the enactment providing for a bar of civil Court's jurisdiction cannot be pressed into service in order to non suit the plaintiffs.

12. The learned Senior Counsel would sum up that as far as the merits of the plaintiff's claim is concerned, the trial Court has found everything in favour of the plaintiffs, and but for the legal objection, the Court below would have allowed the plea of the plaintiffs. However, in view of the decision of the Ho'ble Supreme Court of India and also by the learned Judge of this Court as cited supra, the legal objection which was raised on behalf of the first and second defendants have to be discountenanced and in which case, the learned Senior counsel would submit that that the plaintiffs are entitled to the relief as prayed for by them in the Original Suit.

13. Per contra, the learned counsel appearing for the defendants 1 and 2, namely, the Tamil Nadu Slum Clearance Board would submit that under the Tamil Nadu Slum Clearance Board (Control and Management of Properties) Rules, 1971, the allotment of Plots, tenement buildings would fall entirely within the domain of the Chairman of the Board with reference to Rule 3 of the Rules. Therefore, the Chairman has the authority

to allot and re-allot or modify the allotment. The learned counsel would also submit that under Rule 9 of the said Rules, an appeal is provided. He would also submit that both the Courts below were right in accepting the legal objection in regard to bar of jurisdiction provided under Section 65 of the Act. A similar provision of appeal is also provided in the principal Act, under Section 59. The Courts below have understood the Scheme of the Act and Rules and held that when there is an explicit bar as provided under the statute which admittedly governed the allotment, the question of entertaining the suit does not arise at all. Therefore, he would submit that the judgment and decrees of the both the Courts below are in furtherance of the provisions of the Act and no infirmity could be found.

14. Mr. Ashok Menon, learned counsel who appeared for the third respondent/third defendant would submit that since the third defendant had been living for a considerable time in the same plot along with the plaintiffs, she was entitled to be considered for allotment along with the plaintiffs and recognizing her long occupation, the Board has sub-divided the plot and granted a portion of the plot to her and there was nothing wrong in such allotment. The learned counsel would rely on a decision of this Court, wherein, a learned Judge of this Court in S.A.No.803 of 2008 dated 24.04.2009, in paragraph nos.7, 11 & 12 has held as under:

7. Section 65 of the said Act would run thus:

"Section 65: Bar of jurisdiction of civil Courts. - Save as otherwise expressly provided in this Act, no civil court shall have jurisdiction in respect of any matter which the Government are, or the prescribed authority is, empowered by or under this Act, to determine and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act."

A plain reading of the above would display and demonstrate that it ousts the Civil Court's jurisdiction in respect of proceedings taken and orders passed by the authorities concerned.

8. to 10.

11. It is a pathetic case in which without obtaining such permission, the plaintiff litigated all along. However, during the pendency of the suit, an Advocate Commissioner was appointed, who visited the suit property, measured it and located that the defendant encroached into the suit property. The trial Court also observed that

objection was not filed to the Commissioner's report. The first appellate Court also confirmed the same. In such a case, there is absolutely no substantial question of law involved relating to the finding of fact arrived at by both the Courts below, based on appreciation of evidence, in giving the finding that the defendant is in illegal occupation of a portion of the suit property. However, in view of the fact that the suit was not properly instituted after obtaining permission, necessarily this Court has to interfere in second appeal, in view of having decided the additional substantial question of law that the suit is not maintainable. It is an example as to how even though the plaintiff having got a good case, failed before the Courts below because of the non-compliance with the obtention of mandatory prior permission, before instituting the suit. Such Sections 29 and 65 of the Act cannot simply be taken as pettifogging bureaucratic procedure, but those sections 29 and 65 are based on sound principles of law.

12. This is a case in which there is nothing to highlight that the plaintiff has become the absolute owner of the suit property and in such a case, she could have very well approached the authority for removal of the encroachment made by the defendant. Accordingly this second appeal is allowed setting aside the judgements and decrees of the trial Courts below and the original suit is dismissed with a direction that the plaintiff is at liberty to approach the appropriate authority under the Slum Clearance Board within a period of one month from the date of receipt of copy of this order, whereupon within a period of three months thereat, the authority concerned, without questioning about its own jurisdiction to interfere with the matter, shall take up the matter and after hearing both sides, as per Rules, dispose of the matter, as per law. No costs. Consequently, connected miscellaneous petition is closed."

15. According to the learned counsel, the above Ruling of the Hon'ble Judge of this Court would be a pointer in regard to clear bar as envisaged in the Act and therefore, the judgments and decrees of the Courts below need not be interfered with.

16. This Court has considered the submissions of Mr.M.K.Kabir, learned Senior counsel for the appellants /

plaintiffs, Mr.Rajasekar, learned counsel for the Board and Mr.Ashok Menon, learned counsel for third respondent.

17. The task of this Court in deciding this Second Appeal is rather simple and straight forward. This Court has to see whether the decisions cited on behalf of the plaintiffs can be applied to the factual matrix of the present case and if so, what is the effect of its application.

18. The plaintiffs have gone before the trial Court questioning the action taken by the Board in sub-dividing the Plot, which was admittedly allotted only to the first plaintiff, who is no more, to be enjoyed by his legal heirs, who are the plaintiffs 2 to 5. When the allotment was made and the terms of the allotment had been duly complied with by the plaintiffs, factually, the Board was bound to issue patta and execute the sale deed in favour of the plaintiffs, when the installments were completed admittedly in the year 1993, which fact was also not denied by the Board, non-issuance of patta and non-execution of the sale deed was without any legal justification. Over and above, the action of the Board in sub-dividing the Plot in order to give a portion of the plot in favour of the third defendant that too without cancelling the allotment granted to the plaintiffs and without any payment received from the third defendant was mala fide exercise of power and such power could not have any source in the main frame work of the Act and the Rules framed therein. In fact, when this Court confronted the learned counsel appearing for the Board as to under what Section or Rule, the authority had the power to modify the allotment once the terms of the allotment were complied with by the plaintiffs successfully, there was no answer at all. Therefore, it boils down to simple conclusion that the sub-division of the Plot in order to favour the third defendant, was, in fact, abuse of power even assuming such power was vested in the authority. Therefore, the plaintiffs were constrained to approach the civil Court for seeking redressal of their grievance by resorting to common law remedy. The objections regarding Sections 59 and 65 of the Act regarding appeal being provided and the bar of jurisdiction are not to be countenanced when the decisions of the Hon'ble Supreme Court are to be applied to the factual matrix of the present case. When an action of this nature, which in the opinion of this Court, falls completely out side the realm of the Act, Sections 59 and 65 have no application at all. When an appeal remedy is provided, which presupposes an order to be passed within the frame work of the Act but when the decision was taken out side the frame work of the Act, the question of resorting to appeal remedy did not arise so was the application of Section 65 which provides for a bar of civil Court's jurisdiction. When the decision of the Board suffers from a complete illegality, it becomes non-est in the eye of

law. In the said circumstances, it was entirely within the right of the plaintiffs to maintain the suit as the decision which was under challenge was clearly a nullity and therefore, suffered from jurisdictional error. The two decisions of the Hon'ble Supreme Court (cited supra) relied on by the learned Senior Counsel would undoubtedly fortify his legal objections to the judgments and decrees of the Courts below, dismissing the suit and appeal as not maintainable.

19. Although, on behalf of the Board, it is pleaded that the Board has a right to re-allot, modify etc., but such power cannot be exercised arbitrarily impinging upon the Constitutional right of the citizens. When the plaintiffs have been granted allotment in terms of the governing Rules and Regulations and in the absence of any violation to the terms of the allotment made in favour of the plaintiffs, the Board cannot take any action or decision defeating the rights of the allottee by favouring a party who is not otherwise entitled to allotment at all. Such decision on the part of the Board to favour the third defendant, to say the least, is brazenly tainted with mala fides. In the face of such mala fide decision, it was quite strange that the Board has taken a legal objection to the maintainability of the suit in order to non-suit the plaintiffs backed by legitimate claim and with a view to favour the illegitimate claim of the third defendant.

20. Laws are not made or enacted for defeating the legitimate claim of the citizens, and correspondingly conferring undue benefits on the citizens who are in fact dis-entitled to such benefits. The laws or rules need to be understood in specific context in which they operate and there cannot be a straight jacket approach in applying the bar of jurisdiction. Such straight jacket application would inevitably lead to miscarriage of justice and the Courts cannot take refuge under the rigors of law to help injustice to prevail. In such circumstances, the Courts need to look at the issue with larger perspective and to ensure that the fairness and justice do not become causality by application of any particular provision. The Courts below need to rise up to the occasion and ensure that any action of the State which is patently arbitrary or mala fide opposed to fair play, such action need to be confronted with by interference with such action than to meekly surrender its jurisdiction under the garb of existence of bar in the enactment. The Hon'ble Supreme Court's decisions referred to above, which in the opinion of this Court, would clinch the issue in favour of the appellants herein.

21. For all the above said reasons, the Second Appeal is allowed and consequently, the Judgment and decree dated 17.07.2007 passed in A.S.No.441 of 2005 by the learned

Additional District Judge, Fast Track Court-II, Chennai as well as the judgment and decree dated 18.11.2003 passed in O.S.No.5809 of 1996 by the learned First Assistant Judge, City Civil Court, Chennai are hereby set aside and the Original Suit in O.S.No.5809 of 1996 is decreed as prayed. The parties shall bear their own costs.

-s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

dn
To

1.The Additional District Judge,
Fast Track Court-II, Chennai

2.The First Assistant Judge,
City Civil Court, Chennai

3.The Section officer
VR Section
High Court, Madras 104.

+1 CC to Mr.M.Rajasekar, Advocate sr 18977

+1 Cc to Mr.A.Dhiraviyanathan, Advocate sr 18917

+1 Cc to Mr. Ashok Menon, Advocate sr 19576.

S.A.No.499 of 2009

NMI (CO)
SP(11/11/2020)

सत्यमेव जयते

WEB COPY