

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.01.2020

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THE HONOURABLE Mr.JUSTICE K.KALYANASUNDARAM

S.A.No.1008 of 2019
and and CMP.No.21645 of 2019

G. Mariyammal

...Appellant

Vs.

1. Mrs. Lakshmi
2. T. Shanmugam
3. The Chairman,
Tamil Nadu Slum Clearance Board,
Chennai.

... Respondents

Second Appeal filed under Section 100 of the Code of Civil Procedure to set aside the judgment and decree dated 13.02.2019 in A.S.No.265 of 2017 on the file of V Additional City Civil Court at Chennai, confirmed the Decree and Judgment passed in O.S.No.950 of 2014 dated 22.09.2017 on the file of XVIII Assistant City Civil Court at Chennai.

For Appellants : Mr.T.P.Sekar
For Respondents : No appearance

JUDGMENT

This appeal is directed against the judgment and decree of V Additional City Civil Court, Chennai made in A.S.No.265 of 2017 and confirming the judgment of the Trial Court passed in O.S.No.950 of 2014.

2. The unsuccessful plaintiff is the appellant herein. She is the daughter of respondents 1 and 2. The suit property was allotted in favour of the first respondent by the 3rd respondent in the year 1984. It is the case of the plaintiff that originally the 1st defendant had put up a small hut and after marriage of the plaintiff in the year 1987, defendants 1 and 2 have shifted their residence to Andhra Pradesh. Since then, the plaintiff and her husband are residing therein. It is further contended that the property was totally damaged and the plaintiff, by spending Rs.50,000/-has put up new construction in

the year 1995. On 10.02.2014, defendants 1 and 2 attempted to dispossess the plaintiff. Hence she instituted the suit for permanent injunction restraining the defendants 1 and 2 from dispossessing the plaintiff and restraining the 3rd defendant from executing and registering the sale deed in favour of the 1st defendant.

3. In the written statement filed by the 1st defendant, it is stated that the first defendant is allotted with the suit property and the defendants 1 and 2 have constructed their own house and they are residing therein. It is further stated that out of love and affection, the 2nd defendant had purchased the adjoining plot No.77 in favour of the plaintiff and permitted her to put up construction. Taking advantage of the same, the plaintiff is disputing the right of the 1st defendant and prays for disposal of the same.

4. Both the parties have let in oral and documentary evidence in support of their case. After considering the evidence, the Trial Court dismissed the suit, which was confirmed by the First Appellate Court. Aggrieved over the same, the plaintiff has come up with this appeal.

5. Mr.T.P.Sekar, learned counsel for the appellant would submit that the appellant/plaintiff has proved that she has put up construction in the year 1985 and residing in the property since 1987, but the Court below, without considering the material, evidence, non suited the plaintiff and hence findings are liable to set aside.

6. In the case on hand, it is not disputed that the 1st defendant was the allottee of the suit property by the Slum Clearance Board. It is equally not disputed that the appellant/plaintiff had purchased the adjoining plot No.77 and she is residing therein. Relationships of the parties is admitted. Ex.A4 to Ex.A8 were relied on to establish that the plaintiff is in possession of the suit property since 1987. It is the case of the 1st defendant, the plaintiff is the permissive occupant of the suit property. Exs. B1 to B7 have been marked on the side of the 1st defendant to show that she is the allottee of the suit property and the building was constructed by her after obtaining permission from Tamil Nadu Slum Clearance Board and she was residing therein.

7. Though the plaintiff has proved that the defendants 1 and 2 have temporarily shifted their residence to Andhra Pradesh, the Courts below have rightly held that cannot be a ground to grant decree in favour of the appellant/plaintiff.

8. On a perusal of the judgments, it is evident that both Courts below considered the evidence independently and have rightly rejected the case of the plaintiff. Therefore, in my considered opinion no ground is made out warranting interference in the concurrent findings of the Courts below. In fine, the second appeal fails and the same is dismissed. No costs. Connected miscellaneous petition is closed.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

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To

1. The V Additional City Civil Court,
Chennai.
 2. The XVIII Assistant City Civil Court.
Chennai.
- +1 CC to Mr.T.P.Sekar, Advocate sr 865.

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SS (CO)
SP (09/09/2020)

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