



IN THE HIGH COURT OF JUDICATURE AT MADRAS

15.06.2021

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

S.A.Nos.1575 and 1576 of 2010
and
M.P.No.1 of 2012

Saroja ...Appellant in S.A.Nos.1575
and 1576 of 2010
Vs.

1. V. Gunasekaran .. 1st respondent in
S.A.No.1575 of 2010
.. 2nd respondent
in S.A.No.1576 of 2010

2. The Chairman,
Slum Clearance Board,
No.5, Kamarajar Salai,
Chennai - 600 005.
.. 2nd respondent
in S.A.Nos.1575 of 2010
.. 1st respondent
in S.A.Nos.1576 of 2010

PRAYER: Second Appeal filed under section 100 of the Civil Procedure Code against the judgement and decree of the II Additional City Civil Court, Chennai (Incharge III Additional City Civil Judge, Chennai) passed in A.S.Nos.54 and 55 of 2009, dated 23.07.2010 confirming the judgment and decree of the III Assistant City Civil Court, Chennai in O.S.Nos.6956 and 6209 of 1998 respectively dated 1.08.2008.

For Appellant : Mr. N. Rajan

For Respondents : Mr. N. Sankaravadivel for R1
Ms. D. Latha for R2

C O M M O N JUDGEMENT

The above Second Appeals are filed challenging the concurrent judgements and decree of the Courts below.

2. When the above appeals had come up for admission on



04.02.2011, this Court had directed notice to the respondents. The respondents have also entered appearance in the matter.

3. Considering the fact that the above appeals arise in respect of two suits in which the parties and the facts are the same, though the suit properties are adjacent properties, a common judgement is rendered.

Second Appeal 1575 of 2010

4. Second Appeal 1575 of 2010 arises in respect of the suit O.S.No.6956 of 1998. The first respondent herein is the plaintiff in the said suit. The suit has been filed for a bare injunction in respect of the property bearing No.92/2, Plot No.489 Kabali Vanabojana Thottam, Raja Annamalaipuram, Chennai -28 measuring an extent of 88 Sq. metres or 947 Sq. feet consisting of house and ground.

5. The first respondent would contend that he is the absolute owner of this property having purchased the same from one Vembuli Gramani under a sale deed dated 10.03.1988. The property in question and the adjacent properties belong to the second respondent herein namely the Tamil Nadu Slum Clearance Board. After the purchase, the second respondent has also recognised that the first respondent is the allottee of the suit property and also allotted the same in his favour.

6. The first respondent would submit that he has been in exclusive enjoyment of the same which includes a passage abutting Plot No.487. The right is being recognised in the allotment order dated 03.03.1996 of the second respondent.

7. The appellant herein is merely in occupation in Plot No.487 which is situate to the north of the suit property. The access from the street in respect of both plot Nos.487 as well as the suit property was through the passage situate to the east of Plot No.487. The plaintiff would submit that he is in possession of this property in Plot No.489 by putting up a construction which includes a toilet and a latrine.

8. The case of the first respondent is that without any semblance of right, the appellant was attempting to open out a door way on the southern side of the property to access the toilet and the latrine. This was an illegal action and the first respondent had filed a police complaint. Further the appellant was also attempting to get a re-allotment of the suit property in her favour. Therefore, considering the fact that she enjoyed considerable political cloud, the first respondent



had no other option but to approach this Court.

9. The appellant had resisted the above suit inter alia contending that Plot No.487 was allotted by the second respondent to one Selvaraj on 04.12.1982 and Plot No.489 was allotted to Vembuli Selvaraj's elder brother.

10. The appellant would contend that Plot No.487 measures 42 square metres whereas Plot No.489 measures an extent of 59 square metres. It is her case that she had purchased the superstructure with all its rights on 13.03.1997 from the legal representatives of the said Selvaraj.

11. The appellant would contend that the first respondent had only purchased 59 square metres and could therefore not lay any claim to the vacant area to the east of Plot No.487. The appellant would further contend that the bathroom and the toilet belong to her vendor over which the first respondent had no right.

12. The appellant would further submit that she has absolute owner of Plot No.487 and she is entitled to fix any window or door in the wall and the first respondent had no locus standi to curtail this right.

Second appeal 1576 of 2010

13. The second appeal 1576 of 2010 arises from out of the suit O.S.No.6209 of 1998 filed by the appellant herein against the respondents herein in respect of the property measuring an extent of 42 sq. metres of land in Plot No.487 bearing door No.92/2 together with the passage and an extent of 5.0/5.4 Square metres of land in Plot No.488, K.V.B Garden, Chennai -28.

14. The brief facts on which this suit has been initiated by the appellant are as follows:

The property bearing Plot No.487 was owned and possessed by one Selvaraj to whom the same had been allotted on 13.06.1981. There was an open space on the rear side of the property. The original allottee had died leaving behind surviving his wife and three sons who were not in a position to repay the instalments due to Tamil Nadu Slum Clearance Board. Therefore, in order to discharge their debts they had sold the superstructure along with the lease hold right over the land for a value consideration on 30.09.1997 to the plaintiff and a power of attorney was also simultaneously executed. The General Power of Attorney was also got registered.



15. It is the case of the appellant that she had paid the arrears to the second respondent which was payable by deceased Selvaraj and the plaintiff had also occupied the vacant land on the rear side of Plot.No.488. Therefore, it is the case of the plaintiff that in addition to 42 square meters in Plot No.487 the appellant was also in enjoyment of the excess land of about 10*15 square feet.

16. The appellant would contend that despite her request to the second respondent to allot the vacant place in her favour, the same was not being allotted to her and on the contrary, the defendant instead of using the lane on the South of Plot No.477, had trespassed into the schedule mentioned plot. Therefore, the plaintiff is entitled to close the entrance and raise a compound wall in between Plot Nos. 487 and 489 to avoid future complications.

17. The appellant would also submit that she is in enjoyment of the Plot No.488 measuring 150 Square feet. The appellant would further contend that if Plot No.488 is allotted to some third party, it would cause hardship to the appellant.

18. The defendant has resisted this suit by inter alia contending that he purchased Plot No.489 which included the passage measuring 4 feet*40 feet from one Vembuli Gramani under a sale deed dated 10.03.1988. The Tamil Nadu Slum Clearance Board has recognised the first respondent as the allottee of Plot No.489 and the same has been allotted on 03.07.1996. The first respondent would submit that his access to his property was through the passage to the east of Plot No.487.

19. The case of the defendant is that the appellant using her political cloud was attempting to take over all the properties in and around Plot No. 487. He would also question the Locus of the plaintiff in filing the said suit. Both the suits were jointly tried and a common judgment has been passed by the learned III Assistant City Civil Court, Chennai.

Trail Court:

20. The Learned Trial Judge has rendered a finding that the appellant had no right to claim that she is the owner of the property especially when Ex.A1, General Power of Attorney has been given to her only to maintain the property. The learned Judge has further observed that the claim of the appellant that she has purchased the property is an utter falsehood. In fact, the Power of Attorney obtained by the appellant from the legal representatives of Selvaraj was itself questionable since no



proof has been let in to prove the death of Selvaraj. In fact, the appellant was not even able to give the date of death of the said Selvaraj. Ultimately the suit filed by the appellant in O.S.No.6209 of 1998 was dismissed and the Court decreed the suit filed by the first respondent who had proved his possession by filing the allotment letter and other documents issued in his favour.

Appellate Court:

21. The appellant therefore challenged the judgment and decree by filing A.S.No.54 of 2009 against the judgment and decree in O.S.No.6209 of 2018 and A.S.No.55 of 2009 against the judgment and decree in O.S.No.6209 of 1998 before the III Additional, City Civil Court, Chennai.

22. A defense had been taken by the first respondent that the suit was hit by Section 65 of the Tamil Nadu Slum Area (Improvement and Clearance Act, 1971), hereinafter referred to as the 'Act'. This plea has been upheld by the Trial Court and confirmed by the Appellate Court.

23. The appellate Court dismissed these appeals against which the present Second Appeals have been filed.

Submissions:

24. Mr. N. Rajan, learned counsel appearing on behalf of the appellant would strenuously contend that the first respondent was only allotted an extent of 59 square metres and not 88 Square meters as set out by the first respondent. Further the appellant has been in possession of the property in Plot No.487 which included the vacant site. He would draw the attention of the Court to the sketch which has been marked as Ex.B8 to contend that the first respondent had an access to his property through the passage on the western side and therefore there was no necessity for the first respondent to have access through the passage on the eastern side.

25. He would further argue that the findings of the Courts below that the suit is barred by Section 65 of the Act is not correct since the appellant would come within the definition of occupier, under the Slum Clearance Act as defined in Section 1 (g) of the said Act. It is his argument that once the appellant is held to be an occupier the findings of the Courts below become erroneous. He would also further submit that the appellant may be permitted to make an application before the prescribed authority for allotment of the suit property in the name of the appellant and on such application being made, they



shall consider the same taking into account the admitted fact that the Appellant is in possession of the said property.

26. Per contra, Sankaravadivel, learned counsel appearing on behalf of the first respondent would submit that the first respondent has been allotted an extent of 88 square metres in Plot No.489 which includes the access to the street. The appellant was only allotted 42 square metres and the vacant site abutting the said plot was not allotted to the appellant.

27. He would also draw the attention of the Court to the admission of the appellant wherein the appellant has submitted that the original allottee of Plot No. 487 Selvaraj is residing elsewhere and that she does not know whether the Power of Attorney has been given by legal heirs stating that he is no more. The appellant has admitted that she is not aware as to whether Selvaraj is no more. From the deposition of P.W.1 the learned counsel would submit that it is clear that the Power of Attorney obtained by her is without authority.

28. He would further submit that the appellant has not only occupied Plot No.487 but also Plot No.488 and Plot No. 477 which is situate to the north of Plot Nos.487 and 488, allotted to the appellant's husband.

29. He would contend that allotments of the plots by the Slum Clearance Board is only to persons having no property. He would further contend that the appellant does not have the locus standi to even sustain the suit as she seeks to make out a claim which has not been authorised under the Power of Attorney under which she claims possession of the suit property in O.S.No.6209/1998.

30. He would submit that no substantial question of law has been made out and this Court cannot re-appreciate the findings of the Courts below.

31. Heard the counsel and perused the records.

Discussion:

32. The appellant has traced her right to the suit property on the basis of Ex.A1, Power of Attorney dated 13.03.1997. The schedule of property consists of 3 pieces of property, though all the three pieces have been jointly referred to as the schedule of property.

33. The appellant has sought for a permanent injunction



with reference to the 42 square meters of land in Plot No.487 and Mandatory injunction to direct the first respondent herein to allot Plot No.488 measuring 5.0* 5.4 square meters (I.E.250 Square feet 10*15) and a passage.

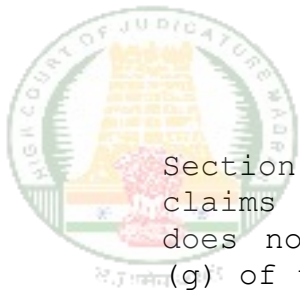
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34. The appellant's case is that she had purchased the property comprised in Plot No.487 from the legal representatives of original allottee Selvaraj and was put in possession of the same on the same date and a registered Power of Attorney was executed in her favour.

35. A perusal of the Power of Attorney would indicate that under this deed the appellant was directed to maintain the property comprised in Plot No.487, lease the same to third parties and collect the advance and rent from such tenants. The deed very clearly specifies that no consideration was passed under the deed.

36. Under this Power of Attorney, the principals have clearly stated that the sale deed in respect of the property has to be made only in their name. Therefore, a perusal of Clause 12, of Ex. A.1 clearly shows that the appellant is not the owner of the property and therefore the contention of the appellant that the property has been sold to her is an utter falsehood.

37. Under the Power of Attorney, only an extent of 42 Square meters in Plot No.487 is the subject matter of the deed. Therefore, the appellant cannot seek to expand the claim to include the passage or the adjacent plot No.488 on the strength of Ex.A1, Power of Attorney. As regards the contention that the first respondent is only entitled to 57 Square meters, both the Courts below, on perusal of the documents, held that the first respondent has been allotted an extent of 88 square meters and there is no proof on the side of the appellant to show that the first respondent was only entitled to 57 square meters. The appellant has included the property in Plot No.488 in the suit O.S.No.6209 of 1998 in which the first respondent has no interest and there is no cause of action pleaded for the said relief. Therefore, the contention of the counsel for the appellant that this Court should give liberty to the appellant to approach the authority is totally baseless. Both the Courts below have appreciated the evidence, both documentary and oral, and gave their findings. This court does not find any ground to interfere with the same. Further, the appellant has not made out any question of law, much less a substantial question of law. The argument of the learned counsel for the appellant that the appellant should be treated as an occupier as defined under



Section 1 (g) of the Act is absolutely puerile. The appellant claims a right only on the basis of a Power of Attorney. She does not come into any of the category listed under Section 1 (g) of the Act.

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38. The Second Appeals are therefore dismissed. Consequently, connected Miscellaneous Petition is closed. No costs.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

mrn

To

- 1.The II Additional City Civil Court,
Chennai
(Incharge III Additional City Civil Judge, Chennai)
- 2.The III Assistant City Civil Court,
Chennai

+2cc to Mr.N.Sankaravadivel, Advocate SR.No.27490

S.A.Nos.1575 and 1576 of 2010
and
M.P.No.1 of 2012

MG (CO)
GN (26/11/2021)