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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.03..2021

CORAM :

THE HONOURABLE MR.JUSTICE KRISHNAN RAMASAMY

S.A.No.211 of 2021  
& CMP.No.4212 of 2021

Rajaraman

... Appellant/Plaintiff

Versus

The Commissioner,  
Nagapattinam Municipality,  
No.536, Public Office Road,  
Nagapattinam - 611 001.

... Respondent/Defendant

Second Appeal is filed under Section 100 of the Civil Procedure Code, to set aside the Judgment and Decree passed in A.S.No.12 of 2016 dated 09.07.2020 by the Sub Court, Nagapattinam, confirming the Judgment and Decree passed in O.S.No.136 of 2011 dated 21.01.2016 by the District Munsif Court, Nagapattinam and allow the prayer in Original Suit in O.S.No.136 of 2011 on the file of the District Munsif Court, Nagapattinam as prayed for.

For Appellant : Mr.R.Suryakumaran

#### J U D G M E N T

This second appeal has been filed to set aside the Judgment and Decree passed in A.S.No.12 of 2016 dated 09.07.2020 by the Sub Court, Nagapattinam, confirming the Judgment and Decree passed in O.S.No.136 of 2011 dated 21.01.2016 by the District Munsif Court, Nagapattinam and allow the prayer in Original Suit in O.S.No.136 of 2011 on the file of the District Munsif Court, Nagapattinam.

2.The main contention of the learned counsel appearing for the appellant is that the appellant was working as a Sanitary Supervisor at Nagapattinam Municipality, while he was working, by virtue of the allotment dated 27.06.1995, the suit schedule property was provided for his accommodation on rental basis. He submitted that by virtue of G.O.Ms.No.730, Rural Development and Local Administration Development dated 14.04.1976, if any of the employees are willing to purchase the house, the said house will be sold to the said resident of the house. Therefore, he has



made an application based on the G.O.Ms.No.730, to sell the property to the appellant herein and subsequently, he made a request to the respondent to sell the property.

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3. Further the learned counsel appearing for the appellant submitted that there are 16 houses in his building. The respondent Municipal Corporation through its Resolution No.76 dated 19.08.1978 and Resolution No.321 dated 09.07.1981 had passed a resolution to sell 8 houses out of 16 houses constructed under the Low Income Group Housing Scheme to the occupant Municipal employees. Later, by virtue of G.O.Ms.No.1470, Rural Development and Local Administration Development dated 16.10.1981, eight houses were sold to the resident of the said houses and the balance eight houses were retained with the employees of the respondent, since the appellant is residing from the year 1995 to till 2009 and he is certainly entitled for the property by virtue of G.O.Ms.No.730, dated 14.04.1976.

4. Further the learned counsel appearing for the appellant submitted that he is entitled to the suit schedule property and the said suit schedule property was leased out to him on 27.06.1995, whereas respondent had taken a decision not to sell the built-up houses to the resident of the Municipality employees, since there was a shortage to accommodate the persons those who are working in the Municipality Corporation, vide Letter No.183 issued by the Municipal Administration and Water Supply Department on 21.07.1997.

5. The appellant's case is that he occupied the house in the year 1995, by virtue of Letter No.183 dated 21.07.1997, there was a ban for prohibiting the respondent and other Municipalities from selling the assets. Therefore, the said ban will not be applied to the appellant. All these aspects were not considered by the courts below.

6. The learned counsel appearing for the appellant submitted that on the side of the appellant Ex.A1 to Ex.A13 were marked and on behalf of the respondent Ex.D1 to Ex.D11 were marked and on behalf of the appellant/plaintiff PW1 was examined and on behalf of the respondent/defendant DW1 was examined. Though the appellant has filed all the documents and established his case, both the courts below have not considered the appellant's case in a proper perspective, as he has joined the Municipal Corporation in the year 1995, as there was a ban in the year 1997, will not apply to the appellant/plaintiff.



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7. The learned counsel appearing for the appellant insist this court to admit this appeal on the following substantial question of law:

"1. Whether the First Appellate Court was right in dismissing the Appeal Suit in A.S. No. 12 of 2016 filed by the Appellant without considering the G.O.Ms.No.1740 dated 16.10.1981 passed by the Rural Development and Local Administration Department?

2. Whether the First Appellate Court was right in upholding the Judgment and Decree passed in O.S. No. 136 of 2011 dated 21.01.2016 passed by the District Munsif Court, Nagapattinam which held that G.O.Ms.No.1740 dated 16.10.1981 was passed by Rural Development and Local Administration Department and same could be superseded by a Letter No.183 Dated 21.07.1997 issued by the Municipal Administration and Water Supply Department?

3. Whether the Lower Courts erred in failing to consider the representation made by the Appellant before the Respondent on 1995 and rejecting the same on the basis of the Letter No.183, dated 21.07.1997, issued by the Municipal Administration and Water Supply Department ?

4. Whether the First Appellate Court erred by dismissing the Appeal A.S.No.12 of 2016 filed by the Appellant in light of the Judgment and Decree granted in O.S.No.57 of 2016 filed by M.Sheyamala Devi against the Respondent for a similar issue of facts before the same Trial Court?

5. Whether the Lower Courts ought to have considered the fact that there was no other house registered in the name of the Appellant or his family members and the Appellant was waiting for over 20 years to buy the house bearing Door No.14, Kamarajar Colony, Nagapattinam for any reasonable amount fixed by the Respondent?

6. Whether the Lower Courts failed to consider the fact that the Appellant has spent upwards of Rs.1 lakhs of his own funds for the upkeep and maintenance of the above said house and property?"

8. On perusal of the Judgment of the Courts below, it is found that the courts below have rejected the contention of the appellant to purchase the flat. The respondent sold some of the flats to the residents by virtue of the G.O.Ms.No.1740 dated 16.10.1981. Thus, the appellant made a request to the



respondent to sell the flats in the same way by virtue of G.O.Ms.No.1740 dated 16.10.1981.

9. However, on perusal of the Judgment and documents, it appears that there was a ban in the year 1997, with respect to the sale of properties to the resident, who are the Municipal employees, due to the reason that there was a shortage to accommodate the employees those who are working in the Municipal Corporation. The respondent rejected the application of the appellant/plaintiff by referring the letter No.183 dated 21.07.1997. However, the appellant had raised the issue that he has joined the Municipality in the year 1995 and the ban came into force only in the year 1997, therefore, he contended that the ban is with effect from 21.07.1997 and the said ban will not be applicable to the appellant, since he is in the occupation of the flat from the year 1995. However, the above said contentions were not considered by the courts below.

10. This Court is of the view that the ban was implemented in the year 1997, thereafter, the respondent can not sell any of the property to its employees. This ban will apply to all employees those who are accommodated with the respondent flats on rental basis as on the date of ban, irrespective of their possession of the respondent flat on rental basis either in the post ban or in the pre ban. These aspects were very well considered by the courts below and this Court does not find any irregularity in the decision making process on the part of the both the courts below. This Court also finds that there is no merit in this appeal and this Second Appeal deserves to be dismissed. Further, this Court does not find any substantial question of law to be raised as suggested by the learned counsel for the appellant.

11. In view of the above, this Second Appeal stands dismissed. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-  
Assistant Registrar(CS V)

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Sub Assistant Registrar



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- 1.The Sub Judge,  
Nagapattinam.
- 2.The District Munsif,  
District Munsif Court,  
Nagapattinam.

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srg 12/08/2021