



A.S.No.501 of 2016

**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

Reserved on :18.02.2022

Pronounced on : 01.03.2022

Coram::

**THE HONOURABLE DR. JUSTICE G.JAYACHANDRAN**

Appeal Suit No.501 of 2016

1. Murugesan,
2. Raja,

.. Appellants/Plaintiffs

**/versus/**

1. Subbaiah (died),
2. Munusamy,
3. Minor. Ravindran,
4. Minor. Suresh,

.. Respondents/Defendant

Appellants 1 & 2 and R2 LR of the deceased R1 viz.,Subbaiah, as per the memo dated 21.10.2021 vide Court order dated 02.11.2021 made in A.S.No.501 of 2016

**Prayer:** Appeal Suit has been filed under Section 96 C.P.C & read with Order XLI, Rule 1 of C.P.C., to set aside the judgment and decree dated 05.04.2016 made in O.S.No.5008 of 2014 on the file of XIX Additional District Judge, City Civil Court Chennai.



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For Appellants : Mr.N.A.Nissan Ahmed

For R2 to R4 : Mr.S.Sathish Rajan

\* \* \* \*

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

The unsuccessful plaintiffs are the appellants before this Court. The suit was for partition and delivery of separate possession of the suit property.

2. Before the Trial Court, the appellants contended that, in the year 1990, the Tamil Nadu Slum Clearance Board allotted the suit property to their mother Chinna Ponnu. The said Chinna Ponnu died on 27.11.1994 leaving behind the plaintiffs and the defendants 1 and 2 as her legal heirs. The first defendant is the father of the plaintiffs and the second defendant. On the demise of Chinna Ponnu, the suit property devolved on her first class legal heirs namely the plaintiffs and the two defendants at the ratio of  $\frac{1}{4}^{\text{th}}$  shares each. Being the husband and children of the deceased Hindu Female. The defendants 3 and 4 are the minor sons of the 2<sup>nd</sup> defendant. They are impleaded in the suit since, the first defendant on the death of his wife Chinna Ponnu, vide his letter dated 26/05/1999 sought for the transfer of allotment in his name and pursuant to his request, the sale deed was executed in the name of the first defendant on 03.12.2012. The first defendant in



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turn had settled the property in favour of the defendants 3 and 4, who are his grand children born to his son Raja the second defendant. Though the plaintiffs have contributed money for the purchase of the suit property and its development, the first defendant had created the sham and nominal settlement deed on 29.05.2013 in favour of the defendants 3 and 4, without the knowledge of the plaintiffs.

**3.** It is pleaded by the plaintiffs that the suit property is the property of their deceased mother. The first defendant cannot claim absolute right in the suit property. Only to usurp the property and dispossess the plaintiffs, the settlement deed dated 29.05.2013 was created. When the first defendant tried to dispossess the plaintiffs on 31.08.2014, the attempt was thwarted with the help of the well wishers. The first defendant cannot interfere with their peaceful possession and enjoyment of the suit property being the co-owners, entitled for  $\frac{1}{4}^{\text{th}}$  shares each.

**4.** In the written statement, the respondent refuting all the plaintiff averments. The suit property was originally allotted to the first defendant in the year 2000. The allotment was made to the persons, who were in possession of the



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property for a long time. The first defendant was in possession of the suit property since 1992 and put up construction during the year 1997. Hence, the Slum Clearance Board allotted the suit property to him. On such allotment, the first defendant paid the cost of the plot in instalments. On payment of entire cost, the Slum Clearance Board executed the sale deed in favour of the first defendant on 15.11.2012. The first defendant is the absolute owner of the suit property. The Tax for the suit property is assessed in the name of the first defendant. Electricity Service connection to the suit property is provided in his name. Out of love and affection, he has settled the suit property to his grand sons by way of a registered settlement deed dated 29.05.2013 and same is valid and enforceable.

5. The Slum Clearance Board never allotted the suit property to Chinna Ponnu as alleged by the plaintiffs. The allotment was made only in the year 2000, whereas, Chinna Ponnu died 6 years earlier to the date of allotment. The suit property was not in joint possession along with the plaintiffs, as alleged in the plaint. The first defendant was the absolute owner of the property and was in his enjoyment exclusively till the property was settled in favour of the defendants 3 and 4 out of love and affection. The said settlement deed is not a



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sham and nominal deed. The first defendant paid the entire sale consideration to the Slum Clearance Board and got the sale deed in his name. The plaintiffs did not contribute for the purchase of the suit property as claimed.

6. The following issues were framed by the Trial Court for consideration:-

(i). Whether the settlement deed dated 29.05.2013 executed by D1 in favour of D3 and D4 is true, valid and enforceable?

(ii). Whether the plaintiffs are entitled for partition of suit property?

(iii). Whether the plaintiffs are entitled to 2/3<sup>th</sup> share in the suit property?

(iv). To what relief the plaintiffs are entitled?

7. On the side of the plaintiffs, the 2<sup>nd</sup> plaintiff Raja was examined as P.W.1 and 11 exhibits were marked. On the side of the defendants, 1<sup>st</sup> defendant Subbiah was examined as DW-1 and 19 exhibits were marked.

8. The Trial Court, on considering the evidence, held that the



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plaintiffs failed to prove the averment that the suit property was allotted to their mother by Slum Clearance Board. Ex.A-6, which is the certified copy of the order issued by the Tamil Nadu Slum Clearance Board, in Annexure-III at serial number 14 against the name of Chinna Ponnu, it is clearly stated that “payment not collected and allotment not issued” as against the total cost of Rs.14,580/- only Rs.1,620/- paid and balance not paid. The plaintiffs have failed to prove that Chinna Ponnu paid the balance sale consideration and got the allotment.

9. Contrarily, the first defendant has proved the allotment in his favour through Ex.B-1, transfer of title through sale deed marked as Ex.B-8 and Chinna Ponnu not paid the land cost and not applied for allotment through the letter of the Estate Office, Slum Clearance Board through Ex.B-14. The first defendant alone paid the entire costs through Ex.B-2 to Ex.B-7 and Ex.B-15 to Ex.B-17 and on payment of entire sale consideration, the sale deed Ex.B-12 was executed in favour of the first defendant by the Slum Clearance Board.

10. The Learned Counsel for the Appellant submitted that, the Tamil



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Nadu Slum Clearance Board used to allot the plots only to the persons who were in long and continuous occupation. First they will identify the true occupants and later start the process of allotment. One of the condition to allot the plot, the beneficiary must be from economic weaker section earning less than Rs.3,500/- per annum. The first respondent was a retired Police Constable and he is not eligible to get allotment in a slum clearance board. Further, in view of mal practise and misuse while transferring the allotment of Slum Clearance tenement and plots, after the intervention of the High Court, the Slum Clearance Board issued a proceedings dated 15.10.2008, wherein it has been instructed that whenever the original allottee is dead, the transfer of allotment must be in favour of all the legal heirs and the practise of transferring in the name of any one legal heir on getting no objection letters of the other legal heirs attested by the Notary public to be discontinued.

**11.** In the instant case the evidence placed by the appellants/plaintiffs sufficiently prove that Chinna Ponnu was identified as the occupant of the land and Ex.A-6. Later, after the demise of Chinna Ponnu, the first defendant gave Ex.A-8 to the Slum Clearance Board a letter for transfer of allotment. Based on



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this letter, the allotment letter Ex.B-1 was issued. The said allotment letter was consequence to the identification of the beneficiary Chinna Ponnu and the subsequent death of Chinna Ponnu on 27.11.1994 (Ex.A-1) followed by the request letter of the first defendant.(Ex A-8).

**12.** The Trial Court ignoring the purpose of allotting plots to the persons living below poverty line and the procedure laid for transfer of allotment had dismissed the suit erroneously.

**13.** Per contra, the Learned counsel for the respondent submitted that, the vexatious suit filed without any basic truth was rightly dismissed by the Trial Court and the judgment of the Trial Court needs to be confirmed since the appellants have not placed any proof for the allotment of the suit land in the name of Chinna Ponnu or the payment of sale consideration by Chinna Ponnu. The suit filed for partition on the strength of joint possession and enjoyment had not satisfied the fundamental requirement. No evidence placed by the plaintiffs to show that their stay in the suit property was in the capacity of co-owners. The judgment relied by the appellant and the proceedings of the Slum Clearance board



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referred by the Appellant's Counsel are not relevant to the facts of the case and in any event they are subsequent to the allotment in favour of the respondent.

Point for consideration:-

*Whether, Ex.A-6 is a proof for allotment of the suit property in favour of Chinna Ponnu ?*

**14.** The Learned Counsel for the appellant made his submissions mainly harping on Ex.A-6 and Ex.A-8. Both these documents are information collected under RTI Act. To be noted, the content of the document was not testified by the author of the documents. That apart, the Learned Counsel relied on the Judgment of this Court rendered in S.A.Nos.1267 and 1268 of 2007 (***Rita -vs- C.Suseela and others***) reported in **2008 (4) SCC 468** and the proceedings of Slum clearance Board dated 15.10.2008 issued pursuant to the judgment of this court cited supra.

**15.** Ex.A-6 is the information received under RTI regarding eligibility list of beneficiaries under the Indira Nagar Scheme. The plaintiffs rely on this



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document to claim Chinna Ponnu was allotted plot No.77 under this scheme. This information has been furnished by the Information Officer of Slum Clearance Board along with his covering letter dated 07.08.2014. The scrutiny of this document in fact disprove the case of the plaintiffs. In annexure-III of Ex.A-6, under the caption “Number of plots for which down payment not collected, allotment orders not issued”, the entries in Serial No.14 very specifically indicates that Chinna Ponnu W/o.Subbaiah was not issued allotment order.

**16.** Contrarily, in Ex B-1, which is the proceedings of the Tamil Nadu Slum Clearance Board dated 14.07.2000, the first defendant has been allotted 162 sq.mt of land under Indira Nagar Urban Land Development Scheme at the cost of Rs.16,200/- and first instalment of Rs.1,620/- collected from him. This land is allotted on lease-cum-sale basis with specific condition that the allottee should pay the EMI of Rs.161/- for a period of 20 years. The allotment order refers G.O.Ms.No.1246 (Housing and Urban Development Department) dated 19/09/1988 and indicates the scheme is funded by World Bank.

**17.** The allotment order Ex.B-1 has nothing to do with G.O.Ms.672 (Housing and Urban Development Department) dated 10.07.1985 which relates to



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slum dwellers residing in slum on or before 30.06.1984 in which the income ceiling limit of Rs.3500/- p.a is prescribed. The Learned Counsel for the Appellant not able to co-relate how this G.O is applicable to the allotment order issued in favour of the first respondent. Further, Ex.B-1 does not even indicate that it was issued in continuation with any other proceedings to which Chinna Ponnu was a party.

**18.** To connect and correlate Ex.B-1 with Chinna Ponnu and it shows that the first defendant got the allotment only by transfer and not as original allottee, to take advantage of the Judgement of this Court and subsequent proceedings of the Slum Clearance Board dated 15.10.2008, the Learned Counsel for the Appellant wants to rely upon Ex.A-8 which is a copy of the letter dated 26.05.1999 sent in the name of first defendant (Subbaiah) addressed to the Chairman, Slum Clearance Board requesting to transfer the allotment made to his deceased wife Chinna Ponnu to his name and if such transfer is made he is ready to pay the costs of the land. In the cross examination of D.W-1 (first defendant) when Ex.A-8, the photo copy of the letter sent in the name of D.W-1 was shown, he has denied the signature found in it and he has further deposed that his second



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son Raja (2<sup>nd</sup> plaintiff) used to forged his signature. The plaintiffs, thereafter not pursued further to establish, Ex.A-8 letter really emanated from the first defendant Subbaiah. That apart, when in Ex.B-1 allotment letter Subbaiah is shown as allottee and not as transferee no presumption could be drawn contrary to the documentary evidence, that the first defendant got allotment only by transfer.

**19.** Therefore, this Court holds that only if there is a proof that the first defendant got the allotment by transfer, the judgment cited supra and the proceedings referred supra will have some relevancy. In the absence of such proof, the plea that transfer of allotment without including other legal heirs of Chinna Ponnu is preposterous. Without proving the fact that Chinna Ponnu was allotted the suit land, the plaintiffs cannot claim any share in the property which was allotted to their father by Slum Clearance Board long after the demise of their mother and developed by their father from his income.

**20.** The first respondent being the absolute owner of the property, has every right to deal with that property. In this case, the first defendant had settled



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the suit property in favour of his grandsons and same is valid.

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**21.** As a result, the Appeal Suit deserves to be dismissed. Accordingly, the Trial Court judgment and decree passed in O.S.No.5008 of 2014 is confirmed and the Appeal Suit is dismissed. Considering the relationship between the parties, there shall no order as to costs.

01.03.2022

Index :Yes.

Internet :Yes.

Speaking order/Non Speaking order

To:-

1. The XIX Additional District Judge, City Civil Court, Chennai.
2. The Section Officer, V.R.Section, High Court, Madras.



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**DR.G.JAYACHANDRAN,J.**

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Pre-delivery judgment made in  
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