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S.A.No.884 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 13.02.2023

CORAM

THE HONOURABLE MR. **JUSTICE G.K.ILANTHIRAIYAN**

S.A.No.884 of 2019
and
C.M.P.No.18654 of 2019

Rajeswari
W/o.Sivalingam

....Appellant

Vs

1. S.Gnanam
S/o.Selvaraj
2. The Chairman
Tamil Nadu Slum Clearance Board
Sathyamurthy Nagar Main Road
Vyasarpadi, Chennai-600 039.

.... Respondents

Prayer :- This Second Appeal is filed under Section 100 of Civil Procedure Code against the Judgment and Decree dated 25.03.2019 passed in A.S.No.196 of 2018 on the file of the XVII Additional Judge, City Civil Court, Chennai, confirming the judgment and decree dated 14.12.2017 passed in O.S.No.4589 of 2016 on the file of the XIII Assistant City Civil Court at Chennai.

For Appellant : Mr.G.Thangavel
For R2 : Mr.J.Abdul Rahim



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JUDGMENT

This Second Appeal is directed as against the Judgment and

Decree dated 25.03.2019 passed in A.S.No.196 of 2018 on the file of the XVII Additional Judge, City Civil Court, Chennai, confirming the Judgment and Decree dated 14.12.2017 passed in O.S.No.4589 of 2016 on the file of the XIII Assistant City Civil Court, Chennai, thereby dismissing the suit for permanent injunction.

2. The appellant is the plaintiff and the respondents are the defendants. The case of the appellant is that the suit property was acquired by her father viz., Samuel @ Basha in the year 1960 and he has also permitted his brother one Selvaraj to reside in a part of the suit property. The first defendant is the son of the said Selvaraj. After demise of their parents, the said Selvaraj fabricated false documents and approached the second defendant. Immediately after the appellant came to know about the allotment, he filed a suit.

3. The first respondent resisted the suit and filed written statement stating that he is the allottee of the second defendant with respect to the suit property and he has been paying the instalments to the



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second defendant. He is in possession and enjoyment of the suit property.

4. The second defendant also filed written statement stating that no allotment has been issued either in favour of the appellant or in favour of the first respondent herein. Further, the second defendant specifically contended that as per Section 29 of the Tamil Nadu Slum Clearance Board Act, 1971, no suit has been filed before the Trial Court.

5. Based on the pleadings, the Trial Court framed the following issues :-

- (i) Whether the defendant trying to evict the plaintiff from suit property ?
- (ii) Whether the plaintiff is in possession of suit property ?
- (iii) What other reliefs ?

6. On the side of the appellant, she had examined herself as P.W.1 and marked Exs.A1 to A6. On the side of the first respondent, he had examined himself as D.W.1 and marked Exs.B1 to B12.



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7. On considering the oral and documentary evidences adduced by the respective parties and the submission made by the learned counsel, the trial Court dismissed the suit. Aggrieved by the same, the appellant preferred an appeal in A.S.No.196 of 2018 before the XVII Additional Judge, City Civil Court, Chennai and the same was also dismissed and the Judgment and Decree passed by the Trial Court was confirmed. Aggrieved by the same, the present second appeal.

8. The learned counsel for the appellant has raised the following substantial questions of law:

(i) Whether the close relative living together in the same property for more than 50 years are eligible to have the joint ownership based on the provisions of allotment of land by Slum Clearance Board ?

(ii) Whether any one of the family member can treat the other family member as stranger when the question of allotment available out of Slum Clearance Board comes into existence for the entire family in the nature of down trodden in the Society ?

(iii) Whether the estate officer required to be treated as a witness in the process of availing the privilege for allotment of the land from the Slum Clearance Board is necessarily to be treated as a necessary party in the suit ?



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9. Heard, Mr.G.Thangavel, the learned counsel appearing for the appellant, Mr.J.Abdul Rahim, learned counsel appearing for the second respondent and perused the materials available on record.

10. The learned counsel appearing for the appellant would submit that the mother of the appellant and the mother of the first respondent are sisters. In order to maintain the slum, they lived in the suit schedule property. Half portion of the property was occupied by the first respondent and other half portion was occupied by the appellant. The first respondent, fabricated the records and submitted it to the second respondent and obtained allotment order in his favour. However, it was denied by the second respondent. The second respondent had taken a specific stand that no one has approached by the second respondent in respect of the suit property. Though the appellant is not entitled for the entire property, she is entitled for 50% of the suit property which is in her occupation and enjoyment of the same. The total extent of the property is only 301 sq.ft. The parents of the appellant and the first respondent had the privilege of equal share from the livelihood of the parents. Therefore, it is established beyond any reasonable doubt that the appellant is eligible and entitled to have equal share from their livelihood.

11. A perusal of the records reveals that even according to



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the appellant, the total extent admeasuring 301 sq.ft. Further, the first respondent occupied 50% of the suit property. Even then, the appellant asked for permanent injunction in respect of the entire extent of the property. Therefore, according to the appellant, both are in possession and enjoyment of the property and she cannot maintain the suit for permanent injunction as against the co-owner of the suit property. Though the appellant had taken a specific stand that the suit property was allotted in favour of their father by the Slum Clearance Board, they failed to produce any piece of evidence. If at all she has any grievance over the allotment order passed by the second respondent, she has to appeal as per law. As per Section 29 of Tamil Nadu Slum Clearance Board Act, 1971, the suit cannot be maintained without obtained any permission from the prescribed authority. As per Section 65 of the Tamil Nadu Slum Clearance Board Act, 1971, no Civil Court is having jurisdiction and no injunction shall be granted by any Court in respect of action taken based on the powers conferred by or under the said Act. Now, the present suit has been filed as against both the respondents herein i.e., The Tamil Nadu Slum Clearance Board and another. Therefore, the suit is not maintainable and the Courts below rightly dismissed the suit.

12. As such the Courts below have analyzed the evidences



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adduced by the parties, both the documentary and oral in detail, and by giving cogent reasons, concluded rightly and dismissed the suit.

Accordingly, this Court is of the considered opinion that no substantial question of law is involved in this appeal.

13. In view of above, this Second Appeal is dismissed and Judgment and Decree dated 25.03.2019 passed in A.S.No.196 of 2018 on the file of the XVII Additional Judge, City Civil Court, Chennai, confirming the Judgment and Decree dated 14.12.2017 passed in O.S.No.4589 of 2016 on the file of the XIII Assistant City Civil Court at Chennai, are confirmed. Consequently, connected miscellaneous petition is closed. There shall be no order as to costs.

13.02.2023

Index : Yes/No

Speaking order/Non-speaking order

Neutral Citation : Yes / No

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To

1.The XVII Additional Judge,
City Civil Court, Chennai.

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



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G.K.ILANTHIRAIYAN, J.

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