



S.A.No.258 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.09.2023

CORAM

THE HON'BLE MR. JUSTICE **A.D.JAGADISH CHANDIRA**

S.A.No.258 of 2021
and C.M.P.No.5136 of 2021

G.Vadivelu

... Appellant

Vs.

1. G.Nagammal

2. N.Sundarajan

3. Sakthivel

4. Anthony

5. Kuppuraj

... Respondents

PRAYER: Second Appeal filed under Section 100 of C.P.C., pleased to set aside the Judgement and Decree dated 19.07.2019 passed in A.S.No.275 of 2014 on the file of the V Additional City Civil Court, Chennai, confirming the Judgment and Decree dated 11.04.2014 made in O.S.No.6062 of 2008 on the file of learned VI Assistant Judge, City Civil Court at Chennai.

For Appellant : Mr.A.Muthukumar

For R1 : Mr.R.Venkatesh



S.A.No.258 of 2021

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JUDGMENT

This Second Appeal has been filed against the Judgement and Decree passed by the V Additional City Civil Court, Chennai, in A.S.No.275 of 2014 dated 19.07.2019, confirming the Judgment and Decree passed by the learned VI Assistant Judge, City Civil Court, Chennai in O.S.No.6062 of 2008 dated 11.04.2014.

2. The appellant is the 1st defendant and the first respondent herein is the plaintiff before the trial Court. The first respondent, who is the mother of the appellant had filed the original Suit. The suit was decreed in favour of the first respondent and it was confirmed by the first appellate Court. Aggrieved against the same, the appellant/1st defendant has filed the present Second Appeal.

3. For the sake of convenience, the parties are referred to as they are arrayed in the Original Suit.



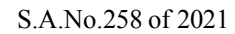
S.A.No.258 of 2021

4. The crux of the plaint averments is as follows:

4.1.The Tamil Nadu Slum Clearance Board built some tenements at K.Pudur during the year 1971 and the tenement bearing No.6/10, Thiruvalluvar Colony at K.Pudur, second part scheme was originally allotted to the plaintiff's father N.Gangadhar Naicker on a licence basis. Subsequently, by an order dated 22.10.1989, the Slum Clearance Board offered to sell the property on payment of the value in monthly instalments for 25 years to the plaintiff's father N.Gangadharan.

4.2. The plaintiff was living in the suit property alongwith her father prior to her marriage and after she got married to One Gandhi in the year 1972 and sent out by her husband. Subsequently the plaintiff's father died on 21.12.1987. The voter list also stands in the plaintiff's name in respect of the tenement No.6/10 and she alone was paying the necessary charges and she paid the instalments in respect of the suit property for the past several years, during the lifetime of her father.

4.3. The plaintiff has got a son, who is the 1st defendant herein and three daughters and two of them are married. After the death of plaintiff's father, the plaintiff had applied for transfer for allotment in her name and the Tamil Nadu Slum Clearance Board, by its order dated



4.4. During the month of June 2002, the plaintiff put up the construction in the ground floor, two portions in the first floor and in the suit property with her own funds and through her The plaintiff was living in the ground floor with her unmarried the 1st defendant. She left out other portions to the tenants from to June 2003.

4.5. The plaintiff had authorized the 1st defendant to collect the rents from the tenants from July 2003 and to repay and adjust the amounts borrowed from others and spend for the purpose of construction. She got the



S.A.No.258 of 2021

1st defendant married on on 04.05.2003 and thereafter, he started utilizing the funds for his own use without accounting for the same. The 1st defendant had collected a sum of Rs.7,400/- from the tenants from the month of July 2003 without accounting for the same.

4.6. Defendants 2 to 5 are the tenants in the suit property, from whom, the 1st defendant collected sum of Rs.2,14,600/- by way of rent. The 1st defendant also started to pick up unnecessary quarrels and ill-treating the plaintiff and her unmarried daughter from April 2004 onwards. Since the 1st defendant failed to give account for the amounts collected from defendants 2 to 5, the plaintiff had issued notice on 14.05.2004 through her counsel and cancelled the authority given to the 1st defendant to collect the rents from the tenants.

4.7. The plaintiff had also sent notices to tenants through her counsel on 14.05.2004 informing them that the rents have to be paid only to the plaintiff and not to the 1st defendant, whereas, on the instigation of the 1st defendant, the tenants refused to receive the notice and the same was returned with an endorsement “Refused”.

4.8. The 1st defendant forcibly broke open the lock on the



S.A.No.258 of 2021

second floor room and rented the room to the 5th defendant, subsequent to the notice sent by the plaintiff. The estimated amount payable by the 1st defendant after the expenditure, if any, made by him is Rs.1,00,000/-. Defendants 2 to 5 are liable to surrender vacant possession of the portions occupied by them to the plaintiff in view of the dispute in the landlord and tenant relationship and hence, they are only termed as trespassers. The 1st defendant has no right to collect any rent from the tenants subsequent to the revocation of authority given to them. The plaintiff had also given complaint to the police against the 1st defendant on 03.08.2004, but, the police did not take any action.

4.9. The electricity Service Connection No.229-10-332 also stands in the name of the plaintiff. The 1st defendant used to collect electricity charges and the rent from the other defendants, who are the tenants and give the consumption charges as per the meter reading to the plaintiff for payment of electricity bills upto June 2004. Subsequent to the police complaint, the 1st defendant seems to have given a letter to the Electricity Department as if signed by the plaintiff by signing himself for the issue of a duplicate electricity card and paid the electricity charges for the month of October 2004. When the plaintiff paid the electricity charges for the months of July



S.A.No.258 of 2021

and August 2004, she came to know about the issuance of duplicate card and the payment of electricity charges by the 1st defendant by way of a cheque to create some document. The plaintiff had also sent legal notice dated 07.03.2005 to the 1st defendant calling upon to render account and not to collect further rents and also not to interfere with the peaceful possession of her property. The 1st defendant was trying to throw out the plaintiff and her unmarried daughter from the property and interfere with the collection of rents from other defendants by threatening them. Hence the plaintiff has filed the suit.

5. The 1st defendant had filed a written statement denying the case of the plaintiff, the crux of which is as follows :-

5.1. The suit is not maintainable for the reasons that the plaintiff is not in possession of the suit property and therefore, the plaintiff cannot maintain the suit for injunction.

5.2. The suit property was originally allotted by the Slum Clearance Board in the name of the plaintiff's father i.e., grand father of the 1st defendant namely Gangadharan. The said Gangadharan died on 21.12.1987 leaving behind the plaintiff and Ramachandran, his uncle as legal



S.A.No.258 of 2021

heirs to succeed the suit property. It was specifically denied that the plaintiff alone is entitled for name transfer of the suit property in as much as the other legal heirs Ramachandran has got 50% in the suit property.

5.3. The 1st defendant, out of the savings amount in the Syndicate Bank and borrowal of amount from third parties, constructed superstructure in the suit property by spending Rs.7,50,000/- for the completion of the building and thereby, the 1st defendant is the absolute owner of the superstructure and the plaintiff is not entitled for declaration of title in respect of the suit property and the plaintiff has no sufficient means or funds to construct the suit property and also the plaintiff was not in possession of the suit property and residing in her daughter's house.

5.4. Out of four tenants namely defendants 2 to 5, the 2nd, 4th and 5th defendants vacated the suit property and further for eviction of tenants or recovery of the possession, the plaintiff cannot maintain the present suit for mandatory injunction to deliver possession and to pay rent which is not permissible in the light of specific provision of Tamil Nadu Lease and Rent Control Act and without resorting the remedies available under the Rent Control Act.



S.A.No.258 of 2021

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5.5. Further it was contended that the plaintiff had obtained sale deed from the Slum Clearance Board by filing bogus documents and they are documentary evidence to prove that there was no name transfer in the name of the plaintiff and the Slum Clearance Board had effected joint allotment in the name of the plaintiff and Ramachandran and therefore, the prayer for declaration cannot be granted.

5.6. As the 1st defendant is the absolute owner of the suit property and he had been paying all property taxes and water and drainage tax and electricity charges, the prayer for accounting cannot be granted and since the plaintiff miserably failed to prove the ownership of the suit property, the suit is liable to be dismissed with costs.

6. The trial Court, after considering the above pleadings, framed the following issues:

1. Whether the plaintiff is entitled for declaration as prayed for?
2. Is it true that the 1st defendant constructed the home from and out of his own income?
3. Whether the plaintiff is entitled for delivery of possession from D2 to D5?
4. Whether the suit for delivery of possession against



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S.A.No.258 of 2021

D2 to D5 is maintainable?

5. Whether the plaintiff is entitled for collecting of rent by appointing Advocate Commissioner?
6. Whether the plaintiff is entitle for permanent injunction?
7. Whether the plaintiff is entitle for Mandatory injunction?
8. What other relief the plaintiff is entitled to?

7. During the trial, on the side of the plaintiff, PW1 was examined and Ex.A1 to Ex.A22 were marked. On the side of the defendants DW1 was examined and Ex.B1 to Ex.B4 were marked.

8. During the pendency of the suit, Sulochana wife of one Ramachandran, brother of the plaintiff had filed an Application in I.A.No.19220 of 2012 to implead herself and her children as parties to the suit, claiming that they are also having 1/2 undivided share in the suit 'A' schedule property and the same was dismissed by the trial Court. Against the dismissal of the same, a Civil Revision Petition in C.R.P.No.598 of 2013 was filed before this Court and the same was also dismissed.



S.A.No.258 of 2021

WEB COPY

9. After a full fledged trial, the trial Court partly decreed the suit declaring the plaintiff as the owner of the 'A' schedule property and permanent injunction is granted restraining the 1st defendant and his men interfering with peaceful possession and enjoyment of the suit property including electricity connection and mandatory injunction is granted directing the tenants in the occupation of the 'B' schedule property to pay the monthly rent directly to the plaintiff and with cost. Further the plaintiff is directed to take separate proceedings under Order XX Rule 12 of CPC to appoint an Advocate Commissioner and to work out the rental income payable by the first defendant and dismissed the suit in respect of the delivery of possession from the tenants occupying in the suit 'B' schedule property, leaving it open to the plaintiff to initiate separate eviction proceedings against the tenants. Against the Judgment and Decree of the trial Court, the 1st defendant has filed the appeal in A.S.No.275 of 2014 before the V Additional City Civil Court, Chennai.

10. The first appellate Court, based on the grounds of appeal had framed the following points for consideration.

1. Whether the trial Court was right in partly decreeing



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S.A.No.258 of 2021

the suit on merits ?

2. Whether the appeal has to be allowed or not?

11. The first appellate Court found that the plaintiff has proved that the 'A' schedule property was originally allotted to her father Gangadharan in the year 1971 by the Tamil Nadu Slum Clearance Board. The father of the plaintiff died on 21.12.1987 and subsequently, the plaintiff started to live in the suit property and since, the plaintiff was living in the suit property along with her three daughters and her son, first defendant herein, the Slum Clearance Board has transferred the allotment from the name of the plaintiff's father to the name of the plaintiff on 26.03.1993. After, the plaintiff had paid the necessary instalments to the Slum Clearance Board, the sale deed dated 10.03.2004 was executed in favour of the plaintiff. The first appellate Court also found that the plaintiff became the absolute owner of the suit property and she had put up the additional construction in the suit property and the plaintiff had proved her case that the first defendant had been collecting rents from the tenants. The first defendant had claimed that his mother had obtained the allotment by fraudulent manner and that the construction were put up by him.

12. The first appellate Court further held that spending of money



S.A.No.258 of 2021

in the construction by the first defendant will not create any right to him over the property and thereby, the plaintiff is entitled to the property by virtue of a sale deed executed by the Tamil Nadu Slum Clearance Board. Further, on finding that the first defendant has absolutely no right over the suit property except to reside there as a gratuitous licensee with the consent of the plaintiff, the first appellate Court, had dismissed the Appeal Suit by confirming the judgment and decree passed by the trial Court in O.S.No.6062 of 2008 dated 11.04.2014. Aggrieved against the concurrent findings of the Courts below, the present Second Appeal has been filed.

13. Learned counsel for the appellant vehemently contended that that the Courts below failed to take into consideration Ex.B4, which is an information letter received from the Slum Clearance Board under Right to Information Act, wherein it is stated that the said Gangadhar Naicker, had not given any consent letter for transferring the allotment exclusively in the name of the plaintiff and that the allotment was made in favour of the plaintiff as well as her brother Ramachandran and the Ramachandran had also not given any consent letter for transferring the allotment.

14. Heard the learned counsel appearing on both sides, perused the



S.A.No.258 of 2021

judgments of the Courts below and also the grounds raised by the appellants.

15. A cumulative reading of the judgments of the Courts below and perusal of the materials available on record would disclose that the lis has got two fold. One is for declaration of title as against the first defendant, who is none other than the son of the plaintiff and the other is in respect of rental income and recovery of possession from the tenants. It is seen that the suit property was originally built up by the Tamil Nadu Slum Clearance Board in the year 1971 and allotted to the father of the plaintiff on lease cum sale basis and subsequently, on the death of her father, she had applied for transfer of allotment and got the allotment transferred in her name.

16. Subsequently, some additional constructions were said to have been made in the suit property by the plaintiff, of course, the first defendant claims to have met with the expenses for the same and thereby claims consequential right over the suit property. Apart from such a dispute, another dispute between the plaintiff and the first defendant is as to who should collect the rents from the tenants, to whom the suit property has been let out. It is alleged by the plaintiff that she had entrusted such a task to her son, the



S.A.No.258 of 2021

first defendant, who, had failed to account for properly and thereby, she was constrained to cancel such authority and to file the suit seeking the relief of declaration, recovery of possession and with regard to rental income.

17. Peculiarly, the first defendant, instead of raising any contention and producing substantial materials to claim any right or title to the suit property, sought to raise two different grounds. On one hand, the first defendant sought to divert the issue by raising suspicion over the title of the plaintiff by contending that it is not only the plaintiff, but also her brother one Ramachandran, who was also entitled to the suit property and thereby the legal heirs of the said Ramachandran had filed a writ petition in W.P.No.10107 of 2010 and obtained an order of injunction in their favour restraining the plaintiff from alienating the suit property and also filed an Application to get impleaded in the suit and on dismissal of such an Application, they had also filed a civil revision petition in C.R.P.(PD) No.598 of 2023. It would be relevant to note here that the said civil revision petition also stands dismissed by this court by order dated 20.8.2019 finding that the Original Suit itself was disposed by the Trial Court on 11.4.2014 itself and thereby nothing survives for adjudication. The second contention of the first



S.A.No.258 of 2021

defendant is that he has got right over the suit property for he had spent a sizeable amount for putting up additional construction in the suit property. Precisely, these two contentions alone have been raised by the appellant/first defendant throughout the entire proceedings initiated by him.

18. A perusal of the judgments rendered by the courts below would disclose that the above aspects have been dealt with in depth by the courts below and it has been held that the plaintiff is entitled for declaration and other consequential reliefs, pursuant to the sale deed executed by the Tamil Nadu Slum Clearance Board. When the allotment made by the Tamil Nadu Slum Clearance Board, a Government Body in favour of the plaintiff is in force, merely because the first defendant had spent some money, he cannot claim any right over the suit property and utmost, he can initiate legal proceedings for recovery of such money. If at all the legal heirs of the said Ramachandran feel that they have any claim over the suit property, it is only for them to put forth their case and make any claim and the first defendant cannot project their case to raise any suspicion over the title of the plaintiff. Such aspect also has been rightly appreciated by the first appellate court.



S.A.No.258 of 2021

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19. When the Courts below have thoroughly analysed every aspect of the case, it is unfortunate that the first defendant has chosen to file the Second Appeal raising the same grounds raised by him before the first appellate court, claiming them to be substantial questions of law.

20. This Court, having carefully analysed the materials available on record including the judgments of both the Courts below, does not find any infirmity in the judgment and decree rendered by both the Courts below and there is no illegality or perversity in its findings. Thus, no substantial question of law is involved to admit this second appeal.

21. The Hon'ble Apex Court in ***Kirpa Ram (D) Tr.Lrs. vs Surender Deo Gaur (2020 Scc OnLine SC 935)*** has categorically held as under:-

*"23. Sub-section (1) of **Section 100** of the Code contemplates that an appeal shall lie to the High Court if it is satisfied that the case involves a substantial question of law. The substantial question of law is required to be precisely stated in the*



S.A.No.258 of 2021

memorandum of appeal. If the High Court is satisfied that such substantial question of law is involved, it is required to formulate that question. The appeal has to be heard on the question so formulated. However, the Court has the power to hear appeal on any other substantial question of law on satisfaction of the conditions laid down in the proviso of [Section 100](#) of the Code. Therefore, if the substantial question of law framed by the appellants are found to be arising in the case, only then the High Court is required to formulate the same for consideration. If no such question arises, it is not necessary for the High Court to frame any substantial question of law. The formulation of substantial question of law or re-formulation of the same in terms of the proviso arises only if there are some questions of law and not in the absence of any substantial question of law. The High Court is not obliged to frame substantial question of law, in case, it finds no error in the findings recorded by the First Appellate Court."



S.A.No.258 of 2021

22. In the light of the above decision, sans any substantial question of law, the Second Appeal fails and the same is dismissed, confirming the concurrent findings rendered by the Courts below. No costs. Consequently, the connected Miscellaneous Petition is closed.

22.09.2023

Index : Yes / No
Speaking / Non-speaking
Neutral Citation : Yes / No
ham/ssk

To

1. The V Additional Judge,
City Civil Court, Chennai.
2. The VI Assistant Judge,
City Civil Court, Chennai.
3. The Section Officer,
VR Section, High Court of Madras.



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S.A.No.258 of 2021

A.D.JAGADISH CHANDIRA.,J.

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***S.A.No.258 of 2021
and C.M.P.No.5136 of 2021***

22.09.2023