



C.R.P.(PD)No.457 of 2023

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.07.2024

CORAM

THE HONOURABLE MR.JUSTICE V.LAKSHMINARAYANAN

C.R.P.(PD)No.457 of 2023

and

C.M.P.No.3836 of 2023

S.Dhamodharan

.. Petitioner

Vs.

1.Esther

2.Johnson

3.Wilson

4.Samson

5.Glory

6.The Managing Director,
Tamilnadu Slum Clearance Board,
Kamarajar Salai,
Chepauk, Chennai

7.The Estate Officer,
Estate Officer – V,
Tamilnadu Slum Clearance Board,
T.P.Chatram, Chennai – 600 010

.. Respondents



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Prayer : The Civil Revision Petition is filed under Article 227 of Constitution of India, to set aside the fair and decreetal order, dated 12.12.2022, made in I.A.No.5 of 2022 in O.S.No.8693 of 2021 on the file of the learned XX Assistant City Civil Judge at Chennai.

For Petitioner : Ms.R.Nirmala Devi

For RR1 to 5 : Mr.K.Balaji

For RR6 & 7 : Mr.K.Balaji
for Mr.S.Karthikeyan

ORDER

The present Civil Revision Petition arises against an order passed by the learned XX Assistant City Civil Judge at Chennai in I.A.No.5 of 2022 seeking rejection of plaint in O.S.No.8693 of 2021.

2. For the sake of convenience, the parties will be referred to as per their rank in the suit.

3. The case of the plaintiffs is that the husband of the 1st plaintiff and the father of plaintiff Nos.2 to 5, namely one Daniel, was the beneficiary of the allotment by defendant Nos.1 and 2. The allotment was for the suit schedule mentioned property. The predecessor in title, one Daniel, died intestate on 30.01.2006. Thereafter, the plaintiffs succeeded to his estate.



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They would plead that the 3rd defendant had arrived to help them during their financial crisis and as a security, he had sought a Power of Attorney deed to be executed in his favour on 20.07.2008. Accordingly, a Power of Attorney was executed on that date, and they would also plead their signatures were taken in blank stamp papers and ledger sheets.

4. The plaintiffs further alleged that they settled the amount that they had received from the 3rd defendant but the 3rd defendant, taking advantage of the Power of Attorney, got an electricity connection in his favour and therefore, the Power of Attorney was cancelled. They would plead that the possession of the property that was given to the Power of Attorney was in that capacity and he is not entitled to continue to be in possession of the same.

5. On this basis, the plaintiffs filed a suit for mandatory injunction directing the Tamil Nadu Slum Clearance Board to transfer the allotment from the name of Daniel to their name, and for mandatory injunction directing the 3rd defendant to vacate and hand over the possession of the suit 'B' schedule mentioned property, namely the property handed over to him in



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the capacity as the Power Agent, and for permanent injunction restraining the defendants from interfering with the peaceful possession and enjoyment of the plaintiffs.

6. On being served with the summons in the suit, the 3rd defendant took out an application for rejection of plaint. The primary plea of the 3rd defendant is that the suit is barred by virtue of Section 29 of the Tamil Nadu Slum Areas (Improvement and Clearance) Act, 1971. He would also plead that the suit is under valued and therefore, the plaint is liable to be rejected.

7. After receipt of the counter from the plaintiffs, the learned XXI Assistant City Civil Judge, who is holding the Full Additional Charge of the XX Assistant City Civil Court, came to the conclusion that the rejection of plaint application deserves an order of dismissal and accordingly, dismissed it, against which the present Civil Revision Petition has been presented.

8. Heard Ms.R.Nirmala Devi, appearing on behalf of the petitioner,



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Mr.K.Balaji, appearing on behalf of respondent Nos.1 to 5 and Mr.B.Balaji, for Mr.S.Karthikeyan, appearing on behalf of respondent Nos.6 and 7.

9. In order for the suit to be barred under Section 29 of the Tamil Nadu Slum Areas (Improvement and Clearance) Act, 1971, the person in occupation should be an occupant. As to who is an “occupant” is defined by Section 2(g) of the said Act. The possession of an Agent is the possession of the principal. By virtue of the Power of Attorney, the 3rd defendant cannot claim any exclusive right of possession/occupation over the property.

10. Ms.R.Nirmala Devi would submit that the 3rd defendant is in possession of an unregistered sale deed. Unfortunately, I am not in a position to look into the said document, because I am dealing with an application for rejection of plaint. At the time of such disposition, I only have to look into the averments made in the plaint and the plaint documents alone. Suffice it to say that the plaintiffs, being the occupants after the death of the allottee/Daniel, would be covered under Section 2(g) read with Section 29 of the Tamil Nadu Slum Areas (Improvement and Clearance) Act, 1971. However, the said benefit cannot be extended to the Power of Attorney



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11. At this stage, Ms.R.Nirmala Devi would bring to my attention the judgment of my brother *Hon'ble Mr.Justice N.Seshasayee* in C.M.S.A.No.11 of 2018, dated 21.08.2018, wherein, the learned Judge has applied Section 29 of the Tamil Nadu Slum Areas (Improvement and Clearance) Act, 1971 and had allowed the application for obstruction filed by the party in possession. That is the judgment which arose after a full trial, where, the learned Judge had the benefit of not only looking into the plaintiffs' document but also that of the defendants. As I have already premised, while dealing with an application for rejection of plaint, I am not in a position to look into or even take a peek into the document of the defendants. As the suit is not barred in terms of Section 29 of the said Act, in view of the fact that possession of the 3rd defendant is only through the deed of Power of Attorney and that has to be treated as possession on behalf of the principal, I do not find that the suit is barred.

12. Consequently, the order passed by the learned XX Assistant City



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Civil Judge at Chenani, dated 12.12.2022, stands confirmed.

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13. It is always open to the defendant to file a written statement and produce the document to substantiate his case and get the suit dismissed on merits.

14. With the above observations, the Civil Revision Petition stands dismissed. No costs. The connected Civil Miscellaneous Petition is closed.

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Index:Yes/No

Speaking Order :Yes/No

Neutral Citation:Yes/No



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V. LAKSHMINARAYANAN, J.

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To

The learned XX Assistant City Civil Judge,
Chennai

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and
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