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IN THE HIGH COURT OF JUDICATURE AT MADRAS

JUDGMENT RESERVED ON : 24 / 09 / 2024

JUDGMENT PRONOUNCED ON : 21 / 12 / 2024

CORAM

THE HONOURABLE MR. JUSTICE R.SAKTHIVEL

S.A.NO.411 OF 2019

AND

CMP NOS.6128 OF 2019 AND 19194 OF 2024

D.Murali ... Appellant / Respondent /
Defendant

Vs.

D.Kannan ... Respondent / Appellant /
Plaintiff

PRAYER: Second Appeal filed under Section 100 of the Code of Civil Procedure, 1908, praying to set aside the Judgment and Decree dated September 18, 2018 passed in A.S.No.311 of 2014 by the learned I Additional City Civil Court, Chennai, whereby the Judgment and Decree dated December 23, 2011 passed in O.S.No.2983 of 2009 by the V Assistant City Civil Court at Chennai, was reversed.

For Appellant : Mr.S.Sadasharam

For Respondent : Mr.T.S.Rajamohan

J U D G M E N T



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This Second Appeal is directed against the Judgment and Decree dated September 18, 2018 passed in A.S.No.311 of 2014 by the 'I Additional City Civil Court Judge, Chennai' ['First Appellate Court' for brevity], whereby the Judgment and Decree dated December 23, 2011 passed in O.S.No.2983 of 2009 by the 'V Assistant City Civil Court Judge at Chennai' ['Trial Court' for brevity] was reversed.

2. For the sake of convenience, hereinafter, the parties will be referred to as per their array in the Original Suit.

Plaintiff's Case

3. The plaintiff is the absolute owner of the Suit Property. The plaintiff was working as a Fitter in Simpson Company, Chennai. The Suit Property was allotted to the plaintiff in the year 1989 under the 'Scheme of Subsidized Rate of Construction of House to Labourers and Economically Weaker Section'. Since 1989, the plaintiff is in possession and enjoyment of the Suit Property. The defendant, being one of the brothers of the plaintiff, trespassed into the Suit Property knowing fully aware that the Tamil Nadu Housing Board executed a Sale Deed on March 18, 2008 in



favour of the plaintiff. Despite oral request, the defendant refused to vacate the Suit Property. Hence, the plaintiff, after issuing notice to the defendant, filed a Suit against the defendant to vacate the Suit Property.

Defendant's Case

4. The defendant filed written statement denying the allegations made by the plaintiff in the plaint. He contended that plaintiff is the brother of the defendant; that their father A.Devaraj was working in Simpson Company and belonged to economically weaker section of the society; that the Suit Property was allotted to his father A.Devaraj in the year 1983 by the Tamil Nadu Housing Board; that his father retired from service on March 31, 1985; that after retirement, the plaintiff's father, plaintiff, defendant and another brother by name D.Mani, who is physically challenged, were residing in the Suit Property; that their father A.Devaraj passed away on March 29, 1987; that thereafter, the plaintiff was paying monthly rents to the Tamil Nadu Housing Board from March 13, 1985 to February 11, 2008; that hence the plaintiff and his brother D.Mani as heirs of A.Devaraj are entitled to reside in the Suit Property; that the plaintiff suppressed the material facts and fraudulently obtained Sale Deed in his favour from the Tamil Nadu Housing Board .



Accordingly, he prayed to dismiss the Suit.

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Trial Court

5. At trial, the plaintiff was examined as P.W.1 and Ex-A.1 to Ex-A.8 were marked on the side of the plaintiff. On the side of the defendant, the defendant was examined and Ex-B.1 to Ex-B.39 were marked.

6. After completion of trial and hearing both sides, the Trial Court came to the conclusion that the Suit Property was allotted to A.Devaraj, father of the plaintiff and the defendant; and A.Devaraj was paying rent from March 11, 1983 onwards. After the demise of A.Devaraj, the defendant, as one of the heirs of A.Devaraj is residing in the Suit Property. Defendant is not a trespasser and he is in possession and enjoyment of the Suit Property as of right. Accordingly, the Trial Court, dismissed the Suit.

First Appellate Court



7. Feeling aggrieved by the trial Court's Judgment and Decree, the plaintiff preferred an appeal in A.S.No.311 of 2014 before the First Appellate Court. The First Appellate Court after hearing both sides and perusing the documents available on record, concluded that the Suit Property was originally allotted to A.Devaraj, father of the plaintiff and the defendant; that subsequently after his demise, the Tamil Nadu Housing Board executed a Sale Deed in favour of the plaintiff; that the defendant's stay in the Suit Property without any right could only be considered as a trespassing; that the plaintiff is entitled to evict the defendant from the Suit Property; and that the long duration of possession of the property by a person would not *ipso facto* confer title to the defendant. Accordingly, the First Appellate Court allowed the appeal and set aside the Trial Court's Judgment and Decree and decreed the Suit.

Second Appeal

8. Feeling aggrieved by the Judgment and Decree passed by the First Appellate Court, the defendant preferred this Second Appeal.

9. The Second Appeal was admitted on December 3, 2021 on the following substantial question of law:



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S.A.No.411 of 2019

“i) Whether the legal heir of an allottee, before the allotment, fructified into a sale, can claim in the capacity as the legal heir of deceased allottee, share in the property allotted?

ii). When the defendant has specifically pleaded that he made representations dated 11.02.2008 and 23.02.2009 to the Tamil Nadu Housing Board claiming that the sale deed in favour of the plaintiff was obtained by misrepresentation and fraud, is it not necessary for the defendant to challenge the impugned sale deed by counter claim?

iii). When the defendant claims that the sale deed in favour of the plaintiff is a fraudulent sale deed and denies the title of the plaintiff, is it not necessary for the plaintiff to seek a prayer for declaration of title and whether the decree granted in favour of the plaintiff without a prayer for declaration of title can be sustained?”

Arguments

10. Mr.S.Sadasharam, learned Counsel for the appellant / defendant would submit that the Judgment and Decree passed by the First Appellate Court is perverse and the First Appellate Court, did not consider the defendant's side evidence in proper perspective; that the father of the plaintiff and defendant who was working in Simpson Company was allotted the Suit Property in the year 1983; that during his lifetime, he paid rent to the Tamil Nadu Housing Board; that the defendant paid the property-tax, water-tax etc., to the Chennai Corporation and also paid rent



to the Tamil Nadu Housing Board; that the plaintiff's father A.Devaraj died in the year 1987 leaving behind him three sons and two daughters as his legal heirs; that one of his sons D.Mani is a physically challenged person and that the defendant and his brother D.Mani are residing in the Suit Property since 1985 as heirs of A.Devaraj.

11. Further would submit that the defendant requested the Tamil Nadu Housing Board to execute the Sale Deed in their favour but the Tamil Nadu Housing Board, directed the defendant to produce some documents; that in the meanwhile, the plaintiff clandestinely obtained No Objection Certificate of this defendant and obtained Sale Deed in his favour from the Tamil Nadu Housing Board. Though the Sale Deed stands in the name of the plaintiff, the defendant and his brother D.Mani are entitled to a share in the Suit Property. The First Appellate Court, failed to consider the evidence. It merely considered the factum of Sale Deed which stands in the name of the plaintiff. On that basis, allowed the appeal. Hence, the learned counsel would pray to allow the Second Appeal and set aside the Judgment and Decree of the First Appellate Court and restore the Judgment and Decree of the Trial Court.



12. On the other hand, Mr.T.S.Rajamohan, learned Counsel for the respondent / plaintiff would argue that Tamil Nadu Housing Board executed a Sale Deed in favour of plaintiff. Hence, the plaintiff alone is the title holder. Accordingly, he would pray to sustain the Judgment and Decree passed by the First Appellate Court and pray to dismiss the Second Appeal.

Discussion and Decision

13. This Court has heard the submissions made on either side and perused the materials available on record.

14. The appellant / defendant filed a Civil Miscellaneous Petition under Order XLI Rule 27 of the Code of Civil Procedure, 1908 in CMP No.19194 of 2024 to receive the following documents as additional evidence in the Second Appeal:

(1)Certificate issued by Dr.A.Kalanidhi, former Member of Parliament to the petitioner dated 24.07.1982.

(2)Copy of G.O.Ms.No.128 dated 24.03.1997 issued by the Government of Tamil Nadu, Housing and Urban Development Department.



WEB COPY



S.A.No.411 of 2019

(3) Allotment Letter dated 06.02.1998 issued by the Allotment Service Manager, Anna Nagar Division, Tamil Nadu Housing Board to the petitioner.

(4) Representation dated 29.06.2011 by R.Kumaran to the Commissioner of Police, Chennai.

(5) Copy of affidavit and petition filed by the petitioner in H.C.P.No.842 of 2011 on the file of the Hon'ble High Court of Judicature at Madras.

14.1. This Court has perused the affidavit filed in support of the Civil Miscellaneous Petition in CMP No.19194 of 2024 and the document sought to be received as additional evidence in Serial No.(2) is a Government Order, which is available in the public domain and document sought to be received as additional evidence in Serial No.(3) is the allotment letter issued by the Tamil Nadu Housing Board. Considering the nature of document in Serial No.(3), the plaintiff cannot deny it. Hence, this Court is inclined to receive the documents described in Serial No.(2) and Serial No.(3). As far as other documents are concerned, the reasons stated in the affidavit are not sufficient to receive the documents. Moreover, they are not relevant to decide the case. Hence, this Court is inclined to reject the CMP *qua* documents in Serial Nos.1, 4 and 5.

15. It is an admitted fact that the father of the plaintiff and the



defendant was working in Simpson Company, Chennai and he retired from service on March 31, 1985. The Suit Property was originally allotted to the father of the plaintiff and the defendant in the year 1989 under the 'Scheme of Subsidized Rate of Construction of House to Labourers and Economically Weaker Section'. A.Devaraj was paying the rent and subscription to the Tamil Nadu Housing Board till his demise. Thereafter, the defendant was paying the rent and subscription to the Tamil Nadu Housing Board. Besides the rent, he is paying water-tax and property-tax, etc., for the Suit Property till 2008. The defendant produced Ex-B.1 to Ex-B.13 to prove that the defendant, his family members and his brother D.Mani are residing in the Suit Property. Ex-B.17 Legal Heirship Certificate of A.Devaraj would show that A.Devaraj passed away on March 29, 1987 leaving behind three sons and two daughter as legal heirs. Ex-B.24 is the letter sent by Labour Commissioner, Chennai – 6 to the defendant enabling the defendant to approach the Tamil Nadu Housing Board for obtaining Sale Deed in his favour. Ex-B.18 is the Consent Letter given by the plaintiff to transfer the Suit Property in favour of the defendant. Thereafter, the plaintiff obtained Ex-A.3 – Sale Deed in his favour. According to the defendant, Ex-A.3 has been obtained fraudulently behind his back. This Court is of the view that the question



whether Ex-A.3 was obtained fraudulently or not, need not be gone into in this case for the reason that since original allotment was made in favour of A.Devaraj, father of the plaitniff and defendant, unless contrary is proved by the plaintiff, law presumes that Ex-A.3 was executed in favour of all the legal heirs of A.Devaraj. Though the Sale Deed stands in the name of the plaintiff, as far as the Suit Property is concerned, he is like a Trustee.

16. Merely because Ex-A.3 – Sale Deed stands in the name of plaintiff, he cannot claim exclusive title over the Suit Property. On reading of Ex-B.39 and Ex-B.40, it is easily discerned that Ex-A.3 was executed after obtaining 'No Objection Certificate' from all the legal heirs of original allottee A.Devaraj. Hence, all the legal heirs of A.Devaraj are entitled to share as per the law of succession applicable to the parties. Admittedly, A.Devaraj died as a Hindu. Hence, Hindu Succession Act, 1956 would be the applicable law in this case. Hence, all the legal heirs enumerated under Legal Heirship Certificate, are entitled to get equal share in the Suit Property. Law presumes that all the legal heirs of A.Devaraj are co-owners in respect of the Suit Property. The defendant, being a co-owner is entitled to be in possession of the Suit Property. If the plaintiff wants to get his share, he ought to have filed a Suit for partition. Till such time, the



defendant is entitled to reside in the Suit Property as per the Law of Co-ownership.

17. As already stated *supra*, originally the Suit Property was allotted to A.Devaraj. He passed away leaving behind him three son and two daughters as his legal heirs. It is a practice that is being adhered in Tamil Nadu Housing Board that if an allottee passes away, his / her legal heir(s) is/are entitled to get Sale Deed from the Tamil Nadu Housing Board. In such circumstances, it is usual practice of the Tamil Nadu Housing Board to get a 'No Objection Certificate' from the other legal heirs.

18. In this case also, the defendant has given 'No Objection Certificate' in favour of the plaintiff. As already stated *supra*, based on the No Objection Certificate, the plaintiff obtained Ex-A.3 Sale Deed. Though Ex-A.3 Sale Deed was executed in favour of the plaintiff, the plaintiff alone cannot claim exclusive title over the same. Law presumes that Ex-A.3 – Sale Deed executed in favour of the plaintiff and other legal heirs. Hence, the plaintiff's claim of exclusive title deserves to be rejected. The defendant's side documents would show that the defendant's family and his brother D.Mani are residing in the Suit Property since 1989 by paying



water-tax, property-tax, electricity charges, etc. Hence, defendant is in 'settled possession' over the Suit Property. Hence, he cannot be termed as 'trespasser', on the other hand, the defendant is a co-owner along with the plaintiff. In the considered opinion of this Court, the Trial Court has rightly dismissed the Suit. But the First Appellate Court, based on Ex-A.3- Sale Deed allowed the appeal, which is erroneous and perverse.

18.1. Substantial Question of Law No.(i) is answered affirmatively in favour of the defendant.

18.2. As stated supra, the defendant being a co-owner, need not challenge the Sale Deed and file a Suit for declaration. The defendant as a co-owner is entitled to be in possession until final partition is effected. Substantial Questions of Law Nos.(ii) and (iii) are answered accordingly. In view of the facts and circumstances of the case, this Court is inclined to allow the Second Appeal.

Conclusion

19. In the result,

(i) CMP No.19194 of 2024 in S.A.No.411 of 2019 is partly allowed and the documents mentioned in Serial Nos.2 and 3 viz., copy of G.O.Ms.No.128 dated 24.03.1997 issued by



S.A.No.411 of 2019

the Government of Tamil Nadu, Housing and Urban Development Department and Allotment Letter dated 06.02.1998 issued by the Allotment Service Manager, Anna Nagar Division, Tamil Nadu Housing Board are received and marked as Ex-B.40 and Ex-B.41 respectively.

(ii) The Second Appeal is allowed. The Judgment and Decree passed by the First Appellate Court is set aside and the Judgment and Decree passed by the Trial Court is restored.

(iii) CMP No.6128 of 2019 in S.A.No.411 of 2019 is closed.

(iv) Considering the facts and circumstances of the case, there shall be no order as to costs.

21 / 12 / 2024

Index : Yes
Speaking Order : Yes
Neutral Citation : No
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S.A.No.411 of 2019

**LIST OF ADDITIONAL DOCUMENTS RECEIVED AND MARKED
IN THE SECOND APPEAL ON THE SIDE OF THE DEFENDANT**

<i>S.No.</i>	<i>Dated</i>	<i>Exhibits</i>	<i>Description of documents</i>
1	24.03.1997	Ex-B.40	G.O.Ms.No.128 issued by the Government of Tamil Nadu, Housing and Urban Development Department
2	06.02.1998	Ex-B.41	Allotment Letter dated 06.02.1998 issued by the Allotment Service Manager, Anna Nagar Division, Tamil Nadu Housing Board to the petitioner

21 / 12 / 2024

To

- 1.The I Additional City Civil Court Judge
Chennai.
- 2.The V Assistant City Civil Court Judge
Chennai.

Note: Typographical error is corrected. Re-upload immediately.

R. SAKTHIVEL, J.

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S.A.No.411 of 2019

PRE-DELIVERY JUDGMENT MADE IN
S.A.NO.411 OF 2019

21 / 12 / 2024