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S.A. No. 713 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.10.2024

CORAM

THE HONOURABLE MRS. JUSTICE T.V.THAMILSELVI

S.A. No.713 of 2024

L.Ramu @ Ramachandran

... Appellant

Versus

1. The Government of Tamil Nadu,
rep. by its Secretary,
Secretariat, Chennai-600 009.
2. The Collector for Chennai District,
Singaravelan Building,
Beach Road, Madras-600 001.
3. The Government of Tamil Nadu,
Registration Department
by its Secretary, Secretariat,
Chennai-600 009.
4. The Tahsildar,
Egmore-Nungambakkam Taluk,
Panchavadi, Chetput, Madras-600 008.
5. The Sub-Registrar,
Virugambakkam Sub Registrar Office,
Arcot Road, Virugambakkam,
Chennai-600 093.



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6. The Chennai Metropolitan Development Authority, by its Member Secretary,
CMDA Building, Egmore,
Madras – 600 008.

7. The Plan Sanctioning Officer,
CMDA Corporation of Madras,
Ripon Buildings, Poonamallee High Road,
Park Town, Madras -600 003.

8. The Corporation of Madras,
by its Commissioner,
Ripon Buildings,
Poonamallee High Road,
Park Town, Madras – 600 003.

9. Karan Construction by Guruvan Ayyavu,
No.25, 1st Avenue, Ashok Nagar,
Madras -600 083.

10. Isakki Subbiah

... Respondents

Prayer:- Second Appeal has been filed under Section 100 C.P.C., against the judgment and decree dated 22.08.2023 passed in A.S.No.65 of 2021 on the file of III Addl. City Civil Judge at Chennai confirming the order passed in I.A.No. 15730 of 2016 in O.S.No.3408 of 2014 on the file the III Asst. City Civil Court Chennai dated 16.06.2022.



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For Appellant : Mr.T.Padmanabhan

For Respondents : Dr.S.Suriya,
Addl. Govt. Pleader (C.S.)
for R1 to R4

JUDGEMENT

Challenging the findings of the trial judge held in I.A.No.15730 of 2016 in O.S.No. 3408 of 2014, the plaintiff preferred this Second Appeal. Before the trial court, he filed a suit for mandatory injunction directing the defendants 1 to 3 to enter the name of plaintiff as absolute owner of the suit property as prescribed in the plaint schedule at Rajamannaar Salai, K.K.Nagar, Vijayaraghavapuram, Chennai-83 admeasuring an extent of 2400 sq.ft. against defendants 1 to 10.

2. On receipt of notice, 10th defendant filed an application to reject the plaint stating that the suit property belong to him as per the allotment made by Slum Clearance Board during December 1995. When the Slum Clearance



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Board failed to execute the sale deed i favour of him, he filed a Writ Petition in W.P.No. 12732 of 2005 seeking for a direction and this court by an order dated 04.05.2005 issued a direction directing the Slum Clearance Board to execute the sale deed, but the Slum Clearance Board failed to execute the same. Hence, he filed a Contempt Petition in Cont.P. No. 287 of 2006, wherein this court directed the Slum Clearance Board to comply the order. Accordingly, the sale deed was executed in the year of 2007 in his favour, based on that, he is in possession for nearly about 30 years. Indeed, the plaintiff also claimed that he is absolute owner of the property, for which, he has also relied the documents, which are not related to the subject property. The plaintiff also not produced any document that he is in possession of the property as he claimed for about 30 years and on the other hand, the 10th defendant is in possession of the property and flats were constructed. Therefore, he prayed to reject the plaint as there is no cause of action arose, so also the suit is barred by limitation. But the said application was objected by the plaintiff by filing counter objections stating that he was in possession for nearly about 30 years and the reasons assigned by the 10th defendant is beyond the scope of Order VII Rule 11 of C.P.C. and the issue of limitation



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cannot be decided, since it is a mixed question of law and on facts.

Therefore, he prayed to admit this Second Appeal.

3. On considering both side submissions, the trial judge held in respect of limitation that he admits that it is a mixed question of law, but in respect of property, the trial judge held that based on the plaint averments, the documents relied on by the plaintiff, prima facie not proved that the property belong to mother of plaintiff, whose name is totally differs from the document as he relied as Ex.A1. Moreover, his mother name is Kaliammal, but the plaintiff relied the suit in O.S.No.4348 of 1989, which was said to be filed by his mother, the name of plaintiff was mentioned as Lakshmiammal. Furthermore, the trial judge also found that there is no cause of action for filing the suit, since because he wanted to demolish the construction made in 10000 sq.ft., but as per the description of the suit property, it is only for 2400 sq.ft. The description of property in the suit schedule has also not been correctly furnished. Hence, there is no prima facie case that he is in possession of property by way of adverse possession and also there is no proof for long possession. Accordingly, there is no cause of action arose to



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file a suit. Hence, the plaint was rejected. Challenging the said findings, the plaintiff preferred this Second Appeal.

4. Admittedly, the contention of plaintiff is that out of 10000 sq.ft., the suit property belong to him was also been encroached by the 10th defendant by putting up a construction. He had also claimed that nearly about 30 years, he is in possession of the property. But, admittedly, within 10000 sq.ft. there is four flats constructed long back by the 10th defendant and as per the direction issued in W.P.No.12732 of 2005, the suit property was allotted to the 10th defendant by Slum Clearance Board, thereby sale deed stands in his name. So, as on date, the document is in force and not cancelled. Furthermore, the description of property was not clearly defined and in the plaint averments, he has averred that he wanted to demolish the construction put up in 10000 sq.ft., but the description is not tallied with the original extent. However, no document was produced on the side of plaintiff that from the year of 1996 to till date, he was in possession of property and nearly about 31 years, there is no document produced. So, there is no cause of action arose to file a suit was rightly observed by the courts below, which



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needs no interference. It is a settled proposition that plaint averments are sufficient to reject plaint under Order VII Rule 11 of C.P.C. Hence, I do not find any merit as there is no question of law arise for consideration. Accordingly, this Second Appeal is dismissed. No costs.

22.10.2024

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To

III Addl. Judge,
City Civil Court,
Chennai.



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T.V.THAMILSELVI, J.

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