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THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.07.2024

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN
AND
THE HONOURABLE MR.JUSTICE R.SAKTHIVEL

W.A.No.1935 of 2022
and
C.M.P.No. 14184 of 2022

1.Chief Controlling Revenue Authority
and Inspector General of Registration,
No.100, Santhome High Road,
Chennai - 600028.

2.The District Registrar (Administration),
Central Chennai, Chennai - 600014.

3.The Sub-Registrar,
Ashok Nagar Sub-Registrar Office,
Chennai.

...Appellants

Vs.

1.V.Sekar

2.The Tamil Nadu Slum Clearance Board,
Represented by its Chairman,
No.5, Kamarajar Salai,
Chennai - 600005.

...Respondents

Prayer: Writ Appeal filed under Clause 15 of Letters Patent, against the order
dated 03.03.2021 made in W.P.No.12589 of 2014.



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For Appellants : Mr.L.S.M.Hasan Faisal
Additional Government Pleader
For Respondents : Mr.N.Umapathi for R1
Mr.G.Venkatesan for R2

J U D G M E N T

(Judgment of the Court was made by R.SUBRAMANIAN, J.)

The Chief Controlling Revenue Authority is on appeal, aggrieved by the order of the Writ Court wherein, the Writ Court held that the release deed executed by the mother, brother and sisters of the 1st respondent should not be treated as a sale, since the siblings of the 1st respondent and the 1st respondent have an interest in the property though the sale deed stands in the name of the mother.

2.The brief facts are as follows:-

One T.Venkatesan, father of the 1st respondent had acquired an extent of about 1378 Sq.ft., of land in a slum area known as M.G.R. Nagar in Chennai. The said area was developed with the aid of the World Bank and an allotment was made to the said Venkatesan in the year 1985. The land

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that was in occupation of Venkatesan was numbered as Plot No.143.

Subsequently, before the execution of the sale deed, said Venkatesan had died on 11.04.2005, leaving behind his wife and three children. The wife applied to the Tamil Nadu Slum Clearance Board (now known as Tamil Nadu Urban Habitat Development Board) / 2nd respondent herein seeking transfer of the allotment. An order came to be passed on 09.09.2008 transferring the allotment in her name.

2.ii) Subsequently, a sale deed came to be executed by the Slum Clearance Board in favour of the wife of Venkatesan / mother of the 1st respondent on 13.10.2008. Since the allotment was transferred in the name of the wife of Venkatesan, sale deed was also executed in her name. However, the parties treated the property as jointly owned by them and executed the release deed in question. The Registering Authority went by the recitals in the sale deed and concluded that wife of Venkatesan is the absolute owner and her children do not have any right over the property therefore, the release should be treated as a sale. Aggrieved by the said conclusion of the Registering Authority, the petitioner moved this Court in W.P.No.12589 of 2014.

3. The learned single Judge concluded that in view of the fact that the



original allotment was in favour of Venkatesan, the fact that the re-allotment made in 2008 will not vest the property absolutely in his wife. The learned single Judge found that the children of Venkatesan will also have a right after death of Venkatesan, since Venkatesan had died intestate. On the said conclusion, the learned single Judge found that the treatment of the release deed as sale deed by the Registering Authority is unsustainable. Therefore, the Writ Petition was allowed. Hence, this appeal.

4. We have heard Mr.L.S.M.Hasan Faizal, learned Additional Government Pleader appearing for the appellants, Mr.N.Umapathi, learned counsel appearing for the 1st respondent and Mr.G.Venkatesan, learned counsel for the 2nd respondent.

5. Mr.L.S.M.Hasan Faizal, learned Additional Government Pleader appearing for the appellants would submit that since the sale deeds stands in the name of the wife of Venkatesan, she should be presumed to be the absolute owner. Neither original order nor the re-allotment order were placed before the Registering Authority. The Registering Authority came to the conclusion based on the recitals in the sale deed executed by the Slum



Clearance Board in favour of the wife of Venkatesan. This issue is not res-integra. This Court had on several occasions considered the effect of such sale deeds executed by the Slum Clearance Board in the name of one of the heirs of the original allottee. The same question came up for consideration in *Vijayalakshmi Vs. Pushparani* reported in **2011 (6) MLJ 642** wherein this Court held that the fact that the Slum Clearance Board had not executed a sale deed would not prevent the heirs from seeking partition of the property, since they have a possessory right over the property.

6. One of us (Hon'ble Justice R.Subramanian) had an occasion to consider the very same question in S.A.No.1100 of 2019 dated 15.11.2019. In paragraph 12 of the said judgment, the question relating to title of the person in whose name the sale deed executed by the Slum Clearance Board stands was considered and it was held as follows:-

"12. Adverting to the contentions of the learned counsel for the appellants, I do not think that those contentions merit acceptance. The Sale Deed was executed by the Tamil Nadu Slum Clearance Board on 26.06.2001. The written statement filed by the Tamil Nadu Slum Clearance Board clearly stated that the property was allotted to Kalimuthu and the sale deed was executed in favour of the first defendant as heir of



*Kalimuthu, since she claimed to be only heir of Kalimuthu. Therefore, the claim that the first defendant becomes the absolute owner of the property since the Sale Deed has been executed in favour of Kalimuthu cannot be accepted. This Court has in **Rita v. C.Suseela**, referred to supra, held that if an allotment is made and the Sale Deed is executed in favour of one of the legal heirs of the allottee, the said legal heir will hold the property in trust for other legal heirs.*

13. It is also pointed out that the Personal Laws that applied to the parties do not stand excluded in matters of allotment made by the Tamil Nadu Slum Clearance Board. Once it is found that the first defendant was holding the property as a trustee on behalf of the other heirs, she has no right to deal with the entirety of the property. The Settlement Deed executed by the first defendant in favour of the fifth defendant would be valid only to the extent of her share and it will not affect the shares of the plaintiffs and other sharers."

7. We also find from the documents that have been produced that the property tax assesment was made by the Corporation in the name of Venkatesan and it was changed in the name of his wife and the three children. In **Rita Vs. C.Suseela and Others** reported in **2008 (4) CTC 468**, this Court has again, pointed out that merely because the sale deed is



executed in the name of one of the heirs, other heirs do not lose title to the property. Hence, the position of law as declared by this Court is clear to the effect that once an allotment is made in the name of the ancestor, the fact that sale deed is executed in the name of one of the heirs will not divest the other heirs of the title to the property. Therefore, the treatment of the release deed as a sale deed by the Registering Authority cannot be sustained. We are therefore, in entire agreement with the conclusion reached by the learned single Judge. This Writ Appeal is therefore, **dismissed**. No costs. Consequently, connected civil miscellaneous petition is closed.

8. We find, this problem is recurring in almost all cases where the Slum Clearance Board or the Tamil Nadu Housing Board execute a sale deed in favour of one of the heirs of the original allottee. This practice leads to multiplicity of litigation in the form of either partition suits or in the form of dispute regarding the stamp duty payable on subsequent documents. We therefore, make it clear that in future wherever an allottee dies before execution of the sale deed, the sale deed shall be executed only in favour of all the legal heirs, leaving it open to the legal heirs to relinquish their rights by a registered instrument, if need be. Both the Tamil Nadu Urban Habitat



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Development Board as well as the Tamil Nadu Housing Board will in future execute sale deeds in respect of properties where original allottee dies, prior to execution of sale deed, in favour of all the legal heirs and not in favour of one of the legal heirs.

(R.S.M., J.) (R.S.V., J.)
03.07.2024

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Internet: Yes

Index: No

Speaking

Neutral Citation : No

Note:-Registry is directed to forward this order to the Tamil Nadu Housing Board also.



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To:-

- 1.The Tamil Nadu Slum Clearance Board,
Represented by its Chairman,
No.5, Kamarajar Salai,
Chennai - 600005.
- 2.Chief Controlling Revenue Authority
and Inspector General of Registration,
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R.SUBRAMANIAN, J.
and
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