



S.A.No.877 of 2017

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment Reserved on 15.02.2024	Judgment Pronounced on 08.03.2024
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THE HONOURABLE MR. JUSTICE P.B.BALAJI

S.A.No.877 of 2017
and C.M.P.No.22040 of 2017

1.N.Kasturi

2.N.Kalaivannan

..Appellants

Vs.

1.R.Thanikaimalai

2.K.Jayaraman

3.Tamil Nadu Slum Clearance Board,
Represented by its Chairman,
Kamarajar Sale, Triplicane,
Chennai – 600 005.

..Respondents

PRAYER: The Second Appeal filed under Section 100 of the Civil Procedure Code against the judgment and decree dated 31.01.2017 made in A.S.No.199 of 2015 on the file of the XVI Additional City Civil Judge, Chennai, confirming the judgment and decree dated 30.07.2014 passed in O.S.No.2515 of 2005 on the file of the II Additional City Civil Judge, Chennai.



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For Appellants : Mr.A.Chidambaram

For Respondents

For R1 : Mr.D.R.Sivakumar

For R2 : Not ready in notice

For R3 : Mr.B.Balaji
for Mr.S.Karthikeyan
Standing Counsel
TNSCB

JUDGMENT

This Second Appeal has been filed against the judgment and decree dated 31.01.2017 made in A.S.No.199 of 2015 on the file of the XVI Additional City Civil Judge, Chennai, confirming the judgment and decree dated 30.07.2014 passed in O.S.No.2515 of 2005 on the file of the II Additional City Civil Judge, Chennai.

2.The 1st Defendant, who suffered concurrently before the Trial Court as well as the First Appellate Court in a suit for permanent injunction, is the appellant herein.



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3.The parties are described as per their litigating status before the Trial

Court.

4.The brief facts of the case is that the plaintiff approached the Court claiming that the Tamil Nadu Slum Clearance Board, under a Scheme, had developed a chunk of lands and a Plot No.67, bearing Door No.12, was allotted to one Nataraja Udayar and Plot No.71, bearing Door No.16 was allotted to one Ranganatha Udayar and Plot No.68, bearing Door No.13 was allotted to Kuppusamy Udayar. According to the plaintiff, the said Plot No.72 bearing Door No.17, New No.5 was left vacant and not allotted to anybody. According to the plaintiff, he was in occupation of Plot No.72, bearing Door No.17, New No.5, P.V.Rajamannar Salai, K.K.Nagar from the year 1986 onwards and he has put up construction of a hut in the said plot, which belongs to the 3rd defendant. According to the plaintiff, the 1st defendant was residing at Door No.12, P.V.Rajamannar Salai, K.K.Nagar. The 1st and 2nd defendants knowing that the plaintiff was in possession of the Plot No.72 started giving trouble to the plaintiff and attempted to take illegal possession of Plot No.72 from the plaintiff. Therefore, the plaintiff instituted the suit, seeking to protect his possession over Plot No.72.



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5.The 1st defendant filed a written statement admitting the original Scheme promulgated by Tamil Nadu Slum Clearance Board. He would also admit that the Board, which was arrayed as 3rd defendant in the suit, had not allotted Plot No.72 to any person and it was lying vacant. A suit was filed in O.S.No.8456 of 1992 before the City Civil Court, Chennai, by the plaintiff and six others, including the 1st defendant, to prevent unconnected persons from trespassing into Plot No.72. According to the 1st defendant, all the other allottees who joined the filing of the suit in O.S.No.8456 of 1992, had sold their respective plots and only the 1st defendant was residing in the plot allotted to him. According to the 1st defendant all the allottees are potters engaged in manufacture of mud articles and were members of the Madras State Pottery Industries Association. The 1st defendant also stated that the suit in O.S.No.8456 of 1992 was dismissed for default on 09.12.1997 and in the meantime, the 1st defendant had applied for allotment of the suit Plot No.72 in his favour. Even in 1995, vide proceedings in ROC.No.17040/95 E4 dated 04.07.1995, the suit Plot No.72 was allotted in favour of the 1st defendant, subject to the payment of damages and further installments for allotment of the said plot. According to the 1st defendant, the 1st defendant



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has paid the amounts demanded by the Board and he has been in possession of the suit property for nearly 10 years, using the property for baking of pots.

The 1st defendant therefore prayed for dismissal of the suit.

6.The Trial Court decreed the suit, finding that the plaintiff had established his entitlement for the relief of permanent injunction. An appeal was preferred by the 1st defendant in A.S.No.199 of 2015 and the First Appellate Court finding that there was no illegality in the judgment and decree granted by the Trial Court, dismissed the appeal.

7.Aggrieved by the concurrent findings, the 1st defendant has preferred the above Second Appeal. The Second Appeal has been admitted on 30.09.2021, on the following substantial questions of law:

1.Whether the judgment and decree of the Courts below are vitiated in not considering the documentary evidence on record in proper perspectives and also in misconstruing the same?

2.Are not the Courts below wrong in granting a decree for permanent injunction while the Respondent had not established his alleged possession as pleaded in the Plaint and so also on the date of the Suit?



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3. Whether the judgment and decree of the Lower Appellate Court simply confirming the judgment and decree of the Trial Court without independently applying its mind to all the facts and circumstances of the case and evaluating all the documentary evidence and oral evidence on record?

8. I have heard Mr.A.Chidambaram, learned counsel for the appellants and Mr.D.R.Sivakumar, learned counsel for the 1st respondent and B.Balaji, learned counsel for Mr.S.Karthikeyan, learned Standing Counsel for the 3rd respondent (TNSCB).

9. Mr.A.Chidambaram, learned counsel for the appellants would state that admittedly, Plot No.72 was not allotted to anybody and it was being put to common use and when there was an interference, the allottees joined together and instituted a suit to protect the possession of the Plot No.72. However, according to the learned counsel for the appellants, he has subsequently been in independent and separate possession right from 1995, which is also evidenced by proceedings in ROC.No.17040/95 E4 dated 04.07.1995, allotting the plot to the 1st defendant. Further, according to the 1st defendant, the plaintiff also gave NOC when the Plot was so allotted to the 1st defendant.



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10.The learned counsel for the appellants would also place reliance on the decision of the Hon'ble Supreme Court on the following judgments:

1.(2006) 1 SCC 168 (Ramlal and Another Vs. Phagua and Others).

2.(2001) 7 SCC 189 (Hafazat Hussain and Another Vs. Abdul Majeed and Others).

3.Judgment of the High Court of Bombay in SA.No.1053 of 2005 (Purubai Ajun Mane and Others Vs. Shankar Bhau Patil).

4.Judgment of the High Court of Madras in SA.No.271 of 2008 (K.R.Kirubakaran Vs. G.Lakshmi and Others).

5.Judgment of the High Court of Bombay in W.P.No.269 of 2018 (Chandrakalabai Bapurao Shirsat Vs. Habib Khan Abdul Raheman Khan and Others).

11.The first of the above judgments referred herein supra is pertaining to Section 100 of Code of Civil Procedure where interference can be made even to concurrent findings of fact.



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12.In ***Purabai Ajun Mane's*** case the Bombay High Court held that the relief of power of restitution was a statutory recognition of a pre existing rule of justice, equity and fair play, even though pending the suit, according to the plaintiff, the 1st defendant has forcibly taken possession of said plot. Therefore, in this regard, he has relied on the decision of the Bombay High Court referred herein supra.

13.In ***K.R.Kirubakaran's*** case, this Court has held that when it is found the person has a better title in view of an allotment order, he would be entitled to relief even for recovery of possession, without declaration of title.

14.In ***Chandrakalabai Bapurao Shirsat's*** case, the High Court of Bombay at Aurangabad again referred to the power of restitution available to the Court.

15.Per contra, Mr.D.Ramalingam, learned counsel for the 1st respondent would submit that even though the plaintiff, along with the 1st defendant and other allottees joined together and filed an earlier suit, the said suit came to be dismissed for default and in the interregnum period, the 1st defendant had applied for allotment.



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16.He would take me through Ex.B1 to fortify his submission that it is not a regular allotment, but only a provisional allotment and therefore, no rights would flow under such an allotment. Even otherwise, there was absolutely no evidence adduced by the 1st defendant that the 1st defendant has been in possession of the said Plot No.72. Further, he would also refer to the findings of the Courts below, regarding the documents and discussion of the Trial Court as well as the First Appellate Court on the same, regarding the factum of physical possession, being only with the plaintiff. He would further submit that the Courts below had concurrently found that the plaintiff had put up a hut and has been residing there for several years. The plaintiff's possession would have to be necessarily protected.

17.He would rely on the decision of the Hon'ble Supreme Court in ***Rame Gowda (D) by Lrs. Vs. M.Varadappa Naidu (D) by Lrs., and Another in Appeal (Civil) No.7662 of 1997***, where the Hon'be Supreme Court held that even a person in settled possession or effective possession, without title, would entitle him to protect his possession, even against the true owner. The conditions laid down by the Hon'ble Supreme Court for entitling such a



person in physical possession to the relief of permanent injunction are as follows:

(i) the trespasser must be in actual physical possession of the property for a sufficiently long period.

(ii) the possession must be to the knowledge (either express or implied) of the actual owner or without any attempt at concealment by the trespasser.

(iii) the process of dispossession of true owner by the trespasser must be complete and final and must be acquiesced to by the true owner.

In my opinion, the only question that needs to be decided is as to whether the plaintiff has proved and established his physical possession in and over the Plot No.72.

18.The plaintiff has filed Ex.A11, the Residence Certificate, Ex.A15, E.B card, Ex.A10, voters list and Ex.A7 to Ex.A9 and Ex.A14 and Ex.A16 these are LIC documents to prove the factum of the physical possession. On the contrary, accepting the provisional order of allotement by the Tamil Nadu Slum Clearance Board, in favour of the 1st defendant, the 1st defendant has not been able to establish his physical possession. In fact, he himself admits that the plaintiffs have taken possession of the suit property, though forcibly.



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If at all the 1st defendant is regularly allotted the said Plot No.72, it is always open to the 1st defendant to workout his rights to recover the possession of the suit property from the plaintiffs. However, when admittedly, the Courts below have concurrently found that the plaintiff has been in physical possession of the suit property and had established the same, by production of satisfactory documents, I do not find any grounds to interfere with such concurrent findings, especially, when I do not find any findings of the Courts below to be irregular or perverse. Consequently, I do not find the substantial questions of law to be answered in favour of the appellants.

19.In the result, this Second Appeal is dismissed. There shall be no order as to costs. Consequently, connected Civil Miscellaneous Petition is closed.

08.03.2024

Index : Yes/No
Speaking Order/Non-Speaking Order
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P.B.BALAJI., J.

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To

- 1.The XVI Additional City Civil Judge, Chennai
- 2.The II Additional City Civil Judge, Chennai.
- 3.The Section Officer, V.R.Section, High Court, Madras.

Pre-delivery judgment made in

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08.03.2024