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S.A. No. 724 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.10.2024

CORAM

THE HONOURABLE MRS. JUSTICE T.V.THAMILSELVI

S.A. No.724 of 2024
and
C.M.P.No. 23735 of 2024

1. K. Ravikumar
2. Valli
3. K. Subramani

... Appellants

Versus

1. D.Tamilarasi
K.Kasammbu (deceased)

2. The Chairman,
Slum Clearance Board,
Having office at Chepauk,
Chennai-600 005.

... Respondents

Prayer:- Second Appeal has been filed under Section 100 C.P.C., against the judgment and decree dated 22.12.2022 passed in A.S.No.15 of 2015 on the file of III Addl. City Civil Court, Chennai reversing judgment and decree passed in O.S.No.359 of 2012 on the file the II Asst. City Civil Court, Chennai.



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For Appellants : Mr.K.Raveendran

For Respondents : Mr.S.Karthikeyan for R2

JUDGEMENT

Challenging the reversal findings of the first appellate court, the defendants 2 to 4 have preferred this Second Appeal. Before the trial court, the 1st respondent/plaintiff being one of legal heir of P.Kamalakannan claiming 1/4th share in the suit properties listed as two items of property, more particularly 'A' schedule property admeasuring an extent of 340 sq.ft of flat at Door No.1469, 27th Cross Street, T.P.Chatram, Shenoy Nagar, Chennai and 'B' schedule property admeasuirng an extent of 180 sq.ft. of flat consisting of house site at No.84/3, Plot No.183, bearing Door No.54/A, New No. H9, Lakshmi Street, Kamaraj Nagar, Kilpauk, Chennai and both the properties were allotted to parent of plaintiff Kamalakannan and his wife wife K.Kasammbu.

2. For the sake of convenience, the parties are denoted as per the ranking in the suit.

3. Before the trial court, the plaintiff filed a suit claiming 1/4th share in



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the properties, which were allotted to her father Kamalakannan and after his demise, all of his legal heirs viz., Plaintiff, 1st defendant/wife, brothers and sister, each entitled 1/4th share. However, during the pendency of the suit, the 1st defendant died. But, the defendants denied the plaintiff's claim. Before the trial court, both parties adduced evidence and on considering the oral and documentary evidence, the trial court dismissed the suit. Against which, she preferred an appeal in A.S.No. 15 of 2015 and the first appellate judge independently analysed the evidence on record and finally held that the property was jointly allotted in the name of plaintiff's father and his wife Kasammbu and during the pendency of suit, both were died intestate. So, as a legal heir, all the three, plaintiff, defendants 2 and 3 became entitled for equal share in both A and B schedule of suit properties. As such, the plaintiff is entitled for 1/3rd share in the suit properties instead of 1/4th share as claimed by her in the suit, owing to the subsequent event of death of 1st defendant. Accordingly, the appeal was allowed and the decree passed by the trial judge was set aside. Challenging the said findings, the defendants 2 to 4 have preferred this Second Appeal.



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4. The learned counsel for appellants would submit that the first appellate judge erroneously granted the relief in favor of plaintiff without considering the evidence properly. In fact, the entire instalment amount was settled by the defendants 2 to 4 to the Tamil Nadu Slum Clearance Board during the life time of their father and hence, the properties are absolutely belong to them. Hence, he prayed to admit this Second Appeal.

5. On perusal of records, before the trial court, no evidence was adduced to prove that 'A' schedule property had been allotted exclusively in the name of 1st defendant nor any proof that contested defendant paid instalments. In fact, it is an admitted fact that the property was originally allotted to Kamalakannan and his wife as per the allotment granted by the Slum Clearance Board. However, during the pendency of proceedings, both were died intestate. So, their legal heirs are entitled for their share. Moreover, the plaintiff filed a suit in the year of 2012 and all the legal heirs of Kamalakannan and Kasammbu, the plaintiff and defendants 2 and 3 are entitled for 1/3rd share in the suit was rightly observed by the first appellate court, which needs no interference of this court. Hence, this Second Appeal



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is liable to be dismissed as there is no question of law involved for consideration. Accordingly, this Second Appeal is dismissed as no merit. No costs. Consequently, the connected Civil Miscellaneous Petition is closed.

25.10.2024

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To

III Addl. Judge,
City Civil Court,
Chennai.



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T.V.THAMILSELVI, J.

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