



S.A.(MD).No.408 of 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **25.03.2024**

CORAM:

THE HONOURABLE **MRS.JUSTICE S.SRIMATHY**

S.A.(MD).No.408 of 2020

and

C.M.P.(MD)No.4893 of 2020

1.Y.Palraj

2.P.Sornam Ammal

... Appellants

/Vs./

1.T.Bakkiyathai

2.L.Jebamani

...Respondents

PRAYER: Second Appeal filed under Section 100 of the Civil Procedure Code, against the Judgment and Decree passed in A.S.No.54 of 2018, dated 13.02.2020, on the file of the Additional Sub Court, Tirunelveli, confirming the Judgment and Decree made in O.S.No.458 of 2015 on the file of the 1st Additional District Munsif Court, Tirunelveli, dated 16.03.2018.

For Appellants : Mr.S.Kumar

For Respondents : No appearance

JUDGMENT

The present second appeal is preferred against the judgment and decree passed in A.S.No.54 of 2018 on the file of Additional Sub Court, Tirunelveli confirming the judgment and decree passed in O.S.No.458 of 2015 on



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the file of the I Additional District Munsif, Tirunelveli.

2. The defendants in the suit is the appellant herein and the plaintiff in the suit is the respondent herein. For the sake of convenience, the parties shall be referred as Plaintiff and Defendant as per the ranking in the suit.

3. The plaintiffs have filed the suit for declaration and recovery of possession and the said suit was allowed. Aggrieved over the same, the defendants herein had preferred an appeal and the same was dismissed. Aggrieved over the same, the present second appeal is preferred.

4. The contention of the defendants / appellants herein is that originally Youvan was in occupation of the suit property from 1955 onwards and he is entitled to allotted of house under Slum Clearance Board. The said Youvan was having two sons namely Thangiah and Palraj. The said Thangiah was married in the 1967 and the said Palraj was married in the year 1975. After Palraj's marriage the father of the plaintiff and defendant had extended the wall of the



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mud house and allowed the said Palraj to stay in the property. Further the said Thangiah was staying in the same suit property for some period, subsequently left Tirunelveli and shifted to Chennai along with his family. Based on the allotment letter, the plaintiffs have filed the suit. According to the defendants, declaration and recovery of possession cannot be filed based on the allotment letter. Since based on allotment letter, sale deed ought to be executed, then only the purchaser would get absolute right over the property. Therefore, the prayer in the suit is without any right and hence, the judgment rendered by both the Courts are erroneous.

5. After hearing the arguments case, this Court is of the considered opinion that based on the allotment letter, both Thangiah and Palraj are not entitled to the property. Further the father is entitled to the suit property based on his occupation from 1955. Since the father died, the sons namely Palraj and Thangiah would be entitled to property. If the Tamil Nadu Slum Clearance Board is executing any sale deed, then it ought to be executed in the name of Palraj and Thangiah, since both Palraj and Thangiah are entitled to the share in the father's property. Therefore, it is questionable how the said Thangiah has received the



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allotment, when Youvan was the original person who was residing in the disputed suit scheduled property. Therefore, in order to clear the title, the Tamil Nadu Slum Clearance Board is one of the necessary parties. Therefore, this Court is remitting the case back to the Trial Court and is directing the plaintiffs to implead the Tamil Nadu Slum Clearance Board and thereafter, contest the suit.

6. Hence, the judgment and decree rendered by both the Courts are set aside and the matter is remitted back to the Trial Court. The parties are at liberty to file additional pleadings along with documents and contest the suit.

7. With the above said observation and direction, the second appeal is allowed. No costs. Consequently, connected miscellaneous petition is closed.

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Index : Yes / No
NCC : Yes / No

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TO:
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1. Additional Sub Court, Tirunelveli.
2. 1st Additional District Munsif Court, Tirunelveli.
3. The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.



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S.SRIMATHY, J.

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Judgment made in
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