



A.S.No.245 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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Reserved on : 10.06.2025

Pronounced on: 23.06.2025

Coram:

THE HONOURABLE Dr. JUSTICE G.JAYACHANDRAN

Appeal Suit No.245 of 2022
& C.M.P.No.8790 of 2022 & C.M.P.No.9158 of 2023

1. D.Jai Santha Kumari,
Daughter of Late Devaraj.

2. D.Jesy Thangamani,
Daughter of Late Devaraj.

3. D.Babu Sathyanathan,
Daughter of Late Devaraj.

4. Esthar Neelavathy,
Daughter of Late Devaraj.

5. D.Victor Devanathan,
Son of Late Devaraj.
All are residing at
No.219/187, Kamarajapuram,
Nungambakkam, Chennai – 600 034.

... Appellants/
Defendants 1, 2, 4, 5 and 6

/versus/

1. Mr.P.David Selvadurai,
Son of D.Pal Raj.
2. Mr.Joyson Selvakumar,
Son of David Selvadurai.
Both are residing at
No.252/23, Kamarajapuram, 4th Street,
Nungambakkam, Chennai – 600 034.

... Plaintiffs/Respondents 1 & 2



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3. Mrs.Selvi Gnanamani,
Daughter of Late Devaraj,
No.219/187, Kamarajapuram,
Nungambakkam, Chennai – 600 034.

... 3rd defendant/3rd Respondent

Prayer:- Appeal Suit has been filed under Order 41 Rule 1 and Section 96 of the Civil Procedure Code, pleaded to set aside the judgment and decree dated 01.02.2021 passed in O.S.No.5410 of 2016 on the file of the Hon'ble XVI Additional Judge, City Civil Court, Chennai by allowing the appeal with costs.

For Appellants :Mr.P.Manikannan.
For Respondent :Mr.S.Selvaraj, for R1 & R2
: Steps not taken, for R3

J U D G M E N T

The appeal suit is filed by the defendants 1, 2, 4, 5 and 6 challenging the judgement and decree passed in O.S.No.5410 of 2016 on 01.02.2016.

2. The suit in O.S.No.5410 of 2016, on the file of XVI Additional Sessions Judge, City Civil Court, Chennai, was filed for partition and permanent injunction. The suit was partly allowed by the trial Court, declaring the plaintiffs are entitled for 1/7th share in the suit property; but not entitled for permanent



3. Case of the plaintiffs:-

The suit property originally belongs to the land of Tamil Nadu Slum Clearance Board. Mrs.Victoria Sarojini, W/o.Devaraj, occupied the land and was in possession of the property as a lessee under the Tamil Nadu Slum Clearance Board. The said Mrs.Victoria Sarojini, put up a construction on the land and was in peaceful possession and enjoyment. Later, the Slum Clearance Board sold the land to Mrs.Victoria Sarojini through a sale deed, dated 18.08.2000, registered at SRO, Thousand Lights, Chennai.

4. Mrs.Victoria Sarojini, had two sons and six daughters. She died on 30.03.2013 and her husband Mr.Devaraj died on 05.12.1981. One of her daughters, Mrs.Ida, died on 24.02.1986 and her son Mr.Peter Johnson predeceased her on 17.08.2005. Her son Peter Johnson died as a Bachelor. Her daughter Mrs.Ida, died leaving behind her husband Mr.David Selvadurai (1st plaintiff) and her son Mr.Joyson Selvakumar (2nd plaintiff). The defendants 1 to 6 are sons and daughters of Mrs.Victoria Sarojini.



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5. The suit was filed for partition by the legal heirs of the predeceased, daughter of Mrs.Victoria Sarojini, on the premise that, after the demise of Mrs.Victoria Sarojini, the plaintiffs 1 & 2 were in enjoyment of the property exclusively, by collecting the rents. The plaintiffs 1 & 2 are ready to divide the property and get their 1/7th share along with the defendants. Despite expressing their consent and willingness for division, the defendants were not ready for partition. Hence, Lawyer notice dated 25.01.2016, demanding partition was sent to the defendants but returned unclaimed. In the meanwhile, the 4th defendant is trying to encumber the property. Hence, suit for partition to allot 1/7th share and injunction from alienating sought.

6. Case of the defendants:-

The appellants/defendants 1, 2, 4 to 6 herein have filed written statement, denying the plaint averments that the Tamil Nadu Slum Clearance Board initially leased the property to Mrs.Victoria Sarojini and later, sold to her absolutely. The real fact is that the suit property was allotted by the Tamil Nadu Slum Clearance Board to Mrs.Victoria Sarojini and seven persons jointly *vide* proceedings dated 20.02.1984. At that time, Tmt.Ida (wife of the first plaintiff and



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mother of the second plaintiff) was not residing in the suit property and her name not mentioned in the allotment proceedings dated 20.02.1984. Devaraj, (the husband of Victoria Sarojini) died prior to the allotment of the land in favour of his wife and seven others by the Tamil Nadu Slum Clearance Board. Tmt.Ida, got married to the first plaintiff and was living with him, till her death on 24.02.1986. The allottees joined together and put up construction from their income. The dues to the Tamil Nadu Slum Clearance Board was paid by them jointly and got the sale deed on 18.08.2000, in the name of their mother Mrs.Victoria Sarojini.

7. Since, Mrs.Ida died i.e., 24.02.1986, prior to purchase of the property, the defendants argued that neither she nor her legal heirs are entitled for a share in the property acquired subsequent to the death of Mrs.Ida. Only the surviving legal heirs are entitled for share in the property and not the plaintiffs, who are the legal heirs of the predeceased's daughter. By fraud, the first plaintiff had obtained the legal heir certificate from the Tahsildar, Egmore, without proper verification. On complaint about the false legal heir certificate obtained by the first plaintiff in the name of Babu Sathyanathan (4th defendant), by fraud, the P.A to Collector conducted enquiry. A request was made to cancel the false legal heir



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certificate issued on 31.12.2013 and to issue a correct legal heirs certificate for the late Mrs. Victoria Sarojoni. The said application was pending for long time, hence a writ petition was filed. Pursuant to the direction of the Hon'ble High Court in W.P.20772 of 2015, the legal heir certificate issued on 31.12.2013 was cancelled.

8. The defendants claim that the plaintiffs have not come with clean hands. The suit is malicious and filed in suppression of true facts. The plaintiffs are not the co-owner of the suit property. They are not in joint possession in the suit property along with the plaintiffs. Hence, the fixed Court Fees paid under Section 37(1) of the Tamil Nadu Court Fees and Suit Valuation Act, 1955 is wrong. The plaintiffs ought to have paid *ad valorem* Court fee as per section 37(2) of the Act. The defendants claim the property belongs to them and the plaintiffs are no way connected. The defendants have no intention to encumber the property to third parties.

9. Based on the pleadings, the trial Court has framed the following issues:-



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1. Whether the plaintiffs are entitled to 1/7th share in the suit schedule mentioned property?

2. Whether the plaintiffs are entitled for permanent injunction as against the defendants?

3. To what other relief, the plaintiffs are entitled?

10. On the side of the plaintiffs, the first plaintiff Thiru.David Selvadurai and one Mohan was examined as P.W.1 and P.W.2. Nine documents (Ex.A.1 to Ex.A.9) were marked. On the side of the defendants, the 4th defendant Babu Sathyanathan was examined as D.W.1. Five documents (Ex.B.1 to Ex.B.5) were marked.

11. The first issue answered in favour of the plaintiffs holding that they are entitled for 1/7th share in the suit property. The second issue answered in negative, holding the plaintiffs are not entitled for permanent injunction. The third issue answered holding that except the relief of partition as stated above, the plaintiffs are not entitled for any other relief.



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12. Against the judgment and decree passed by the trial Court, the present Appeal Suit is filed by the defendants 1, 2, 4, 5 and 6, were taken up for consideration on the following grounds:-

13. The deceased Mrs.Victoria Sarojini had obtained loan by mortgaging the suit property. The said loan was discharged by the appellants as well as the sale consideration for the suit property also jointly paid by the appellants. These facts are reflected in Ex.A.1 and Ex.B.4. However, the trial Court miserably failed to consider these two exhibits and had erroneously decreed the suit partially. The description of the property in the plaint is incorrect. The Court fees paid for the relief sought is also improper. However, the trial Court has ignored the fact that the plaintiffs were never in possession of the suit property. Furthermore, the suit property mentioned as Plot No.70 instead of Plot No.78, is not duly considered by the trial Court. The land of Tamil Nadu Slum Clearance Board was allotted to Mrs.Victoria Sarojini. The mother of the second plaintiff, Tmt.Ida, is not an allottee. Hence, the plaintiffs cannot claim any share in the property through their mother Tmt.Ida. The right and title over the property transferred from the Tamil Nadu Slum Clearance Board to the defendants only on



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18.08.2000. On the date of transfer, the mother of the plaintiff, Tmt.Ida was not alive. She passed away long ago on 24.02.1986. Consequently, the plaintiffs cannot claim any right in a property which was acquired by the family members, after the death of the mother. Ex.A.9, the legal heir certificate dated 31.12.2013 relied by the plaintiff, cancelled by the District Collector on 21.09.2015 as per Ex.B.1. While so, the trial Court failed to properly appreciate the issue, whether the plaintiffs through their mother Tmt.Ida, can claim right in the property allotted to the defendants along with Mrs.Victoria Sarojini, after the demise of Tmt.Ida.

14. It is also contended that P.W.1-David Seladurai has admitted that he is not in possession of the property. While so, the suit filed as if, P.W.1 is joint possession with the defendants and payment of fixed Court fees, cannot sustain.

15. Heard the Learned Counsel for the appellants and the Learned Counsel for the respondents.

16. The suit is filed for partition, claiming that the property is in joint



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possession of the plaintiffs and the defendants. The Court fees is also paid as per

Section 37(1) of the Tamil Nadu Court fees and Suit Valuation Act, 1955. The plaintiffs have filed his Ration Card, marked as Ex.A.7. The Birth certificate of the 2nd plaintiff to show that they are residing at No.219, Kamarajapuram, 6th lane, T.Nagar, Chennai.

17. In the written statement, the defendants 1, 2, 4 to 6 who are present appellants have stated their address as No.219/187, Kamarajapuram, Nungambakkam, Chennai – 600 034. On close scrutiny of the Ration Card (Ex.A.7), the Court finds that it pertains to the year 2005-2009, in which name of Tmt.Tmt is found in the Ration Card along with the 1st and 2nd plaintiffs. The Birth Certificate of 2nd plaintiff which is marked as Ex.A.8 reflects that which was registered on 19.07.1984.

18. It is admitted by the plaintiffs that Tmt.Ida, died on 24.02.1986, if that is so, the Ration Card (Ex.A.7) for the year 2005-2009 showing Tmt.Ida as family member cannot be a document reflecting true facts. Likewise, Ex.A.8, the birth certificate which was registered in the year 1984 also is not proof that the

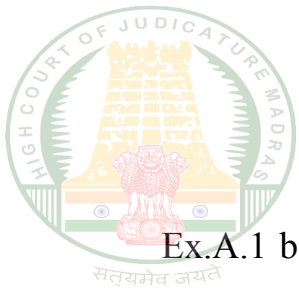


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plaintiffs are in joint possession in the suit property, along with the defendants where the suit filed on 19.10.2016.

19. Thus, it is very clear that the Court fee paid under Section 37(1) of the Tamil Nadu Court Fees and Suit Valuation Act, 1955, as if the plaintiffs were in joint possession of the property along with the defendants, is incorrect. The suit ought to have been valued under Section 37(2) of the Tamil Nadu Court Fees and Suit Valuation Act, 1955.

20. Ex.A.1 is the sale deed executed by the Tamil Nadu Slum Clearance Board in favour of Mrs.Victoria Sarojini. The sale deed is dated 18.08.2000. The main object of the Board to give better accommodation and improved living condition for the slum dwellers and to develop the slum areas. Accordingly, the Board had issued patta and transferred ownership right on the land in favour of the occupants. Mrs.Victoria Sarojini, being the occupant of the land earlier was conveyed with title and patta under these documents on collecting Rs.3,400/- towards costs and Rs.1,920/- towards the development charges. On payment of entire amount fixed under the lease-cum-sale agreement, this sale deed



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Ex.A.1 been executed. The schedule mentioned in the sale deed is Plot No.78 in Door No.219, Kamarajapuram, Nungambakkam, Chennai. Prior to the execution of the sale deed in the year 2000, the Tamil Nadu Slum Clearance Board had issued the allotment order in favour of Mrs.Victoria Sarojini and same is marked as Ex.A.2. The Allotment Card (Ex.B.2) is a very vital document issued on 20.02.1984, discloses that at that point of time, Mrs.Victoria Sarojini, along with defendants 2 to 6 and Peter Joyson (later died on 17.08.2005) were shown as the occupants in the premises. The name of Tmt.Ida through whom the plaintiffs claim right, is not found in the passbook Ex.B.2 issued by Tamil Nadu Slum Clearance Board.

21. Ex.B.3 and Ex.B.4 are receipts to show payment of instalments for the loan availed. However, these documents does not correlate with the suit property. Since, these two documents do not throw much light to substantiate that the defendants alone cleared the debts incurred towards payment of consideration for the suit property. Accordingly, the trial Court had disbelieved the case of the defendants.



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22. At this juncture, it is pertinent to record that to substantiate their plea that Mrs.Victoria Sarojini borrowed money from one Dilip Kumar Jain along with her sons D.Babu Sathyanathan and D.Victor Devanathan by mortgaging the suit property to raise a loan of Rs.1,30,000/-, applications to receive additional documents (mortgage) in C.M.P.No.8790 of 2022 and to implead the mortgagee Dilip Kumar Jain in C.M.P.No.9158 of 2023 been filed.

23. It is contended by the Learned Counsel for the appellants that if these two documents are perused along with Ex.B.3 and Ex.B.4, it would be clear that the loan amount been paid in instalments by 4th defendant/Babu Sathyanathan Son of Mrs.Victoria Sarojini.

24. In view of this Court, introduction of this document belatedly and without any relevancy need to be dismissed. Hence, C.M.P.Nos.9158 of 2023 and 8790 of 2022 are dismissed.

25. The case of the plaintiffs is that Tmt.Ida, the mother of the 2nd plaintiff, along with her husband (1st plaintiff), was living in the suit premises and

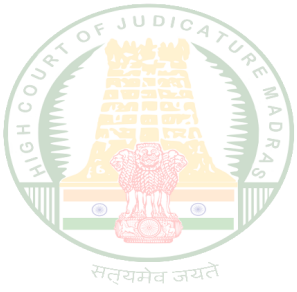


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continued to live till the date of filing the suit. However, the documents clearly show that after the death of Tmt.Ida, they were not residing in the suit premises.

Even the Tamil Nadu Slum Clearance Board issued the passbook dated 20.02.1984, the name of Tmt.Ida not recorded as an occupant. The object of Tamil Nadu Slum Clearance Board, as already recorded, is to provide decent living accommodation to the occupants of the slums. It is only for that reason Mrs.Victoria Sarojini and her family members, who were occupying the Tamil Nadu Slum Clearance Board's land were allotted patta and sale deed executed. Ex.B.3 & Ex.B.4, even without assistance of the mortgage deed, show that the dues towards the loan availed, the 4th defendants was paying the instalments.

26. On the side of the plaintiffs, though it is claimed that he has advanced a sum of Rs.1,00,000/- with the 4th defendant, there is no evidence to substantiate the said claim. From the proceedings of the District Collector, Chennai, which is marked as Ex.B.1, it is evident that the entries found in the legal heirs certificate relied by the plaintiffs are incorrect and only Ex.A.9, which consist of all legal heirs of Mrs.Victoria Sarojini is correct.



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27. The trial Court, relying upon the allotment order (Ex.A.2) in the name of Mrs.Victoria Sarojini and the legal heirs certificate marked as Ex.A.9 had held that all sons and daughters of Mrs.Victoria Sarojini are entitled for a share in the property. However, the trial Court failed to take note of the Allotment Card (Ex.B.2), dated 20.02.1984 which preceded to the sale contains only the names of the defendants. As the head of the family, the sale deed executed in favour of Mrs.Victoria Sarojini and the allotment order stands in the name of Mrs.Victoria Sarojini. The recitals in the sale deed makes clear that the patta is issued to the occupants. In this case, the patta given to Mrs.Victoria Sarojini was living with her sons and daughters, excluding the married daughter Tmt.Ida. The benefits of the Slum Clearance scheme, only to the persons who were occupation along with her at the time of allotment. More so, when these persons who are arrayed as defendants able to establish the fact that they contributed for payment of allotment amount.

28. The scrutiny of the schedule of property found in the plaint also carries an inherent defect regarding the plot numbers. The plaintiffs have not taken any steps to amend the plot number. In the plaint, it is mentioned as Plot No.70,



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whereas, in the sale deed marked as Ex.A.1 mentioned as Plot No.78. Even on the said ground, the suit deserves to be dismissed.

29. Unfortunately, the trial Court failed to consider the documents and the recitals properly and erroneously allowed the suit for partition.

30. For the reasons stated above, the finding of the trial Court is not based on a proper appreciation of the evidence. The Tamil Nadu Slum Clearance Board has granted patta to Mrs.Victoria Sarojini, after ascertaining the persons who were in occupation of the land at the time of allotment. Mrs.Ida the wife of the 1st plaintiff and the mother of the 2nd plaintiff, who were never in the suit property at the time of allotment and even thereafter, cannot have the benefit of getting patta of Slum Clearance Board's land. Though, the patta was given to Mrs.Victoria Sarojini, in her individual name, the allotment order and the passbook show that she is only the representative of the family members occupying the Tamil Nadu Slum Clearance land and this cannot be taken as property for inheritance from Mrs.Victoria Sarojini.



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31. For the reason stated above, this Court finds that the judgment and decree passed in O.S.No.5410 of 2016 on the file of the Hon'ble XVI Additional Judge, City Civil Court, Chennai is hereby set aside. Accordingly, it is set aside. The suit in O.S.No.5410 of 2016 on the file of the Hon'ble XVI Additional Judge, City Civil Court, Chennai stands dismissed.

32. In fine, the *Appeal Suit No.245 of 2022 is allowed.* There shall be no orders as to costs.

23.06.2025

Index :Yes.

Speaking order/non speaking order

Neutral citation :Yes/No.

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To,

1.The XVI Additional Judge, City Civil Court, Chennai.

2.The Section Officer, V.R.Section, High Court, Madras.



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Dr.G.JAYACHANDRAN,J.

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Pre-delivery judgment made in
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