

S.A.No.514 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

JUDGMENT RESERVED ON : 28 / 10 / 2024

JUDGMENT PRONOUNCED ON : 04 / 06 / 2025

**CORAM:
THE HONOURABLE MR. JUSTICE R.SAKTHIVEL**

**S.A.NO.514 OF 2021
AND
CMP NO.10389 OF 2021**

M.D.Sampathkumar ... Appellant /
Appellant /
2nd Defendant

Vs.

Devaraj ... Respondent /
Respondent /
Plaintiff

PRAYER: Second Appeal filed under Section 100 of the Code of Civil Procedure, 1908, praying to set aside the Judgment and Decree dated October 1, 2019 made in A.S.No.19 of 2016 on the file of the III Additional District & Sessions Judge, Erode at Gobichettipalayam, confirming the Judgment and Decree dated June 17, 2016 made in O.S.No.56 of 2008 on the file of the Sub Court, Gobichettipalayam.

For Appellant : Mr.P.Saravana Sowmiyan

For Respondent : Mr.K.Sudhakar

J U D G M E N T

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This Second Appeal is directed against the Judgment and

Decree dated October 1, 2019 passed in A.S.No.19 of 2016 by the 'III Additional District & Sessions Court, Erode at Gobichettipalayam' ['First Appellate Court' for brevity], whereby the Judgment and Decree dated June 17, 2016 passed in O.S.No.56 of 2008 by the 'Sub Court, Gobichettipalayam' ['Trial Court' for brevity] was confirmed.

2. For the sake of convenience, hereinafter, the parties will be referred to as per their array in the Original Suit.

PLAINTIFF'S CASE

3. On June 5, 2006, Karuppanna - husband of the first defendant, borrowed a sum of Rs.2,00,000/- for interest at the rate of 12% per annum from the plaintiff and executed a Promissory Note in favour of the plaintiff. Karuppanna passed away on April 20, 2008 without repaying any amount, leaving behind his wife - Thangammal / first defendant as sole legal representative. The plaintiff demanded repayment of the debt and issued a legal Notice on April 30, 2008, which the first defendant received on May 3, 2008 and caused reply Notice dated May 6, 2008 *inter alia* seeking the Suit Promissory Note for perusal. The plaintiff



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issued a rejoinder dated May 21, 2008 permitting her to peruse the same anytime during office hours at his advocate's office. Accordingly, the first defendant along with her advocate perused the same on June 5, 2008. Thereafter, the plaintiff never heard from the first defendant. The first defendant attempted to alienate the properties left behind by Karuppanna, to a third party, to evade repayment of debt. The plaintiff, therefore, filed the Suit seeking recovery of money along with interest from the first defendant, out of the properties left behind by Karuppanna, along with an Interlocutory Application No.193/2008 seeking attachment of the said properties. From the counter filed in the Interlocutory Application, the plaintiff learnt that Karuppanna had executed a Gift Settlement Deed dated March 28, 2008 bequeathing his entire properties in favour of first defendant. Hence, the first defendant, as a Universal Donee, is liable to settle the debt from the properties gifted by Karuppanna.

3.1. During the pendency of the Suit, the first defendant executed a Sale Deed dated June 25, 2008 in favour of one M.D.Sampathkumar, with a view to defeat and defraud the plaintiff's claim. Thereafter, first defendant passed away on November 14, 2010 pending Suit. Hence, the said M.D.Sampathkumar has been impleaded as



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second defendant (vide Order dated November 10, 2011 made in I.A.No.248 of 2010 on the file of Trial Court). The second defendant as a Universal Donee, is liable to settle the Promissory Note debt, out of the properties purchased from first defendant. To that effect, he prayed for a Decree.

CASE OF FIRST DEFENDANT

4. The first defendant filed a written statement stating that the Karuppanna never borrowed any money from the plaintiff and the Suit Promissory Note is entirely false and fabricated. The plaintiff is none other than Karuppanna's brother's son. The plaintiff and his brother's family had long-standing disputes with the first defendant's family over ancestral properties in Gugalur village, leading to hostility.

4.1. On March 28, 2008, Karuppanna executed a Gift Settlement Deed in favour of first defendant in respect of the entire properties that belonged to him. This led to the plaintiff's family abducting Karuppanna and the first defendant on April 3, 2008 and April 4, 2008 respectively. In this regard, the first defendant's sister - Kannammal, lodged a complaint at the Gobi Police Station. After



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Karuppanna Gounder's demise, on May 5, 2008, the plaintiff's family assaulted and threatened the first defendant seeking to transfer the settled properties, prompting the first defendant to lodge another criminal case against them.

4.2. Given this serious hostility, Karuppanna had no reason to borrow any money from the plaintiff in 2006. The Suit Promissory Note including the alleged Karuppanna's signature therein are false and fabricated. Therefore, the 1st defendant prayed for the dismissal of the Suit.

CASE OF SECOND DEFENDANT

5. The second defendant filed a written statement denying the execution of the Promissory Note by Karuppanna. Further averred that, Karuppanna never borrowed money from the plaintiff and hence, first defendant need not pay him any amount. Karuppanna during his lifetime executed a Gift Settlement Deed dated March 28, 2008 in favour of first defendant in respect of the entire properties that belonged to him. The averments that the first defendant is an Universal Donee under Section 128 of the 'Transfer of Property Act, 1882' ['T.P. Act' for short] is false and



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not legally sustainable. Further averred that the second defendant purchased the properties covered under the said Gift Settlement Deed from the first defendant for a sum of Rs.4,00,000/- on June 25, 2008. He is a *bonafide* purchaser for value without notice of any encumbrances, and has nothing to do with the Suit claim. Therefore, he sought to dismiss the Suit.

TRIAL COURT

6. At trial, plaintiff – Devaraj was examined as P.W.1 and one Mohan was examined as P.W.2 and Ex-A.1 to Ex-A.8 were marked on the side of the plaintiff. On the side of the defendants, second defendant / M.D.Sampathkumar was examined as D.W.1 and no document was marked.

7. After full-fledged trial, the Trial Court concluded that the Suit Promissory Note is true, valid and executed for consideration. Further held that the first defendant acquired the entire properties of Karuppanna by way of Gift Settlement Deed. Hence, the first defendant as a Universal Donee was bound to repay the Suit Promissory Note debt, out of the properties gifted by Karuppanna. Further held that the second



defendant purchased the entire properties gifted to first defendant by Karuppanna during the pendency of the Suit for a lesser value vide Ex-A.7 - Sale Deed with a view to defeat and defraud the plaintiff's right; that the second defendant is not a *bona fide* purchaser; that in these circumstances, second defendant is liable to pay the debt that Karuppanna owed to plaintiff out of the Karuppanna's properties which are now in his hands. Accordingly, it decreed the Suit as prayed for.

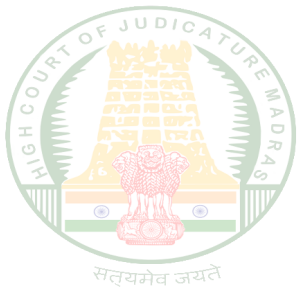
FIRST APPELLATE COURT

8. Feeling aggrieved, the second defendant preferred an appeal before the First Appellate Court, which, after hearing both sides, concurred with the findings of the Trial Court, and dismissed the appeal.

SECOND APPEAL

9. Feeling aggrieved, the second defendant has preferred the present Second Appeal under Section 100 of the Code of Civil Procedure, 1908. The Second Appeal was admitted on July 14, 2021 on the following substantial questions of law:

“a) Whether late Karuppana Gounder's spouse erstwhile first defendant in the Suit and appellant's vendor would become a



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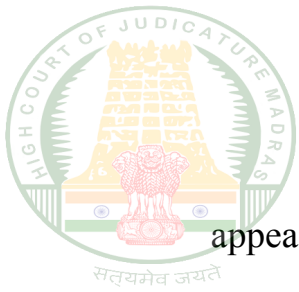
Universal Donee within the meaning of Section 128 of the Transfer of Property Act, 1882 warranting properties, subject matter of settlement, to suffer the decree when the debt is an unsecured debt on the foot of a promissory note?

- b) *Whether doctrine of Lis Pendens vide Section 52 of the Transfer of Property Act, 1882 would be attracted qua a money suit?"*

10. On February 16, 2024, after hearing both sides, the substantial questions of law has been re-framed as follows:

'(a) Whether the provisions under Section 128 of the Transfer of Property Act, 1882, would override the provisions under Section 14(2) [sic] of the Hindu Succession Act, 1956?'

11. During arguments, learned counsel for the appellant / second defendant raised a point that the First Appellate Court erroneously dismissed I.A.No.913 of 2018 filed by the second defendant under Rule 76 of the Civil Rules of Practice, which point has also been mentioned in the grounds of appeal as Point (k). He further submitted that though the said petition was filed under Rule 76 of the Civil Rules of Practice, in substance, it was filed under Order XLI Rule 27 of the Code of Civil Procedure, 1908 ['CPC' for short]. Hence, the First Appellate Court ought to have disposed of I.A.No.913 of 2018 along with the main appeal. Instead, the First Appellate Court decided the petition before hearing the



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appeal, which procedure is erroneous. In support of this submission, learned counsel for the appellant / second defendant relied on the following decisions:

- (i) *Judgment of the Hon'ble Supreme Court in A.Andisamy Chettiar Vs. A.Subburaj Chettiar, reported in (2015) 17 SCC 713; and*
- (ii) *Judgment of the Hon'ble Supreme Court in Shasidhar and Others Vs. Ashwini Uma Mathad and Another, reported in (2015) 11 SCC 269.*

12. In response the above argument, learned counsel appearing for the respondent / plaintiff would submit that I.A.No.913 of 2018 was not filed under Order XLI Rule 27 of the CPC, on the other hand, it was filed under Rule 76 of the Civil Rules of Practice. And, the second defendant did not raise any objection while deciding the said I.A.No.913 of 2018. The said application was filed on April 10, 2018 and disposed on July 4, 2018. Thereafter, the appeal was disposed on October 1, 2019 *i.e.*, after one year. If really the second defendant was aggrieved with the Order passed in I.A.No.913 of 2018, the second defendant would have preferred revision as per law or approached this Court under Article 227 of the Constitution of India. In view of his non-objection, as well as



the fact that he did not prefer revision against the Order passed in the Interlocutory Application, he is not entitled to reagitate the matter in this Second Appeal.

13. This Court has perused the affidavit, petition and Order passed in I.A.No.913 of 2018. The said petition was filed under Rule 76 of the Civil Rules of Practice praying to call for the following documents from the offices in which they lie:

S.No.	Particulars of the document	Office in which it lies
1	04.04.2008 Complaint lodged by Kannammal to the Police, Gobichettipalayam	Police Station, Gobichettipalayam
2	05.04.2008 CSR No.286/08	Police Station, Gobichettipalayam
3	21.05.2008 Complaint lodged by Thangammal before Superintendent of Police	Office of the Superintendent of Police, Erode
4	21.05.2008 Complaint sent by post to Inspector General Office, Coimbatore	IG Office, Coimbatore
5	06.05.2008 and 07.05.2008, the G.D. file kept by Town Police, Gobichettipalayam	Town Police Station, Gobichettipalayam

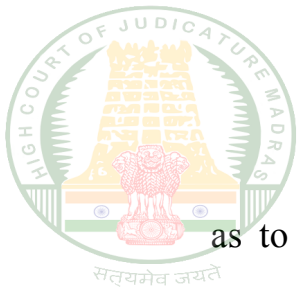
14. The First Appellate Court, after hearing both sides, concluded that the documents sought to be called for are all relating to the year 2008 *i.e.*, after the execution of the promissory note, and that the said



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petition was filed with a view to prolong the proceedings. Further held that the petitioner / second defendant did not take steps to send for the documents before the Trial Court. It was further held that the documents sought to be called for are not relevant and helpful to the petitioner/second defendant. Accordingly, the First Appellate Court dismissed the petition.

15. The documents sought to be called for are all various complaints given by the first defendant and by her sister against the plaintiff's side, relating to the year 2008 *i.e.*, after the execution of Promissory Note. They would not help the defendant's case. The First Appellate Court has rightly held so and dismissed the petition. To be noted, the petitioner / second defendant did not raise any objection when the petition was taken up for disposal before considering the merits by the First Appellate Court. Further, the second defendant did not prefer a revision over the said decision nor did he filed a petition under Article 227 of the Constitution of India before this Court. Further, the said petition was not filed under Order XLI Rule 27 of the CPC and hence, it need not be decided along with the appeal. Further, upon considering the nature of the prayer sought for in the petition, this Court finds no reason



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as to why the petition ought to have been heard along with the main appeal, as contended by the petitioner / second defendant. Moreover, Rule 76 of the Civil Rules of Practice is not applicable to a petition to call for documents. For ease of reference, Rule 76 is extracted hereunder:

"76.Copies of public documents.- When a party to suit or proceeding seeks to obtain a certified copy of public document for being filed into court in that suit or proceeding, he may apply to the court wherein the suit or proceeding is pending for the issue of a certificate to enable him to obtain such copy from the appropriate authority and the court shall on being prima facie satisfied that the production of the certified copy in the suit or proceeding is necessary issue to the applicant a certificate to that effect."

15.1. Rule 76 deals with a request to the Court to certify that the petitioner requires certified copies of certain public documents for the purpose of the case, enabling the petitioner to obtain such a certified copy from a public authority. The petitioner / second defendant ought to have filed the petition under Rule 75 of the Civil Rules of Practice, instead of Rule 76. However, merely citing wrong provision of law is not fatal to his petition. At the same time, while assuming that the petition is filed under the right provision which is Rule 75, even then the contentions of the second defendant that the petition ought to have been considered along



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with the main appeal, does not hold up under scrutiny for the aforesaid reasons. Nothing wrong could be identified in the procedure adopted by the First Appellate Court. It is true that when an application is filed under Order XLI Rule 27 of the CPC, it is to be considered at the time of hearing the main appeal / considering the merits. No doubt with the legal position advanced by the Judgments relied on by the learned Counsel for the appellant / second defendant. However, the second defendant did not file the Interlocutory Application under Order XLI Rule 27 of CPC and hence, it need not have been heard along with the main appeal. In view of the above, the argument of the learned Counsel for the appellant / second defendant in this regard deserves to be rejected.

16. That apart, the learned Counsel for the appellant / second defendant raised a contention that the First Appellate Court failed to follow Order XLI Rule 31 of CPC and the non-compliance thereof renders the Judgment bad in law. This Court has perused the Judgment of the First Appellate Court. It is true that the First Appellate Court framed only one point to the effect that whether the Judgment and Decree passed by the Trial Court is to be set aside or not. But, First Appellate Court has elaborately discussed various material aspects such as the execution and



passing of consideration under Suit Promissory Note (Ex-A.1), whether the second defendant is a *bona fide* purchaser or not, whether the defendants are Universal Donees, whether the plaintiff is entitled to recover the loan amount in and out of Karuppanna's properties now in the hands of second defendant, *etc.* Though separate points for consideration were not framed in regard to the above aspects, the First Appellate Court has covered all the material aspects, substantially conforming with the Order XLI Rule 31 of CPC. Hence, the contention of the learned Counsel for the appellant / second defendant in this regard must fail.

17. Coming to the execution of Ex-A.1 – Suit Promissory Note, the plaintiff examined himself and one more witness, namely P.W.2 – Mohan, in this regard. P.W.2 is the witness to Suit Promissory Note and regarding its execution, he has deposed along the lines of the plaintiff's case. The evidence of P.W.1 and P.W.2 *prima facie* prove the execution of Suit Promissory Note by Karuppanna. Hence, in view of Section 118 of the Negotiable Instruments Act, 1881, Suit Promissory Note attracts the presumption that consideration passed thereunder. Now the burden is upon the defendants to rebut the presumption, which they failed to do so. There is no evidence available on record to rebut the presumption. The



Trial Court as well as the First Appellate Court concurrently concluded that Ex-A.1 – Suit Promissory Note is true, valid and executed for consideration by Karuppanna in favour of plaintiff. This Court is on the same page with the Trial Court and the First Appellate Court.

18. Next question is whether the first defendant is an Universal Donee under Section 128 of the T.P. Act.

19. Learned Counsel for the appellant / second defendant argued that the first defendant acquired the properties of Karuppanna vide Ex-A.6–Gift Settlement Deed as early as March 28, 2008 and the donor–Karuppanna passed away on April 20, 2008. Hence as per Section 14 (1) of the 'Hindu Succession Act, 1956' ['H.S.Act' for short], the first defendant is the absolute owner of the properties and the principal of Universal Donee will not be applicable. He relied on the Judgment of Hon'ble Supreme Court in *C.Masilamani Mudaliar Vs. Idol of Sri Swaminathaswami Swaminathaswami Thirukoil*, reported in (1996) 8 SCC 525.

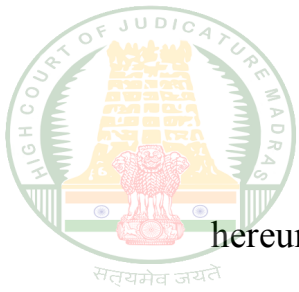
20. Per contra, learned Counsel for the respondent / plaintiff



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submitted that Section 14 (1) of the H.S.Act cannot override Section 128 of the Transfer of Property Act, 1882, by relying on the Judgments of this Court in ***Dayanandan Vs. Venugopal Naidu***, reported in ***AIR 1964 Mad 78***, and in ***Shanmugam Vs. M/s. Syndicate Bank***, reported in ***1999 (III) CTC 186***.

21. The Suit Promissory Note was executed on June 5, 2006 by Karuppanna and he died on April 20, 2008. After exchange of Notices between the plaintiff and the first defendant, the Suit was filed on June 11, 2008. The borrower - Karuppanna, during his lifetime, executed a Gift Settlement Deed on March 28, 2008, in favour of his wife / first defendant in respect of the entire properties in his hands. According to the plaintiff, he was not aware of the execution of the Gift Settlement Deed (Ex-A.6) at the time of filing of the Suit and hence, initially, the first defendant was added as the sole defendant for she succeeded Karuppanna's properties as his legal representative. Later, the plaintiff came to know about the execution of Ex-A.6 – Gift Settlement Deed. Via Ex-A.6, the entire properties of Karuppanna fell onto the hands of first defendant. It is fruitful to extract Section 128 of The Transfer of Property Act, 1882



hereunder:

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"128. Universal Donee.—Subject to the provisions of Section 127, where a gift consists of the donor's whole property, the donee is personally liable for all the debts due by and liabilities of the donor at the time of the gift to the extent of the property comprised therein."

21.1. From the bare reading of the above extracted Section 128, it could be seen that it covers "all the debts due by the donor". It does not restrict itself to secured debts. Further, the addition of the term "liabilities", which is of a much wider scope than debt, via an amendment in 1929, adds support to the assertion that Section 128 is not restricted to secured debts, but also covers unsecured debts. ***Lala Ram Surup Vs. Lala Shiv Dayal***, reported in ***AIR 1940 Lah 285*** lends support to the above view.

22. In this case, the first defendant acquired the entire properties of the borrower / Karuppanna vide Ex-A.6 – Gift Settlement Deed. To be noted, the Gift Settlement Deed was executed after Suit Promissory Note and just three months before the Suit. The Suit was filed within the stipulated period under the Limitation Act, 1963. As stated *supra*, execution of Suit Promissory Note is *prima facie* proved. A Gift

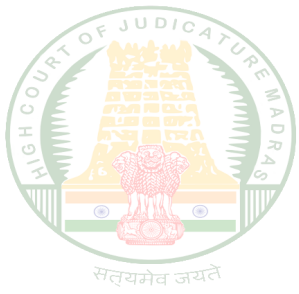


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Settlement Deed lacks monetary consideration and hence, the one in this case, might have been executed with a view to defeat plaintiff's claim of unsecured debt under the Suit Promissory Note. Assuming that there is no Gift Settlement Deed in this case, the plaintiff is entitled to realise the debt through the properties of Karuppanna, which the first defendant would have succeeded as sole legal heir.

23. Learned Counsel for the appellant / second defendant relied on *Masilamani's Case* (cited *supra*) to contend that the Karuppanna's properties became absolute properties in the hands of first defendant / Karuppanna's wife under Section 14 (1) of the H.S.Act. As per said Section 14 (1) as explained in *Masilamani's Case*, any property acquired by a female Hindu by inheritance, or devise, or partition, or in lieu of maintenance, or arrears of maintenance, or by gift from any person, or acquired by her own skill or exertion, or by purchase, or by prescription towards any pre-existing right, shall be her absolute property, not a limited property. If any limited right is granted in the abovesaid manner, the limitations would not hold good and the property would be deemed to be conferred absolutely upon the female Hindu; in other words, the limited rights blossom into absolute rights.



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24. If Section 14 (1) of the H.S.Act is said to have an overriding effect over Section 128 of the Transfer of Property Act, 1882, after debt, a debtor can easily transfer his entire properties to his wife or daughter or sister recognising their pre-existing right, and manage to secure his properties from his debts and liabilities by claiming protection under Section 14 (1) the H.S.Act. Such an interpretation would lead to misuse of the beneficial provision intended to uplift the status of and empower Hindu women, thereby defeating the statutory safeguards available to creditors and encouraging such colourable transactions under the guise of statutory protection against gender-based discrimination conferred upon female Hindus. Thus, this Court concludes that Section 14 (1) of the H.S.Act cannot have an overriding effect on Section 128 of the T.P. Act.

25. A similar view is taken by this Court in *N.K.Pushpam Achi Vs. K.Rajkumar*, reported in **2009 8 MLJ 495**, wherein the debtor transferred his properties in favour of his wife and children after the debt. The plaintiff's petition seeking to add the wife and children as proper parties, which the Trial Court therein dismissed. On revision, this Court held that the plaintiff could proceed against the properties of the proposed



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parties in the event of plaintiff's success in the Suit. This Court accordingly allowed the revision.

26. Hence, the first defendant who acquired the Karuppanna's entire properties through Ex-A.6 without any monetary consideration is liable to clear the debts and other liabilities of the donor, of course to the extent of the properties acquired through Ex-A.6. Thus, the first defendant is a Universal Donee under Section 128 of the Transfer of Property Act, 1882 and the findings of the Trial Court as well as the First Appellate Court that the first defendant is an Universal Donee is correct.

27. The next question is whether the second defendant, who purchased the Karuppanna's properties from the hands of the Universal Donee / first defendant pending the Suit, is a *bona fide* purchaser with value and without notice of the pendency of the Suit.

28. The learned Counsel for the appellant / second defendant argued that there was no encumbrance when the second defendant purchased the properties from first defendant. He was genuinely unaware of the pending Suit. Hence, he is a *bona fide* purchaser with value. Further, the Suit is a Money Suit and the property purchased by the

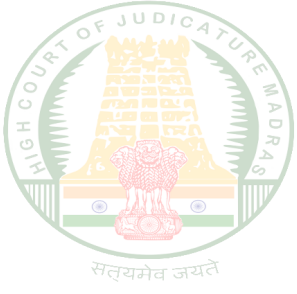


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second defendant is not the subject matter thereof. There is no description of property in the plaint. Accordingly, he argued that the doctrine of *lis pendens* is not applicable to the facts and circumstances of this case and the liability to pay off the Karuppanna's debt cannot be fastened to / bundled with the property purchased by the second defendant vide Ex-A.7 – Sale Deed from the first defendant. The concept of Universal Donee is also not applicable to the second defendant, since he is a *bona fide* purchaser with value without notice of any encumbrance. He would rest his arguments on the Judgment of this Court in ***Kamatchi Vs. Fathima Beevi***, reported in **2012 (1) MWN (Civil) 305**.

29. On the other hand, learned Counsel for the respondent / plaintiff argued that Ex-A.6 – Gift Settlement Deed, the property thereof is valued at Rs.10,00,000/-. But in Ex-A.7 – Sale Deed, it has been valued at Rs.4,50,000/- and purchased for Rs.4,00,000/-. In fact, Ex-A.7 – Sale Deed was impounded under Section 47-A(1) of the Indian Stamp Act, 1899 as the Sub-Registrar valued the properties at Rs.9,24,900/- and the defendants remitted the deficit stamp duty and registration fees of Rs.25,330/- only on January 28, 2012. In this regard, the second defendant / D.W.1 has deposed as follows:

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என்னுடைய கிரய ஆவணத்தில் தங்கம்மாள் வழக்கு சொத்து எனக்கு 28.3.2008 தேதியிட்ட தானசெட்டில்மெண்ட் ஆவணத்தின்படி பாத்தியப்பட்டது என்று கூறியுள்ளார் என்றால் சரிதான். நான் வழக்கு சொத்தை 4 இலட்சம் ரூபாய் கொடுத்து கிரயம் பெற்றேன். வழக்கு சொத்தின் மொத்த விஸ்தீர்ணம் 2 ஏக்கர் 63 சென்ட் ஆகும். வழக்கு சொத்தில் ஒரு வீடு உள்ளது. ஒரு ஆழ்குழாய் கிணறு உள்ளது. மாட்டு கொட்டகை ஒன்று உள்ளது. தங்கம்மாளின் தானசெட்டில்மெண்ட் பத்திரத்தில் வழக்கு சொத்தின் மதிப்பு ரூ.10,00,000/- போட்டு குறிப்பிடப்பட்டுள்ளது என்றால் சரிதான். கிரய ஆவணத்தில் சொத்தின் மதிப்பு குறைவாக காட்டப்பட்டுள்ளது என்று கூறி கிரைய ஆவணம் பதிவு செய்யப்படாமல் சார்பதிவாளரால் நிறுத்திவைக்கப்பட்டதா என்றால் அந்த காரணத்திற்காக நிறுத்தி வைக்கப்படவில்லை. நான் தங்கம்மாளுக்கு செலுத்தவேண்டிய தொகையை செலுத்தி முடிப்பதற்காக கிரய ஆவணத்தை பதிவு செய்யாமல் நிறுத்தி வைக்குமாறு கூறியிருந்தேன். . . . !

30. He has deposed that only with the knowledge that the properties' value is Rs.10,00,000/-, he had purchased the same for Rs.4,00,000/-. Further, both the defendants belong to the same district,



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were residing within 25 Kilometre radius and they belong to the same community. Further, the properties are situated in a village, in which both the plaintiff and the first defendant were residing at the time of Ex-A.7 – Sale Deed and the second defendant could have easily learnt about the pending Suit from a minimum enquiry. It could be reasonably inferred that the second defendant was aware of the pending Suit proceedings and that is why he was able to purchase the property at a much lower price than the market value. Hence, he cannot be termed as a *bona fide* purchaser with value and without notice of the pendency of the Suit.

31. Regarding the applicability of *lis pendens* to a Money Suit, it is the general law that the doctrine of *lis pens* is not applicable to Money Suit. Here, in the prayer itself it has been stated that the first defendant derived title vide the Gift Settlement Deed dated March 28, 2008 as a legal representative and as a Universal Donee under Section 128 of T.P. Act, she is liable to pay the debt. During the pendency of the Suit, first defendant executed Ex-A.7 - Sale Deed in favour of the second defendant on June 25, 2008 for a lesser value. The parties to the Suit were well aware of the fact that the plaintiff prayed to pass a Money Decree recoverable from and out of the properties covered under Ex-A.6 and Ex-



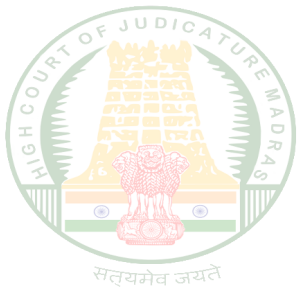
A.7. The original plaint prayer (before impleading the second defendant)

reads as under:

“9.ஆகையால் மேதகு நீதிமன்றம் கருணை புரிந்து, வாதிக்கு வழக்கு தொகை ரூ.2,36,200/- ம் (ரூபாய் இரண்டு லட்சத்து முப்பத்தாறாயிரத்து இருநூற்று ஐம்பது மட்டும்) [sic] பின் வட்டியும் வழக்கு செலவுத் தொகையும் காலஞ்சென்ற கருப்பண கவுண்டரின் வாரிசாகிய பிரதிவாதி வசமிருக்கும் காலஞ்சென்ற கருப்பண கவுண்டரின் சொத்துக்கள் மூலம் கிடைக்கும்படிக்கு ஓர் தீர்ப்பும், தீர்ப்பாணையும் வேண்டுமாய் வாதி பணிவுடன் வேண்டுகிறார்.”

32. Upon learning about the sale transaction between the defendants, the plaintiff modified the prayer as hereunder:

“9.ஆகையால் மேதகு நீதிமன்றம் கருணை புரிந்து வாதிக்கு வழக்கு தொகை ரூ.2,36,200/- (ரூபாய் இரண்டு லட்சத்து முப்பத்தாறாயிரத்து இருநூற்று ஐம்பது மட்டும்) [sic] பின் வட்டியும் வழக்கு செலவுத் தொகையும் காலஞ்சென்ற கருப்பண கவுண்டரின் சொத்துக்களை 28.3.2008 தேதிய கோபி 2நெ. இணை சார்பதிவக பத்திர எண்.608/2008 ஆக பதிவு செய்யப்பட்ட தானசெட்டில்மெண்ட் பத்திரப்படி முதல் பிரதிவாதி அடைந்து அச்சொத்துக்களை முதல்



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பிரதிவாதி 2 ஆம் பிரதிவாதிக்கு 25.6.2008ம் தேதிய கிரய ஆவணம் மூலம் கிரயம் செய்து கொடுக்கப்பட்டு இரண்டாம் பிரதிவாதி வசமிருக்கும் கருப்பண கவுண்டரின் சொத்துக்கள் மூலம் கிடைக்கும் படிக்கு ஓர் தீர்ப்பும் தீர்ப்பாணையும் பிறப்பிக்க வேண்டுமாய் வாதி பணிவுடன் வேண்டுகிறார். (இ.ம.எண்.134/2012 இல் 8.8.2012ம் தேதி ஏற்பட்ட உத்தரவின்படி திருத்தப்பட்டது)”

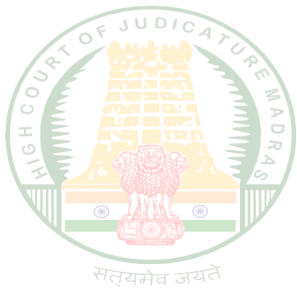
33. The original prayer is sufficient enough to easily discern that the Suit revolves around the properties covered under Ex-A.6 and Ex-A.7 and that if Money Decree passed, it would be enforceable upon the properties covered thereunder. It is clear that though description of property is not stated in the plaint as per Order VII Rule 3 of CPC, the provisions are substantially conformed with by the plaintiff. After impleading the second defendant, the amended prayer has brought greater clarity to the matter. As stated *supra*, the second defendant is not a *bona fide* purchaser and he had purchased the property for less than half of its market value. It leads to a strong inference that he purchased the properties only with the knowledge of the pendency of the Suit. Hence, this Court is of the view that the doctrine of *lis pendens* is applicable to the present case. Moreover, upon being impleaded by the plaintiff, he



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entered appearance, filed written statement and took all defences available to the first defendant, including that the Suit Promissory Note is false and fabricated. In these circumstances, he steps into the shoes of the first defendant and he who is deriving right and title from the second defendant during the pendency of the Suit is also liable to pay the debt in and out of the property derived from the first defendant, as he becomes her legal representative. To be noted, the term legal representative is wide enough to include even an *inter-meddler* and in such a scenario, in view of the facts and circumstances of the case, this Court has no difficulty in holding that the second defendant is a legal representative of the second defendant. In this regard, it is worthwhile to refer to ***Shanmugam's Case*** (cited *supra*), facts whereof are captured in Paragraph No.1 of the Judgment therein, which reads as hereunder:

"1. The first respondent filed a suit in O.S. No. 336 of 1981 on the file of the Sub-Court, Coimbatore for recovery of money from the respondent No. 2 and one Kanni Boyan and Nammal. The defendants 2 and 3 in the suit borrowed money from the first respondent-bank and their mother Nallammal, the fourth defendant in the suit executed a mortgage deed with respect to the property in question in 1978 as security in favour of the said bank. The said Nallammal seems to have executed the settlement deed on 7.3.1980 in favour of the



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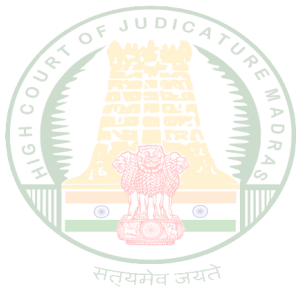
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petitioners who are the sons of the second defendant. To enforce the said mortgage and recover the amount, the first respondent-bank filed the suit on 23.3.1981. Since there were some superstructures in the property settled in favour of the petitioners, the said Nallammal seems to have executed a release deed on 20.1.1982 with respect to those superstructures, and she died on 1982. Preliminary decree was passed on 5.2.1985 and final decree was also passed on 22.7.1986. Since the defendants 2 and 3 also died, the Execution Petition in E.P. No. 137 of 1988 was filed by the said bank against all other legal representatives of the deceased defendants. In the Execution Petition, the petitioners herein filed counter stating that they are the settlees with respect to the property hypothecated to the said bank and they are entitled to the equity of redemption, and the decree obtained without impleading them cannot be enforced. The court below rejected the objection raised by the petitioners and directed to proceed with the execution petition. Aggrieved against the same, the petitioners have filed the above revision."

33.1. Dealing with the above factual matrix, referring to ***Dayanandan's Case*** (cited *supra*), this Court held in ***Shanmugam's Case*** as follows:

"While dealing with similar issue, Veeraswami, J., as he then was, in the decision in Dayanandan v. Venugopal, AIR 1964 Mad. 78 has held as follows:-

"With great respect to the Judges who decided AIR

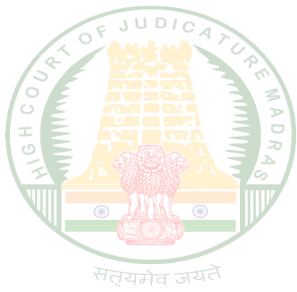


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1952 Trav.Co. 23, I am unable to concur with the view they have expressed. They seem to think that devolution of interest is necessarily a test of one being a legal representative. I am find no warrant for such a view. In S. 2.(11) of C.P. Code the statutory definition of 'legal representative' goes so far as to say that even an inter-meddler with the estate of a deceased will be his legal representative. If that is so, I do not see why a universal donee who by reason of a gift enters upon possession of the estate of a deceased cannot be regarded as his legal representative. It is not necessary that, in order for that person to be his legal representative, there must be a devolution of interest in his favour from the deceased. If devolution is the criterion, many persons who are unboundedly legal representative will not be so, as for example, executors, trustees and the like. Apart from a universal donee being a legal representative, it is particularly important to note that universal donees only take the estate of the deceased subject to the liabilities of the deceased. In fact Section 128 of the Transfer of Property Act fastens a personal liability upon the universal donee for all debts due by the donor at the time of the gift though that liability is confined to the extent of the properties comprised in the gift. This aspect, if I may say so, with respect, again, does not appear to have been kept in view in AIR 1952 Trav.Co. 23. The liability of the universal donee to pay the decree debt of the donor arises not only by reason of the



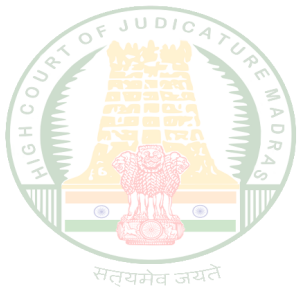
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donee accepting the gift and of being the legal representative of the deceased but also by the very terms under which he becomes a universal donee. Though it was conceded by counsel in Andhra Bank Ltd. v. Srinivasan, AIR 1962 SC 232, that a universal donee would be a legal representative, the Supreme Court was inclined to take the view that even a person who intermeddled with only a part of the estate of a deceased would be his legal representative. The case of a universal donee is a fortiori on a better footing.

Section 50(2) of the Civil Procedure Code enables a decree holder to execute his decree against the legal representatives of the judgment-debtor, the liability, of course, in execution being confined to the extent of the deceased's property in the hands of the legal representative. That precisely is also the position under Section 128 of the Transfer of Property Act. On a careful consideration of the question, I am unable to see why there should be insistence on another suit against the legal representatives to establish the debt of the donor. There appears to be no conceivable reason or principle which compels such a course. Both on the ground that the universal donees are the legal representatives of the donor and on the ground of their personal liability to qualified extent under the terms of Section 128 of the Transfer of Property Act, I hold that no separate suit is necessary to reach the properties of the donor



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in execution of the decree against him but that the decree-holder can levy execution straightway against his legal representatives to the extent of the donor's properties in their hands."

From the abovesaid decision it is clear that the petitioners are the legal representatives of the fourth defendant and they are liable to discharge the liability to the extent of the deceased's property in question and no separate suit need be filed. In view of the above finding I am not going into the other question, viz, whether the suit is sustainable under Order 34, Rule 1 of the Code, without impleading the petitioners."

34. The Trial Court relied on ***VPS Vishwananthan Vs. Sri Raja Yarns Traders***, reported in ***2010 1 MLJ 556***, and held that the second defendant is not a *bona fide* purchaser with value and without notice, and hence the plaintiff is entitled to avoid the sale and realise the debt amount including interest from the second defendant in and out of the Karuppanna's properties which lie in his hands. There is no illegality or irregularity in the said finding of the Trial Court as well as the First Appellate Court. As regards the cases relied on by learned Counsel for the appellant / second defendant in support of the contention that *lis pendens* is not applicable to money Suit, no doubt that the same is the general law,



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however in view of the unique facts and circumstances of this case, the doctrine of *lis pendens* is applicable, as elaborated above.

35. The absolute ownership under Section 14(1) of the H.S.Act cannot override the liability imposed by Section 128 of T.P. Act, in the facts and circumstances of this case. Accordingly, the substantial question of law is answered against the second defendant and in favour of the plaintiff. The Judgment and Decree of the Trial Court as well as First Appellate Court are sustained. The Second Appeal must fail.

RESULT

36. Resultantly, the Second Appeal stands dismissed. The Judgment and Decree of the First Appellate Court is hereby confirmed. Considering the facts and circumstances of the case, there shall be no order as to costs. Consequently, connected Civil Miscellaneous Petition is closed.

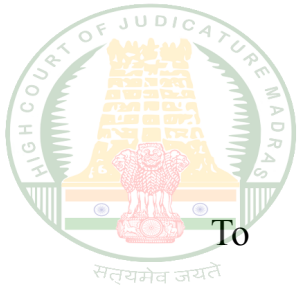
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Index : Yes
Speaking Order : Yes
Neutral Citation : Yes
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R. SAKTHIVEL, J.

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To

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1.The III Additional District
and Sessions Judge
Erode at Gobichettipalayam.

2.The Sub Judge
Sub Court
Gobichettipalayam.

3.The V.R. Section
Madras High Court,
Madras.

PRE-DELIVERY JUDGMENT MADE IN

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