

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07 - 07 - 2015

CORAM:

THE HON'BLE SMT. JUSTICE PUSHPA SATHYANARAYANA

S.A. No. 800 of 2013

and

M.P. No. 1 of 2013

B.K.C. Chokkalingam ... Appellant/Defendant
Vs.

1. Sundaresan @ Masilamani
2. Minor Ponmani @ Suresh ... Respondents/Plaintiffs
(R2 declared as major by
order dated 08.06.2015)

Appeal under Section 100 of the Civil Procedure Code, against the judgment and decree dated 02.04.2013 passed by the Principal District Judge, Krishnagiri, in A.S. No. 35 of 2012 confirming the judgment and decree passed by the District Munsif, Krishnagiri, in O.S. No. 81 of 2007 on 14.07.2011.

For Appellant : Mr. R. Margabandhu

For Respondents: Mr. P. Mani

JUDGMENT

Defendant, who suffered a decree in a suit for declaration of title and delivery of possession, has projected the instant Appeal against the judgment and decree dated 02.04.2013 passed by the learned Principal District Judge, Krishnagiri, in A.S. No. 35 of 2012 confirming the judgment and decree dated 14.07.2011 passed by the learned District Munsif, Krishnagiri, in O.S. No. 81 of 2007.

2. According to the plaintiffs, who are minors represented by their mother and natural friend, the suit properties originally belonged to their paternal grandfather Varadaraj, who gifted them in their favour by Gift Deed dated 09.3.2000. It is stated that the said gift was accepted by their mother and accordingly, mutation was effected in the revenue records. While so, the defendant, who is adjacent owner of the suit lands, surreptitiously took possession of the suit lands in the month of June 2002 and when the plaintiffs

demanded him to hand over possession of the suit lands, he denied their title. Hence, the suit came to be filed.

3. The defendant claimed that the settlement deed written by Varadaraj was cancelled by him on 01.10.2001 by way of cancellation deed marked as Ex. A.2. It is also alleged to have mentioned in the said Ex. A.2 that the plaintiffs' mother and guardian failed to maintain the plaintiffs and, therefore, the settlement deed was cancelled. Stating so, the defendant sought for dismissal of the suit.

4. Before the trial Court, the plaintiffs' mother and guardian examined herself as P.W. 1 besides examining two more witnesses as P.W.2 and P.W.3 and marked Exs. A.1 to A.4. On behalf of the defendants, the defendant besides examining himself as D.W.1, examined five more witnesses as D.W.2 to D.W.6 and marked documents Exs. B.1 to B.8.

5. The trial Court, on consideration of the evidence adduced by the parties and the submissions made by the learned counsels, by judgment dated 14.07.2011, having found that the plaintiffs have established right and title over the suit property, decreed the suit as prayed for. Aggrieved by the same, the defendants preferred appeal in A.S. No. 35 of 2012 before the Lower Appellate Court / Principal District Judge, Krishnagiri, and the same was dismissed confirming the judgment and decree of the trial Court. Feeling aggrieved, the defendant is before this Court with the present Second Appeal.

6. The point for consideration in this Appeal is whether the finding of the Courts below with regard to the Gift Deed suffer from any infirmity or illegality?

7. Heard Mr. R. Margabandhu, learned counsel appearing for the appellant and Mr. P. Mani, learned counsel for the respondents and perused the records.

8. Admittedly, the suit properties belonged to one Varadaraj. The said Varadaraj had settled the properties in favour of the plaintiffs who are his grand children, under Ex. A.1 Gift Deed dated 09.3.2000. The recitals of the settlement deed specifically mentioned that the same is irrevocable and even if it is revoked, it would be void. The plaintiffs' mother was appointed as guardian in the settlement deed on behalf of the minors. Accordingly, the plaintiffs' mother had taken possession of the properties and was cultivating the same. While so, the defendant, who had fraudulently purchased the same property from the grandfather of the plaintiffs on 03.10.2001 as per Ex. A.3 sale deed, trespassed into the suit property and claimed ownership.

9. On the other hand, the defendant had come up with the cancellation of settlement deed and subsequent sale in his favour. The reason alleged for the cancellation of gift deed was that the mother of the plaintiffs did not take care of the children. The

said reason is only to be rejected in the absence of any evidence. The defendant has not produced any evidence nor had examined any witness to prove the said fact.

10. Be that as it may. From a perusal of the records, it is seen that the recitals in Ex. A.1 Gift Deed are very clear that the settler cannot revoke the settlement deed and even if it is cancelled, such revocation is void. Once the settler had settled the property unconditionally by way of an irrevocable settlement deed, he ceased to have any right over the said property. Once the gift deed is acted upon, the settler cannot revoke or cancel the same. The plaintiffs have also produced Ex. A.4 patta to prove that the revenue records have been changed pursuant to the settlement deed. Therefore, it is evident that the settlement deed was acted upon having accepted the gift.

11. To establish the fact that the settler intended to benefit the settlees who are his grandchildren, the plaintiffs have examined P.W.2 and P.W.3 who are the attesting witnesses to Ex. A.1. While the attesting witnesses P.W.2 and P.W.3 have spoken about the execution of the settlement deed, they had stated about the intention of the settler to benefit the settlees.

12. The defendant / appellant had tried to prove the sale deed Ex. B.1 dated 03.10.2001 in his favour. Even presuming that Ex. B.1 was executed by Varadaraj, it is to be noted that on the date of sale, he did not have any marketable right or title over the property. Further, it is admitted by D.W.1 that he did not even verify about the encumbrances in the suit property before purchasing the same. From the above conduct of the defendant, who is the neighbouring owner of the suit property, it is clear and evident that the property was purchased from Varadaraj with an ulterior motive to grab the lands.

13. Learned counsel appearing for the appellant placed his reliance on the decision in Baby Ammal vs. Rajan Asari [1996 (4) CCC 295 (SC)] in support of his contention that the gift was not accepted and acted upon. In this regard, learned counsel relied on paragraph 4 of the above said judgment which reads as follows:-

"A reading of the above would indicate that the appellant had retained the title to the enjoyment of the property during her life time as full owner with all rights. Section 122 of the Transfer of Property Act defines gift executed in the manner indicated thereunder divesting the title to and possession of the donor in the property and vesting the same in the donee under Section 123. These must be proof of delivery and acceptance of possession of the gifted property. In this case, both the title and possession in respect of the property remained with the plaintiff. There is no acceptance of possession by

the respondent in the light of above recital. As a consequence, the appellant remained to be the owner during her life time. Under these circumstances, it cannot be construed to be a gift deed in favour of the respondents. At best, it would be only a licence in favour of the respondent to remain in possession jointly with the appellant. Therefore, the High Court was not right in concluding that Ex.A-1 is a gift deed and that the appellant has no title to the property for declaration as he had parted with possession."

14. The facts of the case cited supra are different as the settler in the above case retained the life interest for himself and the settlee was only a licensee during the life time of the settler. Hence, the above case is inapplicable to the facts of the present case.

15. The above said ratio laid down by the Hon'ble Supreme Court would leave no doubt that to establish a valid gift, there has to be an acceptance supported by relevant materials. Admittedly, mutation of entries in the revenue records was effected pursuant to the settlement deed. Therefore, taking note of the facts and the grounds raised by the appellant and in view of the discussions made, this Court is of the view that the Courts below have rightly come to the conclusion that the gift deed is a valid one and the plaintiffs are entitled for the declaration of title and recovery of possession. I do not find any reason to differ from the concurrent finding rendered by the Courts below. The point is answered against the appellant / defendant.

In fine, the Second Appeal fails and the same is dismissed confirming the concurrent finding of the Courts below. However, in the circumstances of the case, there shall be no order as to costs.

gri

s/d-

Assistant Registrar(CS-III)

True Copy

Sub-Assistant Registrar

To

1. The District Munsif,
Krishnagiri
2. The Principal District Judge
Krishnagiri

3. The Record Keeper
V.R. Section
High Court Madras

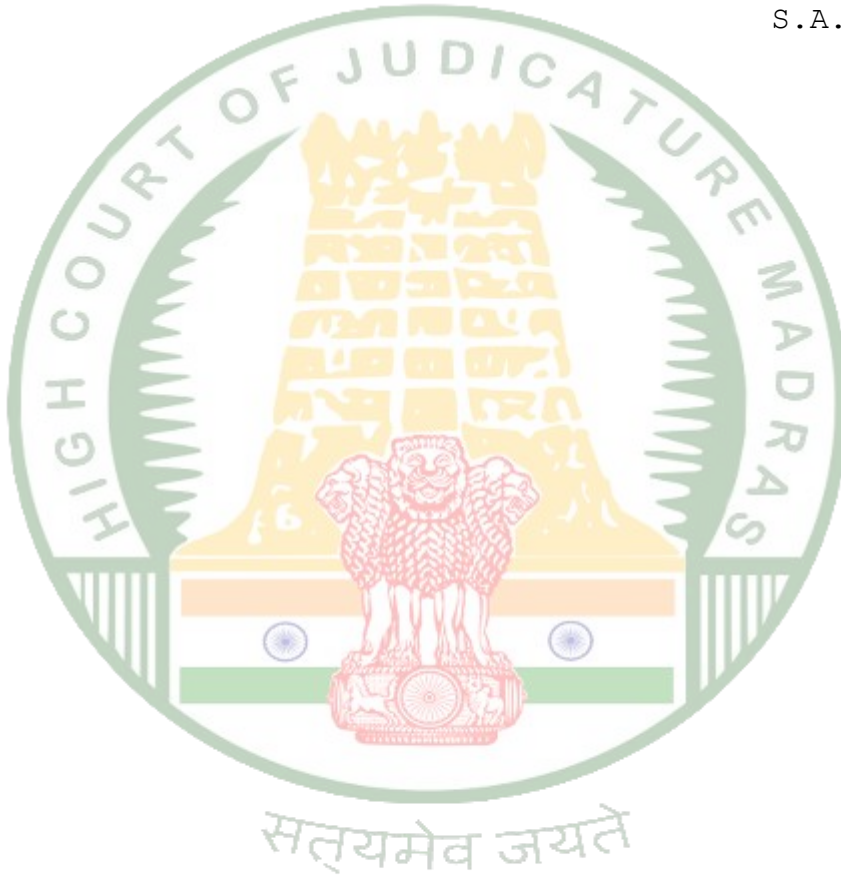
+ 1 cc to Mr.R.Margabandhu, Advocate SR 34686

+ 1 cc to Mr.P.Mani, Advocate SR 33744

tej (co)

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S.A. No. 800 of 2013



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