



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 05.09.2018

DELIVERED ON: 07.09.2018

CORAM:

THE HON'BLE MRS.JUSTICE R. HEMALATHA

S.A.No.1268 of 2002

1. Boovaragamoorthy (deceased)
2. B.Jayakumar
3. B.Vanitha
4. B.Balamurugan

(Appellants 2 to 4 brought on record as legal representatives of the deceased sole appellant vide order dated 5.1.2018 made in CMP 137 to 139 of 2018 in S.A.No.1268 of 2002)

... Appellants/Plaintiff

Vs.

Sivamala

... Respondent/Defendant

PRAYER : Second Appeal filed under Section 100 of C.P.C., against the decree and judgment dated 05.02.2002 passed in A.S.No.72 of 2000 on the file of the Additional Subordinate Judge, Cuddalore reversing the decree and judgment dated 14.08.2000 passed in O.S.No.527 of 1995 on the file of the District Munsif, Cuddalore.

For Appellants : Mr.S.K.Rakhunathan

For Respondent : Mr.R.Muralidharan

JUDGMENT

The unsuccessful appellant in A.S.No.72 of 2000 on the file of the Subordinate Judge, Cuddalore is the sole appellant herein. Since he died during the pendency of this appeal, his legal representatives have been impleaded as appellants 2 to 4.

2. The first Plaintiff Mr.Boovaragamoorthy (since deceased) was the plaintiff in O.S.No.527 of 1995 on the file of the District Munsif, Cuddalore. He filed a suit for declaration of his title over the suit property more fully described in the plaint schedule and for a permanent injunction restraining the respondent/defendant from alienating the suit property. He further prayed for recovery of possession and for mesne profits till the date of handing over of the possession to him.

3. For the sake of convenience, the parties are called as per their ranking in the original suit.



4. The brief case of the plaintiff is as follows. The suit property originally belonged to Mrs.Selvanayaki Ammal and her sons, from whom the plaintiff purchased the property through a registered sale deed dated 27.07.1986, a copy of which is marked as Ex.A1. Eversince the date of purchase, the plaintiff was in possession and enjoyment of the suit property as evidenced by Ex.A4 to Ex.A9, kist receipts, paid by the plaintiff. The plaintiff married the respondent as his second wife and he executed a settlement deed dated 27.09.1993 (Ex.A2) in her favour. According to the plaintiff, since the possession of the suit property was not handed over to the respondent, the settlement deed dated 27.09.1993 (Ex.A2) was not acted upon. It is also his contention that, he cancelled the said settlement deed(Ex.A2) through a registered deed of revocation dated 05.07.1994 (Ex.A3). The further contention of the plaintiff is that the respondent/defendant is attempting to alienate the suit property.

5. The suit was resisted by the respondent/defendant on the ground that the marriage between her and the plaintiff took place on 03.10.1993 and that on 22.09.1993, the plaintiff executed a settlement deed in her favour and patta was also transferred in her name. According to her, she was living with the plaintiff only for 4 months and thereafter, she was driven out from the matrimonial home by the plaintiff and his first wife. It is also her contention that the cancellation deed dated 05.07.1994 is not true and valid and that the plaintiff does not have any right to cancel the settlement deed dated 27.09.1993 (Ex.A3).

6. On the basis of the above pleadings, the trial court framed the following issues and additional issue.

1. Whether the plaintiff purchased the suit property on 27.07.1980?
2. Whether the plaintiff is in possession of the suit property ever since the date of purchase?
3. Whether the plaintiff married the defendant as his second wife?
4. Whether the plaintiff executed a settlement deed dated 27.09.1993 in favour of the defendant in respect of the suit property?
5. Whether the settlement deed is acted upon?
6. Whether the plaintiff cancelled the settlement deed, vide a deed of revocation dated 05.07.1994, before the defendant accepted the settlement deed?
7. Whether the plaintiff is trying to sell the suit property?
8. Whether the plaintiff is entitled to the relief of declaration as prayed for?
9. Whether the plaintiff is entitled the relief of permanent injunction as prayed for?
10. To what other relief the plaintiff is entitled?



Additional Issue.

1. Whether the plaintiff is entitled for declaration, recovery of possession and for mesne profits as prayed for by him?

7. In the trial court, the plaintiff examined himself and three other witnesses and marked Ex.A1 to Ex.A9. The respondent/defendant examined herself and one another witness and marked Ex.B1 to Ex.B7.

8. After full contest, the learned District Munsif, Cuddalore decreed the suit. Aggrieved over the same, the respondent/defendant filed an appeal in A.S.No.72 of 2000 before the Additional Subordinate Judge, Cuddalore. The learned Additional Subordinate Judge, Cuddalore set aside the decree and judgment dated 14.08.2000 passed in O.S.No.157 of 1995 by the District Munsif, Cuddalore vide decree and judgment dated 05.02.2002. Now, the plaintiff has filed the second appeal before this court and during the pendency of this second appeal, the appellant/plaintiff died and his legal heirs were brought on record as appellants 2 to 4.

9. In the second appeal, the following substantial questions of law were raised by the appellant.

[i] Whether the judgment and decree of the lower appellate court is vitiated by its failure to consider the legal effect of a minor unrepresented by a guardian being the settlee under the deed of settlement dated 27.09.1993 marked as Ex.A2?

[ii] Whether the settlee could acquire any right over the suit property pursuant to Ex.A2, especially when the anterior documents of title, Ex.A2 and possession of the suit property continue to be with the appellant?

[iii] Whether the deed of settlement Ex.A2 is a sham and nominal document on the facts and circumstances of the case?

10. It is an admitted fact that the sole plaintiff (since deceased) married the respondent/defendant as his second wife, after divorcing his first wife. and this is evident from the decree of divorce Ex.B1 passed by the Principal Sub Judge, Cuddalore on 12.4.1993 in HMOP No.33 of 1993. As already observed, the marriage between the first appellant and the respondent took place on 03.10.1993, as per the evidence of the respondent/ first appellant.

11. Mr.S.K.Rakhunathan, learned counsel appearing for the appellants raised the following points to show that the respondent/defendant cannot claim any right over the suit property by virtue of the suit settlement deed.

(i) The respondent was a minor at the time



the first appellant and the respondent is not valid in the eye of law.

(ii) On the date of execution of the settlement deed, the respondent was not the wife of the first appellant.

(iii) The possession of the suit property was not handed over to the respondent/defendant on the date of settlement deed dated 27.09.1993 (Ex.A2) and therefore, the settlement deed Ex.A2 was not acted upon.

(iv) The settlement deed was executed directly to the respondent, who was a minor, without showing any one as her guardian.

(v) The settlement deed was also subsequently cancelled by a deed of revocation dated 05.07.1994 (Ex.A3).

12. As far as the present appeal is concerned, the only substantial question involved is, whether the respondent, who was a minor on the date of execution of settlement deed dated 27.09.1993 (Ex.A2) can be held to have validly accepted the gift.

13. I have examined the contents of the settlement deed. The donor, the first appellant had very clearly transferred the ownership and title in respect of the suit property to the donee, his second wife. Under Section 6 of the Transfer of Property Act, "property of any kind may be transferred", except those mentioned in Clause a to i. None of the clauses a to i is attracted in the instant case.

14. Secondly, the Transfer of Property Act does not prohibit transfer of a property to a minor. It is relevant to extract Section 122 and 123 of the Transfer of Property Act, 1882.

122. "Gift" defined - "Gift" is the transfer of certain existing movable or immovable property made voluntarily and without consideration, by one person, called the donor, to another, called the donee, and accepted by or on behalf of the donee.

Acceptance when to be made - Such acceptance must be made during the lifetime of the donor and while he is still capable of giving.

If the donee dies before acceptance, the gift is void.

123. Transfer how effected . - For the purpose of making a gift of immovable property, the transfer must be effected by a registered instrument signed by or on behalf of the donor, and attested by at least two witnesses.

For the purpose of making a gift of movable property, the transfer may be effected either by a



registered instrument signed as aforesaid or by delivery.

Such delivery may be made in the same way as goods sold may be delivered.

WEB COPY

15. The other relevant Section 126 of the Transfer of Property Act specifies circumstances, under which a gift may be suspended or revoked. Section 126 of the Transfer of Property is extracted hereunder

126. When gift may be suspended or revoked.- The donor and donee may agree that on the happening of any specified event which does not depend on the will of the donor a gift shall be suspended or revoked; but a gift which the parties agree shall be revocable wholly or in part, at the mere will of the donor, is void wholly or in part, as the case may be.

A gift may also be revoked in any of the cases (save want or failure of consideration) in which, if it were a contract, it might be rescinded.

Save as aforesaid, a gift cannot be revoked.

Nothing contained in this section shall be deemed to affect the rights of transferees for consideration without notice.

Section 127 of the Transfer of Property Act reads thus.

Section 127. Onerous gifts - Where a gift is in the form of a single transfer to the same person of several things of which one is, and the others are not, burdened by an obligation, the donee can take nothing by the gift unless he accepts it fully.

Where a gift is in the form of two or more separate and independent transfers to the same person of several things, the donee is at liberty to accept one of them and refuse the others, although the former may be beneficial and the latter onerous.

Onerous gift to disqualified person. - A donee not competent to contract and accepting property burdened by any obligation is not bound by his acceptance. But if, after becoming competent to contract and being aware of the obligation, he retains the property given, he becomes so bound.

Section 127 of the Transfer of Property Act throws light on the question of validity of transfer of property by gift to a minor.



16. The last part of Section 127 indicates that minor donee, who can be said to be in law incompetent to contract under Section 11 of the Contract Act is however, competent to accept a non onerous gift.

WEB COPY

17. It is also clear from the records that the donee was aged about 17 years on the date of settlement deed Ex.A2 and her father was also present with her at the time of settlement. In fact, the first appellant /donor had married the donee and he has indicated the donee as his wife in the settlement deed itself. The first appellant was aged 42 years on the date of the second marriage and he divorced his first wife, before marrying the respondent/defendant. The marriage between the first appellant / respondent was said to be solemnized on 03.10.1993. The donee was an educated lady aged 17 years on the date of settlement deed and it is also admitted by both the parties. She is presently working as a nurse in a hospital. Therefore, the knowledge of settlement deed Ex.A2 to the father of the donee and the donee is sufficient to indicate acceptance of gift by minor herself. The settlement deed was revoked much later on 05.07.1994 through a revocation deed Ex.A3. By that time, the donee had become a major and she never repudiated the gift.

18. The contention of the learned counsel appearing for the appellants is that the possession of the property settled in favour of the respondent/defendant was not handed over to the respondent/defendant. In the instant case, the relationship between the parties should be taken into account. The first appellant (donor) is the husband of the donee. The possession if any held by the donor, after the execution of the settlement deed Ex.A2, can only be construed as possession on behalf of the donee, who was a minor at the time of the execution of the settlement deed. It is also relevant to point out that the plaintiff in the instant case has prayed for recovery of possession and also for mesne profits from the respondent/defendant, which shows that the defendant is in possession of the suit property. Her specific contention is that patta was transferred in her name subsequent to the execution of the settlement deed.

19. It is also relevant to note that in the cancellation deed dated 05.07.1994(Ex.A3), it is not mentioned by the donor that the donee did not accept the gift. On the contrary, it is mentioned that the donee, the respondent did not live with him, subsequent to the marriage and therefore, he cancelled the gift. Therefore, it has to be presumed that the donee had accepted the gift and such acceptance is also confirmed by her by not repudiating the gift on attainment of majority.

20. It is true that in every gift, the donor has a particular motive or a reason to part with his property in favour of the donee. In most of the cases, love and affection towards the donee would be the sole criterion. Merely



because the marriage did not take place between the first appellant and the respondent on the date of settlement, the settlement deed cannot be simply thrown out, especially when the donor had referred the donee as his wife. Therefore, his intention is clear from the recitals of settlement deed Ex.A2 that he wanted to benefit his second wife.

21. It is also settled law that a child can take property in any manner whatsoever either under intestate (having made no legal will) or by Will or by purchase or gift or other assurance, except where it is clearly to his/her prejudice to do so. The first appellate court had analysed the entire evidence on record and had come to the conclusion that the plaintiff/first appellant is not entitled for declaration of his title over the suit property and for recovery of possession of the suit property from the respondent/defendant. The reasons assigned by the first appellate court is well sounded and I do not see any reason to interfere with the findings of the first appellate court.

22. In the result,

(i) The second appeal is dismissed. No costs.

(ii) The decree and judgment dated 05.02.2002 passed in A.S.No.72 of 2000 by the learned Additional Subordinate Judge, Cuddalore is upheld.

(iii) The decree and judgment dated 14.08.2000 passed in O.S.No.527 of 1995 by the learned District Munsif, Cuddalore is dismissed with costs.

Sd/-

Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

mst

To

1. The Additional Subordinate Judge, Cuddalore.
2. The District Munsif, Cuddalore.
3. The Section Officer, VR Section,
High Court, Madras.

+1cc to M/s.S.K.Rakhunathan, Advocate SR.NO.62086

+1cc to M/s.R.Muralidharan, Advocate SR.NO.62047

NRI (CO)

sm:20.11.2018

S.A.No.1268 of 2002