



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 16.04.2018

CORAM:

THE HONOURABLE MR.JUSTICE S.S.SUNDAR

S.A.(MD)No.27 of 2018

and

C.M.P.(MD)No.507 of 2018

WEB COPY

Hindu Veerakudi Vellalar Nala Sangam,
Pattamputhur,
Virudhunagar District,
Represented by its Secretary,
Petchimuthu.

... Appellant/Appellant/
Plaintiff

-Vs-

1. K.Velupillai
2. P.Kaliraj
3. M.Gomathinayakam Pillai
4. Primary Agricultural Co-operative Bank,
Sp.SPL.152, Pattamputhur Village,
Virudhunagar District,
By its Special Officer. ... Respondents/Respondents/
Defendants

PRAYER: Second Appeal is filed under Section 100 of Civil Procedure Code, to set aside the Judgment and Decree passed by the Court of the Subordinate Judge, Virudhunagar, in A.S.No.12 of 2014, dated 05.12.2016, confirming the Judgment and Decree passed by the District Munsif Court, Virudhunagar, in O.S.No.25 of 2012, dated 29.04.2014 and to allow this Second Appeal.

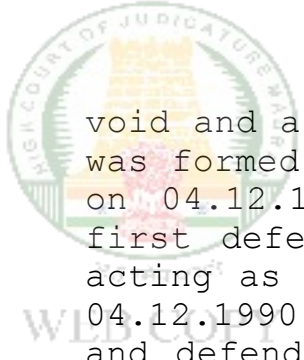
For Appellant : Mr.G.Marimuthu
For Respondents : Mr.A.Thiyagarajan

J U D G M E N T

The plaintiff in the suit in O.S.No.25 of 2012 on the file of the District Munsif Court, Virudhunagar, is the appellant in this appeal.

2. The case of the plaintiff in O.S.No.25 of 2012 is as follows:-

The suit property is an extent of 25 cents out of an extent of 1 acre 18 cents on the northern side in Survey No.46/9, in Kalangaperi Village, Pattamputhur Panchayat, Virudhunagar District. The suit is for declaration that the Gift Deed executed by defendants 1 to 3 in favour of the fourth defendant is null and



void and also for consequential injunction. The plaintiff society was formed for the welfare of Vellalar people in Veerakodi Village on 04.12.1990 in the name of Hindu Saiva Vellalar Sangam. The first defendant was elected as President of the society and was acting as such from the date of inception after it was formed on 04.12.1990. The first defendant is the President of the society and defendants 2 and 3 are the executive members of the society. With effect from 10.01.1991, the plaintiff society was changed as 'Hindu Veerakodi Vellalar Sangam'. An extent of 1 acre 18 cents in Survey No.46/9 was purchased by the plaintiff society pursuant to the resolution that was passed on 10.01.1991. The sale deed was obtained on 25.01.1991. Though the plaintiff was in enjoyment of the property as owner and the society was functioning, it was registered on 05.11.2008 under the Tamilnadu Societies Registration Act as Hindu Veerakodi Vellalar Welfare Sangam. When measurements were taken in the suit property by strangers, they came to know that the suit property has been gifted by defendants 1 to 3 in favour of the fourth defendant on 02.08.1993. Since there was no resolution passed by the general body of the society, the gift deed, dated 02.08.1993 executed by defendants 1 to 3 in favour of the fourth defendant is null and void.

3. The case of the first defendant in the written statement is to the effect that the gift deed in the year 1993 was obtained in the name of the fourth defendant, as they were using the said property as a place to organize cultural programme and as a communal place for the people who are living in the village. Defendants 1 to 3 on the basis of resolution passed by the Society and after considering various aspects, executed the gift deed in favour of the fourth defendant in the year 1993 and handed over possession immediately as the suit properties intended to be utilized for the residents of the area. It is further stated in the written statement that the first defendant was elected as the president of the society 04.12.1990 and he was continuing as President of the society till the written statement was filed.

4. The suit was also resisted by the fourth defendant in line with the plea that was taken by first defendant and on the basis of the whole factual background. The trial Court after framing necessary issues dismissed the suit holding that the gift deed under Ex.A.8, dated 02.08.1993 is valid and that the fourth defendant is in possession and enjoyment of the property. Aggrieved by the findings of the trial Court, the plaintiff preferred an appeal in A.S.No.12 of 2014 on the file of the Subordinate Court, Virudhunagar. The lower appellate Court also after considering the findings of the trial Court and pleadings and evidence elaborately, confirmed the findings of the trial Court. Aggrieved by the findings of the Courts below, the plaintiff has preferred the above appeal.



5. In the memorandum of grounds in the above appeal, the following substantial questions of law are framed:-

"(1) Whether it is correct that both the Courts find that the suit filed by the plaintiff is barred by limitation, on the other hand, the plaintiff Association filed a suit, within three years from the date of knowledge of the execution of the settlement deed by defendants 1 to 3 in favour of the fourth defendant?

(2) Whether Courts below are correct in considering Article 43 of the Limitation Act, 1963, the suit was filed within three years from the date of knowledge of execution of the settlement deed Ex.A.8/Ex.B.2?

(3) Whether Courts below are correct in considering a fact that the suit schedule property has been purchased out of the money collected from the members and for the benefit of its members of Hindu Veerakodi Vellalars of Pattampudhur Village and the execution of Ex.A.8/Ex.B.2, no way going to help the Sangam members?

(4) Whether Courts below are correct in holding that the Sangam members have the knowledge about execution of settlement deed unless and until in the General body meeting it was discussed and necessary resolution has been passed to that effect?

(5) Whether Courts below are correct in deciding the suit, without discussing the fact that, in the General Body of the Sangam has not produced any power to the executors to execute a document Ex.A.8/Ex.B.2 in favour of the fourth defendant or subsequently it was approved in the General Body meeting?

(6) Whether Courts below are correct in deciding the fact that Ex.A.8/Ex.B.2 was not executed for the welfare of the plaintiff Association members?

(7) Whether 1st Appellate Court is correct in deciding the Appeal without framing point for determination independently/separately which is mandatory under Order 41 Rule 31 C.P.C.?

(8) Whether Courts below are correct in deciding the validity of the settlement deed which was marked as Ex.A.8/Ex.B.2 unless and unless it was shown that the fourth defendant has not inaugurated the Bank for the benefit of the plaintiff Association members?"



6. In this case, it is not in dispute that the society was unregistered, when a decision was taken by the society to gift the property. Having regard to the case of the first defendant in the written statement and the evidence in this case that the suit property is utilized by the fourth defendant for communal purpose for the benefit of residents of the village, this Court *prima facie* is of the view that the gift deed was intended to serve public, and do not see any truth in the allegations which were also disbelieved by the Courts below. The fact that the appellant was aware of the gift deed under Ex.A.8 can be deduced as a matter of fact as held by the Courts below. When the plaintiff had knowledge about the gift deed earlier, Court cannot entertain the suit after this length of time as the suit is barred by limitation. The fact that the same set of office bearers continued as President and other office bearers in the society is not disputed. This Court is unable to see any irregularity or illegality in factual findings of the Courts below in approving the gift deed/settlement deed under Ex.A.8. The appellant has not even produced before this Court the bye-laws of the society so that it can be demonstrated that the alleged gift deed under Ex.A.8 was in violation of the bye-laws of the society. Even assuming that the gift deed has been executed in favour of the fourth defendant, in violation of the bye-laws of the society, it may be a best ground to challenge the sale deed at the appropriate time. After this length of time (18 years) without proving that the gift deed was in violation of the bye-laws of the society, no relief can be granted to the plaintiff.

7. The requirement of a resolution passed by the general body to confirm the alienation is not established before this Court by producing the bye-laws of the society. The contention that the settlement deed is bad unless or until the proposed sale deed is approved by the General Body cannot be accepted and this Court is unable to take a different view than that was taken by the Courts below about the correctness of the gift deed. The fact that the General Body did not question the gift deed but elected the first defendant as President would show that the gift deed was accepted and ratified by the Society. The minute book produced by the plaintiff is held to be self serving by lower appellate Court.

8. The appellant is required to prove before the Court that the settlement deed is invalid for valid reasons. The appellant is expected to show before this Court with proof that the gift deed under Ex.A.8 cannot be sustained on any legal ground. One of the issue that was taken by the learned counsel for the appellant before this Court is that the lower appellate Court has not framed the points for determination as required under Order 41 Rule 33 C.P.C. The trial Court has framed several issues which are in https://hdservices.equityindia.in/hdservices/relief that was prayed by the appellant before this Court. Similarly, the lower appellate Court has also framed the following points for determination:-



"(1) Whether the trial Court was wrong in declining to grant the relief of declaration and permanent injunction in respect of the suit property in favour of the plaintiff?

(2) Whether the trial Court was wrong in declining to grant the relief of declaration in respect of Gift Deed dated 02.08.1993?

(3) Whether this Appeal deserves to be allowed?"

9. After framing the points, in paragraph Nos.12 to 15 of the Judgment, the lower appellate Court has dealt with all issues that were raised by the plaintiff. Each and every issue both on facts as well as on law were properly considered by the lower appellate Court. Hence, this Court is able to see that the lower appellate Court has applied its mind and answered all the issues. In such circumstances, this Court find no other substantial questions of law.

10. As a result, the Second Appeal is dismissed and the Judgment and Decree passed by the learned Subordinate Judge, Virudhunagar, in A.S.No.12 of 2014, dated 05.12.2016, confirming the Judgment and Decree passed by the learned District Munsif, Virudhunagar, in O.S.No.25 of 2012, dated 29.04.2014, is affirmed. However, no order as to costs. Consequently, connected Miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-III)

/True Copy/

Sub Assistant Registrar

To

1. The Subordinate Judge,
Virudhunagar.

2. The District Munsif,
Virudhunagar.

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The Record Keeper, V.R.Section, (2 copies)
Madurai Bench of Madras High Court, Madurai.

+1cc to M/s.G.M.Law Office, Sr.No.61555

PMU

VB/SV/MMS/SAR2/06.06.2018/5P/6C