IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 09.01.2019

DATED: 23.01.2019

CORAM :

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

S.A. No. 1204 of 2002

Arikrishnan .. Defendant/Appellant/Appellant

Vs.

Arumugham .. Plaintiff/Respondent/Respondent

PRAYER: This Second Appeal is filed under Section 100 of Civil Procedure Code, against the Judgment and Decree of the Principal District Judge, Tiruvannamalai, in A.S.No. 49 of 2001 dated 22.03.2002 in confirming the Judgment and Decree on the file of II Additional District Munsif Tiruvannamalai in O.S.No. 1003 of 1990, dated 09.03.2001.

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For Appellant : Mr.V. Srimathi

For Respondent : Mr. S.T.Bharath Gowtham
for Mr.T.R.Rajaraman

JUDGMENT

The defendant in O.S.No. 1003 of 1990 on the file of the Second Additional District Munsif Court, Tiruvannamalai, is the appellant herein.

2. O.S.No. 1003 of 1990 had been filed by the plaintiff Arumugham seeking a Judgment and Decree of declaration of title to the suit property and for delivery of possession and to determine the mense profits payable by the defendant from the date of the plaint till date of delivery of possession and also for costs of the suit.

3. By Judgment and Decree dated 09.03.2001, the suit was decreed. The defendant Arikrishnan filed A.S.No. 49 of 2001. By Judgment and Decree dated 22.03.2002, the Principal District Judge, Tiruvannamalai, dismissed the Appeal and confirmed the Judgment of the Trial Court. Challenging that Judgment, the defendant had filed the present Second Appeal.

4. The Second Appeal had been admitted on the following substantial question of law:-

> "Whether the Courts below are right in declaring the sale deed dated 30.05.1990 as valid, when already the sale deed dated 07.05.90 has been executed with respect to the same property in favour of the appellant?"

O.S.No. 1003 of 1990 - Second Additional District Munsif Court, Tiruvannamalai;

5. According to the plaintiff Arumugham, the suit property measuring 1.56 acres in S.No. 118/14, Vaipoor Village, Tiruvannamalai District, originally belonged to Alamelu Ammal. It was her self acquired property. She died about 25 years prior to the date of institution of the suit. She left behind two daughters viz., Janakiammal and Balambal and two sons, viz., Varadaraja Kone and Kannan. Each one of them succeeded to an undivided 39 cents or 1/4th share in the said property. Kannan died and his wife and children conveyed their 1/4th share to Varadaraja Kone. Thereafter, Varadaraja Kone, who became entitled to ½ share and his sister Balambal, who was entitled to 1/4th share sold their undivided shares by registered sale deed dated 04.06.1990 for valuable consideration to the plaintiff. The other daughter Janaki Ammal, of Alamelu Ammal, who was entitled to an undivided 1/4th share sold that share to the plaintiff by registered sale deed dated 30.05.1990. The plaintiff therefore claimed that he was entitled to the entire 1.56 acres. The defendant Arikrishnan, on the other hand, claimed to have purchased 1.46 acres from Janaki Ammal through a sale deed dated 07.05.1990. He claimed that Alamelu Ammal had given by oral gift to Janaki Ammal the entire area and consequently claimed right and title over 1.46 acres. It is under these circumstances that the plaintiff had filed the suit seeking declaration of title and recovery of possession and mesne profits.

6. The defendant filed a written statement in which he claimed that Alamelu Ammal had given by oral gift the entire lands to Janaki Ammal. Thereafter, he purchased 1.46 acres out of 1.56 acres by registered sale deed dated 07.05.1990 from Janaki Ammal. He also claimed to be in possession. He stated that the plaintiff can claim right and title only to the remainder 10 cents and not to the entire area. He therefore stated that the suit should be dismissed.

7. On the basis of the above pleadings, the following issues were framed:-

" (i) Whether the sale deeds dated 04.06.909 in favour of the plaintiff in respect of 1.17 ac., of suit property by Varadharaja Kone and Balambal is true, valid and binding on the defendant?;

(ii) Whether the sale deed dated 30.05.90 in favour of the plaintiff in respect of 39 cents of the suit property by Janaki Ammal is true, valid and binding on the defendant?;

(iii) Whether the defendant trespassed upon the western portion 78 cents in the second week of June 1990 and is in unlawful occupation?;

(iv) Whether Alamelu Ammal the original owner of the suit property orally gifted the suit property to her daughter Janaki Ammal before 6 months prior to her death?;

(v) Whether Janaki Ammal was in possession and enjoyment of the suit property from the date of gift?;

(vi) Whether Janaki Ammal perfected her title to the suit property by adverse possession also?;
(vii) Whether the sale deed dated 30.05.90 in favour of the plaintiff in respect of 1.46 ac., of suit property by Janaki Ammal is true and valid?

(viii) Whether the plaintiff is entitled to declaration and possession as prayed for?;

(ix) Whether the plaintiff is entitled to mesne profits as prayed for?; and

(x) To what reliefs?"

8. During trial, the plaintiff Arumugham examined himself as PW-1. He also examined as PW-2 Duraisamy Goundar; as PW-3 Krishnamoorthy and as PW-4 Varadaraja Kone. The defendant Arikrishnan examined himself as DW-1 and he also examined another witness Ramakrishnan as DW-2. The plaintiff marked Exs. A-1 to A-9. Ex. A-1 is the sale deed executed by Varadaraja Kone and others dated 04.06.1990; Ex.A-2 is the sale deed executed by Janaki Ammal dated 30.05.1990; Ex.A-3 is the patta

in the name of the plaintiff dated 07.06.1990. On the side of the defendant, Ex.B-1, sale deed executed by Janaki Ammal dated 07.05.1990 was marked.

9. On the basis of the oral and documentary evidence, the learned Second Additional District Munsif, found that there were suspicions regarding the execution of the sale deed in Ex.B-1 in favour of the defendant. It was found that the stamp papers were purchased at Chennai on 01.04.1990. The document was written on 07.05.1990 but presented for registration only on 05.06.1990. It was also found that the scribe to the document was not examined. It was also found that the defendant had not established the oral gift said to have been given by Alamelu Ammal to Janaki Ammal. On the other hand, it was found that Exs. A-1 and A-2 conveyed title to the plaintiff and Ex.A-3 conveyed mutation in the revenue records the name of the plaintiff. The suit was thus decreed.

A.S.No. 49 of 2001 (Principal District Court, Tiruvannamalai):

10. The defendant then filed the above First Appeal. The learned Principal District Judge, framed the following points for consideration:-

> "(i) Whether the sale deeds dated 04.06.1990 and 30.05.1990 are true, valid and binding on the defendant?;
>
> (ii) Whether the sale deed dated 07.05.1990 in favour of the defendant in respect of 1 acre 46 cents by Janaki Ammal is true and valid?"

11. The learned Principal District Judge reappraised the evidence and affirmed the findings of the Second Additional District Munsif, Tiruvannamalai. He also found that the sale deed relied by the defendant was clouded with suspicions. Further the defendant had not proved the oral gift given by Alamelu Ammal in favour of Janaki Ammal. On the other hand, the Principal District Judge found that the title of the plaintiff had been proved in manner known to law and consequently, the Appeal was dismissed and the Judgment of the trial Court was confirmed.

S.A.No. 1204 of 2002:-

12. The defendant then filed the present Second Appeal. The Second Appeal had been admitted on the following substantial question of law:-

> "Whether the Courts below are right in declaring the sale deed dated 30.05.1990 as valid, when already the sale deed dated 07.05.90 has been executed with respect to the same property in favour of the appellant?"

13. For the sake of convenience even though the defendant is the appellant and the plaintiff is the respondent, the parties will be termed as plaintiff and the defendant.

14. The suit property measuring 1.56 acres in S.No. 118/14, Vaipoor Village, Tiruvannamalai District, originally belonged to Alamelu Ammal. She had two daughters, namely, Janaki Ammal and Balammal and two sons, namely, Varadaraja Kone and Kannan. They were each entitled to an undivided 39 cents or $1/4^{th}$ share. Kannan died. His legal representatives, executed a sale deed on their undivided $1/4^{th}$ share to Varadaraja Kone. Varadaraja Kone therefore became entitled to ½ undivided share. By sale deed dated 04.06.1990, Ex.A-1, Varadaraja Kone and his minor sons and his sister Balammal sold their ½ + $1/4^{th}$ undivided share to the plaintiff. The plaintiff therefore became entitled to undivided $3/4^{th}$ share in the suit property. By sale deed dated 30.05.1990, Ex.A-2, Janaki Ammal sold her undivided $1/4^{th}$ share to the plaintiff. The plaintiff therefore became entitled to the entire 1.56 acres of the suit property. The plaintiff also obtained patta on 07.06.1990 by Ex.A-3.

15. The defendant claimed title through Ex.B-1 which is sale deed executed by Janaki Ammal for 1.46 acres out of 1.56 acres of the suit property. This sale deed had been presented for registration on 05.06.1990 and registered as Document No. 786 of 1990 in the Office of the Sub Registrar, Vettavalam. It had been written on 07.05.1990 on two stamp papers purchased at Chennai on 01.04.1990.

16. It is the claim of the defendant that Janaki Ammal became entitled to the entire property by virtue of an oral gift by Alamelu Ammal in her favour. The date of the oral gift had not been given. The witnesses to the oral gift had not been

mentioned. An oral gift is not legal and is not valid. It is impermissible in law. Section 123 of the Transfer of Property Act is as follows:-

> "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."

17. It is clear that a gift must be registered. Failure to register the gift deed would not create any right and would not confer any title. The gift deed must be registered, signed by the donor and attested by atleast two witnesses. An unregistered oral gift in contravention of Section 123 of the Transfer of Property Act is void abinitio and has no sanction of law. In this connection, Sections 17 and 18 of the Registration Act 1908 can also be referred and it is clear that an unregistered oral gift is not valid and has no legal effect and cannot convey any title.

18. In Gomtibai (dead) through Lrs. and Others Vs. Mattulal (Dead) through Lrs. (AIR 1997 SC 127), the Hon'ble Supreme Court has observed as follows:-

> "4.Thus, it is seen that the gift of immovable property should be made only for transferring the right, title and interest by the donor to the donee by a registered instrument signed by or on behalf of the donor and must be attested by at least two witnesses. The pre-existing right, title and interest of donor thereby stand divested in the donee by operation of Section 17 of the Registration Act only when the gift deed is duly registered and thereafter the donor would lose title to the property. It must also be proved that the donee had accepted the property gifted over under the instrument. In this case, though the transfer of gift was acted upon by Kusturibai as per the correspondence and evidence on record, but, admittedly, there is no written instrument executed by the donor, namely, the plaintiff and the defendant in favour of their cousin sister Kusturibai and it was got attested by at least two witnesses and registered in accordance with the provisions of the Stamp

Act and the Registration Act. In the absence of compliance of these formalities, at best what could be seen from the partition deed is that the original plaintiff and the defendant have expressed their intention to gift over the land to their cousin sister Kusturibai. As held earlier, in the absence of any registered instrument of gift and acceptance thereof by the donee, the said property could not be said to have been legally transferred in favour of their cousin sister; in other words, the gift is not complete in the eye of law. Therefore, the District Court has rightly set aside the decree of the trial court which was later confirmed by the High Court. We do not find any error of law warranting interference."

19. In 2011 (2) CTC 88 (P.S.G. Ganga Naidu & Sons Charities Vs. The Special Commissioner & Commissioner and others), this Court had held as follows:-

"22.Whether an oral or an unregistered gift is permissible in law:

22.1.Section 17 of the Registration Act, 1908 prescribes the transactions for which a registration is compulsory. Accordingly, an instrument of immovable property has to be registered. Section 49 of the Act speaks about the effect of non-registration of documents required to be registered. It clearly spells out that a gift deed which is required to be registered under Section 17 of the Act if not done so would not the affect the immovable property concerned. In other words, in the absence of any registration which is mandatorily required there is no transfer of title and the alleged transaction would be a nullity and void in the eye of law. Hence for a transfer of an immovable property by way of a gift a registered deed is necessary.

22.2.'Gift' has been defined under the Transfer of Property Act, 1882. Section 123 of the said Act prescribes that a transfer of gift

> must be effected by a registered instrument signed by the donor and attested by atleast two witnesses. In the present case on hand, there was neither a written document nor it was registered with attestation. Therefore, in such an eventuality the very plea of the petitioner would fall on the ground in as much as there is no transfer in the eye of law.”

20. It is clear from the ratio laid down in the Judgments above that Janaki Ammal cannot claim any right or title under an alleged oral gift from Alamelu Ammal. Consequently, the sale deed executed by her on the basis of an alleged oral gift will not have any force in law. The defendant cannot claim title to the property and trace title under an oral gift which concept has no sanction under law. The document in favour of the defendant in Ex.B-1 has no validity or legality.

21. The substantial question of law was whether the sale deed dated 30.05.1990 should be termed as valid when Janaki Ammal had executed an earlier sale deed on 07.05.1990. A perusal of Ex.B-1 shows that the stamp papers have been purchased on 01.04.1990, the document written on 07.05.1990 and presented for registration only on 05.06.1990. No explanation for the staggered dates have been given. Both the Courts below have rejected Ex.B-1 and have concurrently found on facts that it is clouded with suspicions. The scribe to the document had not been examined. The document in Ex.B-1 cannot convey any right, title or interest. On the other hand, the plaintiff has examined as PW-3 Krishnamoorthy, the son of Janaki Ammal, who affirmed the sale deed dated 30.05.1990, Ex.A-2. The plaintiff also examined as PW-4 Varadaraja Kone, who conveyed his share of the property along with his sister Balammal, by sale deed dated 04.06.1990, Ex.A-1, in favour of the plaintiff. The plaintiff has also filed Ex.A-3 patta which had been obtained on 07.06.1990. Consequently, the substantial question of law is answered that though the sale deed, Ex.B-1 was dated 07.05.1990, it was presented for registration only on 05.06.1990 and more significantly the vendor did not have any right, title or interest since it was claimed that her title flowed from an oral gift and an oral gift can never confer title.

22. In view of the above, I hold that the appellant has not made out any case for interference with the Judgments and Decree of both the Courts below. Accordingly, the Second Appeal is dismissed with costs.

Sd/-
Assistant Registrar (CCC)

//True Copy//

Sub Assistant Registrar

vsg

To

1. Principal District Court
Tiruvannamalai.

2. II Additional District Munsif
Tiruvannamalai.

3. The Section Officer,
VR Section,
High Court, Madras

+1 cc to Mr.V.Raghavachari, Advocate, S.R.No.5763

+1 cc to Mr.T.R.Rajaraman, Advocate, S.R.No.5726

Judgment made in
S.A. No. 1204 of 2002

CA(CO)
SSM(11/04/2019).