Reserved on :13.03.2019
Pronounced on :25.03.2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

CORAM

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

Second Appeal No.387 of 2008 &
C.M.P.No.562 of 2008

The Commissioner,
West Arni Panchayat Union,
Arni Post,
Thiruvannamalai District. ...Appellant

Vs

1. St. Joseph Social Welfare Centre
Rep. by Brother - Superior Rev.
Brother Lourduraj,
Susai Nagar, devikapuram,
Arni Taluk, Thiruvannamalai District.

2. The Chief Executive Officer,
Tamil Nadu and Village Industries,
Kuralagam, Chennai - 108.

3. The Assistant Diretor,
Tamil Nadu and Village Industries,
Thiruvannamali.

4. The District Collector,
Thiruvannamalai District,
Thiruvannamalai. ... Respondents

Prayer:- Second Appeal has been filed under Section 100 of C.P.C. against the judgment and decree dated 29.11.2002 passed in A.S.No.111 of 2001 on the file of the Principal District Court, Thiruvannamalai reversing the judgment and decree dated 19.10.2001 in O.S.No.96 of 1991 on the file of the Sub Court, Arni, Thiruvannamalai District.

For Appellant : Mr.P.Dinesh Kumar
for Mr.R.Vijaya Kumar

For Respondents: Mr.R.Thiagarajan - R1
Mr.N.Manikandan
Government Advocate (CS) - R2-R4

JUDGMENT

Aggrieved over the finding of the first appellate Court allowing the appeal thereby dismissing the suit which is filed for recovery of possession and also declaration that the defendants 2 and 3 are not entitled to claim any right over the suit properties, the present appeal filed by the third defendant. The first and second defendant have not filed any appeal against the finding of the first appellate Court.

2. The brief facts leading to filing of the suit is as follows :

The plaintiff institution is a Christian Missionary Religious Trust. One Brother Thomas was heading the institution formerly and during his period the suit properties were acquired. Item No.1 of the suit property was given to the institution by a registered Gift Deed dated 25.05.1977. Whereas, Item No.2 was purchased on 12.05.1977 out of the funds of Christian Mission. Subsequently, two storied building was constructed and the constructions were put up by the funds of the institution in order to provide employment to the poor and minority community. Patta No.562 was given to the plaintiff establishment and after the death of Brother Thomas, the patta was transferred to present incumbent. The defendants 1 and 2 were permitted to occupy the building free of rent to carry out their activities. Thereafter by a letter dated 18.11.1983, the plaintiff institution requested the defendants to vacate the building. Thereafter, the defendant wrote a letter expressing their desire to purchase the property. As the letter disclosed reluctance to vacate the building, this suit has been filed .

3. The first and second defendants filed a written statement contending that they are running a 'Rural Artisan Training Center' in the suit property for the last 14 years under the rural development scheme. In the year 1977, the defendants came into possession and they were running training centre and the plaintiff has no right to file the suit.

4. The third and fourth defendants filed a written statement contending that one Nataraja Mudaliar, Govindasamy, Subramani, Pavunammal wife of Govindaraj, Mottai @ Katha Ammal have gifted the suit property in favour of the third defendant on 17.04.1974 for the purpose of construction of Elementary School and Hospital for the benefit of general public and poor. However, the previous Commissioner has not complied the conditions by constructing the school or hospital. It is their further contention that all the revenue records have been changed after the gift deed in favour of the defendants and the defendants are in possession of the property from the date of the Gift Deed. However, the defendant is going to construct Elementary School and hospital in the schedule mentioned

property. It is also denied that that the construction of the building by Thomas and also changing of the patta in his name. The property has already been transferred to this defendant's name and the alleged cancellation deed is not a valid one and the suit is not maintainable. Hence prayed for dismissal of the suit.

5. The trial Court framed the following issues :

1. Whether the plaintiff is entitled for vacant possession of the suit shop?

2. Whether it is true that the defendants have established "Artisan Training Centre" in the suit property and given employment for 50 ladies and the said property has been given by Brother Thomas to the defendants' department?

3. Whether the plaintiff has right to file this Suit?

4. Whether the suit is barred by limitation?

5. To what other relief?

Additional Issues :-

1. Whether the Cancellation Deed dated 25.05.77 and the gift deed true, valid and binding on the defendants?

2. Whether the suit is maintainable without notice under section 80 of Code of Civil Procedure?

6. On the side of the plaintiff P.W.1 to 3 were examined and Ex.A.1 to Ex.A.19 marked. On the side of the defendants, D.W.1 and D.W.2 were examined and Ex.B.1 to Ex.B.19 were marked.

7. The trial Court decreed the suit in respect of the second item of the suit property and dismissed the suit in respect of the first item of the suit property. As against which all the defendants filed an appeal. The first appellate Court allowed the appeal in respect of the second item of the suit property as against which the present appeal has been filed.

8. At the time of admitting this Second Appeal, the following substantial questions of law have been framed :

1. Is the lower appellate Court correct and justified in holding that the plaintiff has got valid title in respect of Item 1 even without a prayer for such a declaration?

2. Is the lower appellate Court correct and

justified in holding that plaintiff has valid title on the basis of Ex.A.2 especially when the settlors had already executed a settlement deed as early as 17.04.1974 (Ex.B.15) without reserving any power to cancel that settlement?

3. Is the lower appellate Court correct and justified in holding that the cancellation of settlement deed dated 17.04.1974 is valid when there was no power reserved to cancel the settlement deed and when all the executants are not parties either to cancellation or to the settlement deed Ex.A.2?

9. The learned counsel appearing for the appellant contended that under Ex.B.15 dated 17.04.1974, the second item of the property was gifted in favour of the third defendant. The first and second defendants have not filed any appeal in respect of the Item No.1 of the suit property. Therefore, the judgment against them has reached finality. The third defendant has filed the appeal in respect of the second item of the suit property.

10. The learned counsel appearing for the appellant would contend that the property is gifted for specific purpose of constructing of Elementary School and hospital for poor and needy. There is no time limit stipulated in the Gift Deed. Therefore, when there is no time stipulated for performing the condition, the donor has no right to revoke the same subsequently in the year 1977 under Ex.A.2 by cancelling the earlier gift given in the year 1974. Once, the Gift is complete and possession has been handed over, the same cannot be revoked by the donor. Therefore, the subsequent Gift in favour of the plaintiff did not convey any title to the plaintiff. Unilateral cancellation of Gift Deed is not valid. Hence, submitted that the plaintiff has no title to the second item of the suit property.

11. The learned counsel appearing for the respondent submit that Ex.B.5 gift deed is subject to the performance of the condition. The land has been gifted to the third defendant for the specific purpose of constructing Elementary School as well as hospital for poor and needy. When the third defendant has not complied the conditions and not taken any steps for many years, the Gift would not be complete. Therefore, the donor has rightly revoked the same and executed the Gift Deed in favour of one Thomas on 25.05.1977 and also cancelled the Gift Deed dated 17.04.1974. The second item of the suit property was purchased on 12.05.1977 by the plaintiff. The evidence and pleadings of the parties clearly indicate that the plaintiff is a charitable mission and the revenue records stands in their name and patta also stands in the name of the plaintiff and they are running

school in two storied building available in the suit property. When the defendant has not complied any condition set out in the Gift Deed, the Gift could not have conveyed any title in favour of the third defendant. Even when the written statement has been filed after 20 years of the alleged Gift Deed, the same indicate that they have not taken any steps to fulfill the conditions found in the Gift Deed. Hence, submitted that if the condition is not complied, the donor can revoke the Gift under section 126 of the Transfer of Property Act. In support of his contentions, he relied upon th the judgment S.Sarojini Amma Vs. Velayadhan Pillai Sreekumar reported in 2018 SCC Online Supreme Court 2200.

12. The admitted case of the parties is that Item No.1 was originally gifted to one Thomas. Item No.3 was purchased on 12.05.1977 by the plaintiff. The plaintiff is running various charitable institutions and it is a Christian Machinery. These facts are not in dispute. It is also not in dispute that in the year 1974, Item No.2 was gifted in favour of the third defendant with a condition that the third defendant should construct an elementary school and hospital for poor and needy. Except for the above purpose, the property should not be used for any other purpose. The recitals in Ex.B.15 shows that not even possession was handed over to the third defendant. This fact could be seen from the document itself. Further, there is no recitals in the Gift Deed reserving the right of the donor to revoke the settlement. Gift once executed, it can be cancelled only under the circumstances stated under section 126 of the Transfer of Property Act. A reading of S.126 of the Transfer of Property Act makes it clear that 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. Though for valid gift transfer of possession is not one of the essential conditions, the fact remains in this case that the very Gift Deed executed for the specific purpose for constructing School and Hospital and possession has not been handed over. Ex.B.15, the Gift has not been acted upon for various reasons.

13. The defendants even after 20 years, when they filed the written statement in the year 1996, there is no mentioning in the written statement that they have taken any steps to fulfill the obligations attached under Ex.B.15 Gift Deed. The first item was gifted to the plaintiff on 25.05.1977 under Ex.A.2. Ex.A.4 to Ex.A.7 was filed by the plaintiff to prove their possession in the suit properties. The above facts

clearly indicate that the gift deed executed under Ex.B.15 has already been cancelled by the donor himself under Ex.A.17. Ex.A.17 recitals clearly indicate that since the property is continuously in their possession and as the third defendant has not taken any steps to construct the Elementary School and Hospital, the donor decided to cancel the above Gift Deed. D.W.2 also in his evidence has admitted that they never issued any notice against such cancellation. They have also not issued any notice to the Tahsildar or Revenue Divisional Officer for mutation of revenue records in the name of the plaintiff. The recitals in Ex.A.17 and Ex.B.15, when read together makes it clear that though the Gift Deed has been registered, the possession was all along retained by the donor. This fact is further fortified by the subsequent events. It is the specific case of the plaintiff that there are two buildings in the suit property run by the plaintiff. This aspect has not even been denied in the written statement specifically. The patta also under Ex.A.10 transferred to the name of the plaintiff. Chitta also stand in the name of the plaintiff from the year 1977.

14. The documents filed by the plaintiff clearly show that in the two items of the properties, pacca constructions are already there and it was constructed by the funds of the machinery. Though in general principle, when there is no right is reserved in the Gift Deed such Gift Deed or Settlement Deed cannot be revoked unilaterally. If the Gift Deed is executed subject to the condition and such condition is not fulfilled, it can be construed that such a deed is subject to the condition attached in the deed. Admittedly, the defendants have not taken any steps for the past 20 years to construct school and hospital as per the condition stipulated in the document. In this regard it is useful to refer to the judgment in S.Sarojini Amma Vs. Velayadhan Pillai Sreekumar reported in 2018 SCC Online Supreme Court 2200 wherein it has been held as follows :

> "17. In Reninkuntla Rajamma (supra), this Court held that the fact that the donor had reserved the right to enjoy the property during her lifetime did not affect the validity of the deed. The Court held that a gift made by registered instrument duly 1 (1997) 2 SCC 255 2 (2014) 9 SCC 445 executed by or on behalf of the donor and attested by at least two witnesses is valid, if the same is accepted by or on behalf of the donee. Such acceptance must, however, be made during the lifetime of the donor and while he is still capable of making an acceptance.
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> 18. We are in agreement with the decision of this Court in Reninkuntla Rajamma (supra) that there is no provision in law that ownership in property cannot be gifted without transfer of possession of such property. However, the conditions precedent of a gift

as defined in Section 122 of the Transfer of Property Act must be satisfied. A gift is transfer of property without consideration. Moreover, a conditional gift only becomes complete on compliance of the conditions in the deed.

19. In the instant case, admittedly, the deed of transfer was executed for consideration and was in any case conditional subject to the condition that the donee would look after the petitioner and her husband and subject to the condition that the gift would take effect after the death of the donor. We are thus constrained to hold that there was no completed gift of the property in question by the appellant to the respondent and the appellant was within her right in cancelling the deed. The judgment and order of the High Court cannot, therefore, be sustained."

15. As already stated, there is no reference as to the handing over of possession in Ex.B..15. E.A.17 clearly shows that the possession is always with the donors and the patta and other revenue records also have not been changed in their name. The above fact itself clearly show that Ex.B.15 was originally executed in the year 1974. There is no evidence available on record to show that the same was accepted by the third defendant. In the absence of any evidence to show that the gift was accepted by the donee, mere existence of the document cannot confer valid title to the donee under section 122 of the Transfer of Property Act. Further, as already discussed, the condition and obligation imposed in the document has not been complied for many years and even during the arguments in the Section Appeal in the year 2019, no materials whatsoever has been placed by the appellant to show that they have made any attempt to fulfill the obligation in the Gift Deed. The above conduct of the appellant clearly indicate that the Gift has not been accepted by them. Ex.B.15 remain only in paper and not accepted by the defendants. Therefore, it cannot be stated by the appellant that they have become the owner of the property based Ex.B.15. No doubt the judgments of this Court referred by the learned counsel appearing for the appellant in S.Packialakshmi Vs. K.Baskaran reported in 2017 (4) MLJ 154 and K.Baskaran (died) and another reported in 2017 (4) MLJ 154 wherein I had an occasion to deal with the revocation of the gift deed by the donor, considering the facts and circumstances of the above cases, I have held that the Gift has been executed by the donor and unilateral cancellation of the gift deed is not permissible. The facts in the above case is not applicable to the facts of this case.

16. In this regard, it is useful to refer to the judgment in Naramadaben Maganlal Thakker Vs. Pranjivandas Maganlal AL Thakker and others reported in 1997 (2) Supreme Court Cases 255,

wherein it has been held that

"7. It would thus be clear that the execution of a registered gift deed, acceptance of the gift and delivery of the property, together make the gift complete. Thereafter, the donor is divested of his title and the donee becomes the absolute owner of the property. The question is: whether the gift in question had become complete under Section 123 of the TP Act? It is seen from the recitals of the gift deed that Motilal Gopalji gifted the property to the respondent. In other words, It was a conditional gift. There is no recital of acceptance nor is there any evidence in proof of acceptance. Similarly, he had specifically stated that the property would remain in his possession till he was alive. Thereafter, the gifted property would become his property and he was entitled to collect mesne profits in respect of the existing rooms throughout his life. The gift deed conferred only limited right upon the respondent-donee. The gift was to become operative after the death of the donor and he was to be entitled to have the right to transfer the property absolutely by way of gift or he would be entitled to collect the mesne profits. It would thus be seen that the donor had executed a conditional gift deed and retained the possession and enjoyment of the property during his life time. The recitals in the cancellation deed is consistent with the recitals in the gift deed. He had expressly stated that the respondent had cheated him and he had not fulfilled the conditions subject to which there was an oral understanding between them. Consequently, he mentioned that the conditional gift given to him was cancelled. He also mentioned that the possession and enjoyment remained with him during his life time. He stated, "I have to execute immediately this deed of cancelling the conditional gift deed between us. Therefore I hereby cancel the conditional gift deed 15-5-65 of Rs.9000/- in words rupees nine thousand presented at the Serial no. 2153 on 15-5-65 in the office of the Sub-Registrar Baroda for registration. Therefore, the said conditional gift deed dated 15-5-65 is hereby cancelled and meaningless. The property under the conditional gift has not been and is not to be transferred in your name.: Thus he expressly made it clear that he did not hand over the possession to the respondent nor did the gift become complete during the life time of the donor. Thus the gift had become ineffective and inoperative. It was duly cancelled. The question then is: whether the appellant would get the right to the property? It is not in dispute that after the cancellation deed dated June 9, 1965 came to be executed, duly putting an end to the conditional gift deed dated May 15, 1965, he executed his last will on May 17, 1965, and died two days thereafter."

17. Considering the above judgment and also the facts as narrated above, acceptance of the gift itself has not been established and the recitals in Ex.A.17 and the conduct of the appellant in not taking any steps all these years coupled with the fact that they have not even changed the revenue records all these years and two storied buildings were available in the suit properties and various charitable activities are regularly run by the plaintiff, makes it clear that Gift was not accepted by the third defendant. Therefore, merely on the basis of Ex.B.15, the appellant cannot contend that they have become the owner of the property. Further, the conditions in the Gift Deed also not fulfilled by them. Hence, the substantial questions of law have been answered against the appellant.

18. Accordingly, this Second Appeal is dismissed and the judgment and decree of the first appellate Court is confirmed. Consequently, the connected miscellaneous petition is closed. No cost.

Sd/-
Assistant Registrar (CS-VIII)

//True Copy//

Sub Assistant Registrar

vrc

To

1. The Principal District Judge,
Thiruvannamalai.

2. The Subordinate Judge,
Arni, Thiruvannamalai District.

+1cc to Mr.R.Thiagarajan, Advocate, S.R.No. 28373

Second Appeal No.387 of 2008

PMS(CO)
GN(23/05/2019)