

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date : 01.02.2019

CORAM

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

Second Appeal No.251 of 2012 &
M.P.Nos.1 and 2 of 2012

T.Rajasekaran

...Appellant/1st Defendant

Vs

Sagoundala

... Respondent/Plaintiff

Prayer:- Second Appeal has been filed under Section 100 of C.P.C., against the judgment and decree dated 29.08.2011 in A.S.No.214 of 2006 on the file of the Principal District Court, Puducherry confirming the judgment and decree made in O.S.No.137 of 1998 dated 12.02.2001 on the file of the Principal Sub Court, Puducherry.

For Appellant : Mr.S.V.Jyaraman, Sr. Counsel
for K.V.Sundararajan

For Respondent : Mr.R.Krishna Prasad

JUDGMENT

This second appeal has been filed as against the concurrent finding of the Courts below.

2. The brief facts of the plaintiff case is as follows :

The suit property originally belong to the second defendant by virtue of the purchase dated 09.07.1956. The plaintiff is her widowed sister. Due to love and affection, the second defendant had executed a Gift Deed in favour of the plaintiff on 21.06.1967 and registered the same as document No.R.V.374 No.43 dated 30.06.1967. However, the second defendant had retained her life interest in the property. The Gift has been accepted and come into force. Thereby the plaintiff has become the absolute owner of the property. The plaintiff has also occupied the house along with the donor and electricity connection has also been transferred in her name and shops have been constructed in the suit property and the same were let out to various tenants. The plaintiff and the second defendant lived

in the property for more than 31 years. The first defendant, who is the son of another sister of the Donor was requested by the plaintiff to give some help while the donor fell ill. On that situation, the first defendant has taken advantage and had manipulated certain documents. The plaintiff has subsequently come to know that the first defendant had cancelled the Gift Deed in the year 1998 and thereafter, got the property registered in his favour. Hence, the suit for declaration to declare that the plaintiff is the absolute owner of the property and to declare that the sale deed 28.01.1998 as void and pass a decree for permanent injunction.

3 . It is the contention of the first defendant that the Donation Deed/Gift Deed was subsequently revoked by the donor. The plaintiff has been living in the house of the respondent and the first defendant started collecting rents from the tenants. Few years before the death of the second defendant, she became very ill and she required intensive and expertise treatment. Since the Donation Deed was executed in favour of the plaintiff for maintaining the donor and as the plaintiff did not take care of the second defendant, the first defendant spent the money towards medical expenses of the second defendant and the second defendant voluntarily executed the sale deed in favour of the first defendant after she was discharged from the hospital in Salem. Hence, it is the contention of the defendants that they are only entitled to the suit property as Donation Deed has already been cancelled.

4. The trial Court has framed the following issues :

1. Whether the suit has not been properly valued and appropriated Court Fees has not been paid?

2. Whether the Donation Deed dated 21.06.1967 in favour of the plaintiff has been executed by the second defendant out of her own free will and condition?

3. Whether sale deed dated 29.01.1998 in favour of the first defendant has been executed by the second defendant for valid consideration and has been validly acted upon?

4. Whether the first defendant is in possession and enjoyment of the suit property?

5. Whether the plaintiff is entitled for a decree of declaration in her favour with respect to the donation deed dated 21.06.1967 and the sale deed dated 29.01.1998 are prayed for in the suit?

6. Whether the plaintiff is entitled for a decree of permanent injunction against the first

defendant as prayed for in the suit?

7. To what other relief or reliefs are the parties entitled?

5. On the side of the plaintiff P.W.1 to 4 have been examined and Ex.A.1 to A15 have been marked. On the side of the defendants, D.W.1 to D.W.6 have been examined and Ex.B.1 to Ex.B.22 have been marked.

6. The trial Court after analysing entire oral as well as documentary evidence has decreed the suit in favour of the plaintiff. The first appellate Court considering the entire materials, framed point for consideration and analysed the factual aspects and confirmed the decree and judgment passed by the trial Court and dismissed the appeal. As against which the present second appeal came to be filed.

7. While admitting this second appeal, the following substantial questions of law has been framed :

i) Whether the Courts below was correct in holding that the Ex.A.1 is only a settlement deed especially when no title in presanti was vested?

ii) Whether the Courts below have properly applied Section 122 and 123 of the Transfer of Property Act, 1982 in deciding that the Ex.A.1 is a Gift Deed?

8. The only issue involved in this appeal is whether Ex.A.1 is a Gift Deed or A Will. According to the learned Senior Counsel for the appellant, Ex.A.1 can never be construed as a Gift Deed or a Donation Deed and utmost it can only be construed as a Will since the property has not been vested with donee in presenti. Therefore, Ex.A.1 could not be construed as a Gift Deed and can only be construed as a Will. Further it is the contention of the learned Senior Counsel that the second defendant died during the pendency of the suit and no amendment was made in the relief for recovery of possession. Admittedly, the defendants are in possession of the property. Therefore, it is the contention of the learned Senior Counsel that the appeal has to be allowed.

9. Whereas, it is the contention of the learned counsel for the respondent that the first defendant in the written statement itself has categorically admitted the nature of the document, that the document is a Gift Deed. Merely because the life interest was retained by the donor, the same cannot be construed as a Will. Hence, submitted that the trial Court and the first appellate Court had thoroughly analysed these facts and found that E.A.1 is a Gift Deed. Once the Gift Deed has been validly executed by the donor, the same cannot be cancelled. Therefore, any document executed in the year 1998 in

favour of the first defendant is not valid in the eye of law. It is the further contention of the learned counsel for the plaintiff that the plaintiff is in possession of the property and the same has been admitted by the defendant himself. Therefore, there is no question for amendment arise. Hence, prayed for dismissal of the appeal.

10. The appellant has canvassed only one ground as substantial question of law whether Ex.A.1 is a Will or a Gift Deed. Other factual aspects decided by the trial Court has not been assailed. The question of law No.1 framed by this Court is also relating to Ex.A.1, whether it is a Will or a Gift Deed. Since short question of law is involved in this appeal and the entire issue revolve around Ex.A.1, now the Court proceed to decide the question of law. A careful perusal of Ex.A.1, registered Donation Deed, the nomenclature of the document is given as Donation Deed. But in fact it is a Gift Deed. The recitals of the document makes it clear that the deed is irrevocable with immediate surrender of rights. Ofcourse, the Donor reserved for herself life interest to use the profits derived from the said immovable properties without right of mortgaging or right of alienation. From the recitals in the documents, it makes it very clear that the donor has retained life interest to enjoy the benefits from the property and she has not retained any other right to deal with the property either by mortgaging or letting out or alienation. Once a property has been gifted and the deed has been registered as per law, the transfer of title is immediate. What is sine qua non for Gift Deed is the transfer of title not transfer of possession. A careful perusal of Section 122 of the Transfer of Property Act, reveals that gift is the transfer of certain existing movable or immovable property made voluntarily without consideration by one person called the donor to another person called the donee and accepted by or on behalf of the donee. Section 123 relates, how transfer to be affected. Once, a transfer is complete, the gift cannot be revoked by an unregistered deed.

11. It is to be noted that transfer of possession is not a sine qua non for making valid Gift Deed. It is now well settled that delivery of possession of the property is not an essential condition for the completion of the Gift Deed. Therefore, merely because the donor retains possession of the property or reserve some right to enjoy the benefits of the property during her/his life time, it cannot be stated that the Gift Deed has not been acted upon. What is contemplated for valid Gift Deed is the transfer of property and not transfer of possession. This has been upheld by the Three Judges Bench of the Honourable Apex Court in a judgment reported in 2014 (9) CTC 445 [Renikuntla Rajamma (Dead) by Legal Representatives Vs.

K.Sarwanamma] and settled the issue.

12. It is curious to note that the entire written statement of the first defendant, when carefully seen, he himself had admitted in his pleadings that Gift Deed/Donation Deed has been executed out of love and affection on the ground that the plaintiff would take care of the second defendant. Therefore, this Court is of the view that in view of the admission of the defendant and also considering the nature of the document, Ex.A.1 is a Gift Deed and it cannot be construed as a Will.

13. As far as the contention of the learned Senior Counsel that as the second defendant died the amendment is required for seeking possession of the property is concerned, in this regard, D.W.1. in his evidence has categorically admitted that even when he had filed caveat, notice has been taken to the plaintiff in the suit property address. The same probabalize the case of the plaintiff that ever since the date of Ex.A.1, she is living in the suit property. Similarly, the defendant has also admitted that in Door No.12, plaintiff's name appeared in the voters list. He never objected the same and the electricity service connection is also is in the name of the plaintiff. Further he has also admitted in the evidence that E.A.1 is a Gift Deed. The categorical admission of the defendant himself proves the possession of the plaintiff in the gifted property, therefore, the contention of the learned Senior Counsel that amendment is required cannot be countenanced. Hence, the substantial questions of law are answered against the appellant.

14. Accordingly, this Second Appeal is dismissed. Consequently, the connected miscellaneous petitions are closed. No cost.

Sd/-
Assistant Registrar (CS-IV)

//True copy//

Sub Assistant Registrar

vrc

To

1. The Principal District Judge, Puducherry.
2. The Subordinate Judge, Puducherry.

Copy To : The Section Officer, VR Section, High Court, Madras

+1cc to M/s.Sarvabhauman Associates, Advocate SR.No.8576

+1cc to Mr.K.V.Sundararajan, Advocate SR.No.9251

Second Appeal No.251 of 2012

CA(CO)

GMV(26/04/2019)