



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 09.02.2021

PRONOUNCED ON : 22.02.2021

CORAM

THE HONOURABLE MR.JUSTICE T.RAVINDRAN

S.A.No. 971 of 2008

and

M.P.Nos.1 & 2 of 2008

1. Ravi kumar
S/o. Alavandan

2. V. Nagooran
S/o. Vadivel

3. E. Govindasamy
S/o. Elumalai

... Appellants/Respondents/Respondents

Vs.

V. Balakrishnan

... Respondent/Appellant/Plaintiff

Prayer: Second Appeal filed under Section 100 of CPC, 1908 against the judgment and decree in A.S. No.36 of 2004 dated 13.09.2006 on the file of the Additional Subordinate Judge at Tindivanam, reversing the judgment and decree in O.S.No.325 of 2003 dated 27.02.2004 on the file of the Principal District Munsif, Tindivanam.

For Appellants : Mr.N.Suresh

For Respondent : No appearance. Set exparte vide order dated 09.02.2021.



JUDGMENT

Challenge in this second appeal is made to the judgment and decree dated 13.09.2006 passed in A.S. No.36 of 2004 on the file of the Additional Subordinate Court, Tindivanam, reversing the judgment and decree dated 27.02.2004 passed in O.S.No.325 of 2003 on the file of the Principal District Munsif Court, Tindivanam.

2. For the sake of convenience, the parties are referred to as per their rankings in the trial court.

3. The defendants in OS.No.325 of 2003 are the appellants in the Second Appeal.

4. Suit for declaration and possession.

5. The case of the plaintiff, in brief, is that the suit property which is inclusive of a larger extent originally belonged to Venugopal S/o. Narayanasamy and on 10.09.2001, the plaintiff has purchased 0.20 cents of land in Survey No.160/10 from Venugopal and enjoying the same and in the abovesaid sale deed, the survey number has been wrongly mentioned as S.No.160/7, however, the boundaries contained in the sale deed would point out that it is only the property comprised in Survey Number 160/10 which had been alienated and there is no dispute over the lie of the suit property and the plaintiff had also mortgaged the suit property to one Deenadayalan and when the plaintiff endeavoured to put up a godown in the suit property for his saw mill, the defendants, without any authority, on 23.10.2003 encroached into the suit property to an extent of 5 feet of land and laid the foundation to an extent of 4 feet for the temple and hence, according to the plaintiff, he has been necessitated to lay the suit against the defendants for appropriate reliefs.

6. The defendants resisted the plaintiff's suit contending that they are the nattamai and panchayatars of the Kaipani colony of Tindivanam Taluk and the plaintiff's father-in-law Venugopal is also one of the nattamai and panchayatars of the abovesaid village and the people of the colony resolved to construct a temple for the deity Sri Karukkadiamman and accordingly, they had entrusted the work of construction of the temple to the sculptor Krishnadoss, S/o. Shanmugam on 13.12.2000 and even prior to the same, the construction had commenced and the same is to the knowledge of the plaintiff and his father-in-law and despite the same, Venugopal had sold the suit property to the plaintiff on 10.09.2001 and in the guise of the abovesaid sale deed, the plaintiff is endeavouring to obstruct the construction of the temple. The defendants are not constructing



the temple in Survey No.160/7 and also put forth the case that Venugopal, as the nattamai, has sold an extent of 0.10 cents of land in R.S.No.160/10 on 10.11.2000 after receiving a sum of Rs.5,000/- i.e. Rs.500/- per cent and signed in a green paper styling it as a sale deed. As the buyer could not be ascertained, the sale deed was agreed to be executed in the name of the deity Karukkadiamman herself and registered after the construction of the temple. Thus according to the defendants, the sale deed executed by Venugopal in favour of the plaintiff is not legally valid and resultantly prayed for the dismissal of the plaintiff's suit.

7. In support of the plaintiff's case P.Ws.1 and 2 were examined and Exs.A1 to A10 were marked. On the side of the defendants D.Ws.1 to 3 were examined and Exs.B1 to B3 were marked.

8. On a consideration of the oral and documentary evidence adduced in the matter and the submissions put forth by the respective parties, the trial court was pleased to dismiss the plaintiff's suit. Aggrieved over the same, the plaintiff preferred the first appeal. The first appellate court, on an appreciation of the materials available on record and the submissions put forth by the respective parties was pleased to set aside the judgment and decree of the trial court and by way of allowing the appeal preferred by the plaintiff, decreed the suit in favour of the plaintiff as prayed for. Impugning the same, the present second appeal has been laid by the defendants.

9. At the time of admission of the second appeal, the following substantial questions of law were formulated for consideration.

- 1) "Whether the court below has erred in not advertting to the legal position that dedication of property to Hindu God can be effected orally?
- 2) Whether the court below erred in decreeing the suit in favour of the plaintiff as the suit had not been filed against the villagers in a representative capacity as the temple was sought to be constructed by the entire village people?"

10. The plaintiff claims title to the suit property by virtue of the sale deed dated 10.09.2001 marked as Ex.A1 said to have been executed in his favour by his father-in-law Venugopal. That Venugopal was originally the owner of the suit property and the other properties is not in dispute between the parties. The copy of the parent title deed in the name of Venugopal dated 29.11.1956 has been marked as Ex.A3. Considering the lie of the suit property and when the identity of the suit property is not in dispute, particularly the boundaries surrounding the same,



when the defendants would also put forth the case that Venugopal had alienated the suit property for constructing the temple and the defendants would thereby claim title to the suit property only based upon the alleged sale deed said to have been executed by Venugopal marked as Ex.B3, in such view of the matter, as rightly held by the first appellate court, the description of the property in Ex.A1 sale deed as lying in R.S. No.160/7 is not required to be assigned much importance and considering the pleas put forth by the parties in the matter, it is evident that the suit property is only located in R.S.No.160/10.

11. As above pointed out, when the parties are not at issue that the suit property originally belonged to Venugopal and when it is seen that Venugopal had alienated the suit property to the plaintiff under Ex.A1 sale deed, it is evident that it is only the plaintiff who had acquired a valid title to the suit property.

12. The defendants would put forth the case that the nattamai and the panchayatars of the Kaipani colony of Tindivanam Taluk had resolved to construct a temple for the deity Sri Karukkadiamman and accordingly proceeded to put up the construction of the temple in the suit property and Venugopal also, being one of the nattamai and panchayatars of the colony, initiated all the works and further according to the defendants, Venugopal had alienated the suit property on 10.11.2000 after receiving a sum of Rs.5,000/- and signed in a green paper styling it as a sale deed and therefore, according to the defendants, by virtue of Ex.B3 sale deed, the plaintiff would not be entitled to claim any right over the suit property.

13. It is the specific case of the defendants that Venugopal had only alienated the suit property to the temple by receiving a sum of Rs.5,000/- on 10.11.2000, which document has come to be marked as Ex.B3. On a perusal of Ex.B3, it is noted that it is written on a green paper and not properly stamped and registered as required by law. Even on a perusal of the contents in Ex.B3 letter, it is found that Venugopal had only concluded that he would execute the sale deed at a later point of time if desired by the villagers. The nature of Ex.B3 being above, the same having not been properly stamped and registered as mandated under law, the first appellate court has held that, based on the unregistered and unstamped sale deed, the defendants cannot claim any right over the property mentioned therein i.e the suit property and therefore, nothing would flow from Ex.B3 so as to enable the defendants to claim the right over the suit property as put forth by them. The defendants would also project Exs.B1 and B2, being the resolutions passed for the purpose of constructing a temple for Sri Karukkadiamman.



14. However, the counsel for the defendants would contend that Venugopal having gifted the suit property in favour of the temple on 10.11.2000 itself under Ex.B3 much prior to Ex.A1 sale deed, according to him, though Ex.B3 is an unregistered instrument, he would however, rely upon the decisions reported in ILR XLII 440 (Ramalinga Chetti and two others v. Sivachidambara Chetty and fourteen others) and CDJ 2010 SC 1180 (Sainath Mandir Trust v. Vijaya & others) and based on the abovesaid decisions would contend that in the light of the proposition of law enunciated therein, according to him, where the document is in the nature of a dedication of immovable property to God by way of the gift deed, the same does not require registration as it constitutes a religious trust and it is exempted from registration and in the decision reported in CDJ 2010 SC 1180, the Apex Court has adverted to the Full Bench decision of the Madras High Court reported in AIR 1927 Mad. 636 (Narasimhaswami vs. Venkatalingam and others), wherein it has been held that Section 123 of the Transfer of Property Act does not apply to such a case for 'God' is not a living person and so the transaction is not a transfer as defined by Section 5 of the Transfer of Property Act and therefore, a gift to an idol may be oral and it may be effected also by an unregistered instrument.

15. However, on a reading of the decision reported in CDJ 2010 SC 1180, it is found that though the Apex Court has referred to the abovesaid Full Bench decision of Madras High Court reported in AIR 1927 Mad. 636, it is found that they had left the abovesaid contentious issue open and expressed no final opinion as to the question whether the deed of gift executed in favour of the appellant trust having not been registered would confer any title to the appellant's trust and also held that the abovesaid point was neither pressed hard nor argued by the counsel threadbare and accordingly the court had also not wished to enter into the question further. It is further noted that in the abovesaid decision, the Apex Court had disposed of the case covered in the decision on the footing that as it has become obligatory on the part of the purchaser of the plot in question, namely, R1 to R7 to seek the permission of the Charity Commissioner as mandated under Section 51 of the Bombay Trusts Act, 1950 to recover the property by filing a suit or initiating a proceeding and the abovesaid statutory requirement of the Bombay Public Trusts Act, 1950 having not been complied with, on that basis proceeded to dispose of the case covered in the said decision. It is thus found that the Apex Court in the abovesaid decision had not gone into the question whether a gift could be effected in favour of a temple orally or by way of the unregistered instrument.

16. In the decision reported in ILR XLII 440, it has been held that a dedication of a property to an idol of a temple by

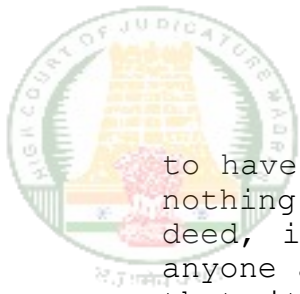


the father or the manager of the family is not by the law of India required to be in writing and is valid and binding on the other members of family as a gift ordained for pious purpose. It is thus evident in the abovesaid decision, the transaction involved is only as regards the validity of a oral gift in favour of an idol of a temple.

17. The decision of the Full Bench of Madras High Court reported in AIR 1927 Mad. 636 is also in respect of the gift deed in favour of an idol and thereby held that the same may be orally effected or also be effected by an unregistered instrument.

18. Insofar as the case at hand, as above pointed out, it is not the case of the defendants that Venugopal had gifted the suit property in favour of the temple, on the other hand, it is the specific case of the defendants that Venugopal had only alienated the suit property to the temple by way of Ex.B3 deed. It is thus evident that when the case projected by the defendants that Venugopal had divested himself of his right over the suit property only by way of the alleged sale deed said to have been executed under Ex.B3 and not by way of a gift to the temple, in such view of the matter, the principles of law outlined in the abovesaid decisions relied upon by the defendants' counsel, as discussed above, in my considered opinion, would not be applicable to the case at hand, as in the case at hand, we are dealing with the sale transaction said to have been executed by Venugopal in favour of the temple. In such view of the matter, as rightly held by the first appellate court, the instrument projected by the defendants marked as Ex.B3 being in the nature of a sale transaction, particularly when it is case of the defendants that Venugopal had alienated the suit property for a sum of Rs.5,000/-, the instrument for the same relied upon by the defendants marked as Ex.B3 being not stamped and registered as mandated under law, as rightly determined by the first appellate court, no valid right would accrue or flow to the defendants over the suit property by virtue of the said document.

19. As above pointed out, when admittedly Venugopal is the original owner of the suit property and when it is seen that he had alienated the suit property to the plaintiff under a valid sale deed on 10.09.2001 marked as Ex.A1, it is found that it is only the plaintiff who would acquire a pucca title to the suit property and in such view of the matter, the defendants cannot be held to have acquired a valid right over the suit property or held to be in the legal possession and enjoyment of the suit property based on Ex.B3. That apart, as rightly held by the first appellate court, the defendants have not come forward clearly as to who had taken the possession of the property said



to have been conveyed under Ex.B3 on behalf of the temple. When nothing has been indicated with reference to the same in Ex.B3 deed, it is seen that Ex.B3 deed would not convey any right to anyone as such and in addition to that, , it is also to be noted that it has been further averred in Ex.B3 that Venugopal would execute the sale deed subsequently as and when the villagers desire him to do so.

20. In view of the abovesaid factors, the contention of the defendants' counsel that the suit property had been gifted to the temple by Venugopal by way of Ex.B3 and therefore, the document requires no registration in the light of the decision relied upon by him, as such, cannot be countenanced as when it is noted that Ex.B3 is not a gift deed but only a sale transaction and when it is also the case of the defendants that Venugopal had only alienated the suit property by receiving a sum of Rs.5,000/-, hence the reasonings and conclusion of the first appellate court for rejecting Ex.B3, in my considered opinion, do not warrant any interference.

21. In the light of the abovesaid discussions, the contention put forth by the defendants' counsel that the courts below had erred in not advertng to the legal position that the dedication of the property to the Hindu God can be effected orally, would not apply to the case at hand and as above pointed out, the transaction involved in this case is only an outright sale transaction. When according to the plaintiff it is only the defendants who had endeavoured to encroach into the suit property by putting up the temple, in such view of the matter, when there is no material worth acceptance to show that the entire villagers are fighting for the construction of the temple as such, the plaintiff is not required to levy the suit against the defendants in the representative capacity and therefore, the contention of the defendants' counsel that the suit should have been laid by the plaintiff in the representative capacity, as such, cannot be countenanced. The substantial questions of law formulated in the second appeal are accordingly answered.

22. For the reasons aforesaid, the judgment and decree dated 13.09.2006 passed in A.S. No.36 of 2004 on the file of the Additional Subordinate Court, Tindivanam, reversing the judgment and decree dated 27.02.2004 passed in O.S.No.325 of 2003 on the file of the Principal District Munsif Court, Tindivanam, are confirmed. Resultantly, the second appeal is dismissed. No cost. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

bga



To

1. The Additional Subordinate Court,
Tindivanam,

2. The Principal District Munsif Court,
Tindivanam.

+1cc to Mr.N.Suresh, Advocate, S.R.No.10670

S.A.No.971 of 2008

RP (CO)
HS (09/09/2021)