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S.A.No.1005 of 2003

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 29.09.2022

CORAM:

THE HONOURABLE MR. JUSTICE KRISHNAN RAMASAMY

S.A.No.1005 of 2003

Palani

... Appellant

Versus

1.Sundramoorthy

2.Arumugham

3.Sanniyasi Padayatchi

... Respondents

Second Appeal filed under Section 100 of the Code of Civil Procedure, against the decree and judgment dated 24.03.1999 made in A.S.No.94 of 1996 on the file of the Subordinate Judge, Villupuram, which confirms the decree and judgment dated 31.07.1996 passed in O.S.No.308 of 1995 on the file of the District Munsif Court, Ulundurpet.

For Appellant : Mr.T.Gandhi
For Respondents : No Appearance

JUDGMENT

This appeal has been filed by the appellant being aggrieved by the judgment and decree dated 24.03.1999 made in A.S.No.94 of 1996 on the file of the Subordinate Judge, Villupuram, confirming the decree and judgment dated 31.07.1996 passed in O.S.No.308 of 1995 on the file of the District Munsif Court, Ulundurpet.



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2. The appellant herein is the 1st defendant. The 1st respondent herein is the plaintiff. The respondents 2 and 3 herein are the defendants Nos.2 and 3. For the sake of convenience, the parties shall be referred to as per their litigative status before the trial Court as plaintiff and defendants.

3. The suit has been filed by the plaintiff for permanent injunction. In the plaint, it is stated that one Mr. Kalvarayan was the original owner of the suit property and the said Kalvarayan had two children namely, Alamelu - daughter and Arumugam - son who is the 2nd defendant/2nd respondent. During the life time of the said Kalvarayan, out of love and affection, he gifted the suit schedule property by virtue of the settlement deed dated 12.03.1954 in favour of his only daughter Alamelu. In the gift deed, it has been stated that as on the date of gift, the property was handed over to his daughter Alamelu. Therefore, the plaintiff contended that the possession was taken over by the daughter even as on the date of the settlement deed itself. Thereafter, patta was also issued in the name of the Alamelu on 06.09.1990. Thus, from 1954 to 1990, the property was in the possession of the said Alamelu. Thereafter, the said Alamelu sold the property by virtue of



the sale deed dated 11.09.1990 to the plaintiff. However, the 2nd defendant sold the suit schedule property once again to the 1st defendant vide sale deed dated 26.11.1990. Therefore, the contention of the plaintiff is that the defendants are unnecessarily interfering with his possession of the property since he has been in possession of the right from the date of purchase of the same from Alamelu. Hence, the suit was filed for permanent injunction.

4. On the other hand, a Written Statement has been filed on behalf of the defendants, inter alia, stating that the settlement deed dated 12.03.1954 was not acted upon and only the 2nd defendant was in possession of the suit property. Therefore, he executed a sale deed dated 26.11.1990 and further he has also filed all kist receipts in favour of his deceased father till the date of execution of the sale deed. Therefore, the defendants submitted that the suit is not sustainable and the plaintiff is not entitled to the relief as sought for. Hence, they prayed for dismissal of this suit.

5. Before the trial Court, the plaintiff/1st respondent was examined himself as P.W.1, one Thangavel Padayachi was examined as P.W.2 and one Muniyan was examined as P.W.3 and marked Exs.A1 to A8. The



defendants examined D.Ws.1 to D.W.4 and marked Exs.B1 to B14.

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6. The trial Court, after hearing both sides, came to the conclusion that by virtue of Ex.A1-settlement deed, the property was gifted in favour of Alamelu and even as on the date of the gift, the possession was handed over to the plaintiff/vendor. The settlement was not challenged by the 2nd defendant. Further, the 2nd defendant also not proved that the property belongs to the ancestors. On considering the deposition of PWs 1 and 2, the trial Court has categorically held that the property was in the possession of the plaintiff's vendor Alamelu. However, in order to substantiate the stand of the defendants, they have not produced any documentary evidence. Therefore, the trial Court concluded that the plaintiff is entitled for the relief as sought for. Accordingly, the suit was decreed.

7. Aggrieved over the judgment and decree passed by the trial Court, the 1st defendant/appellant herein preferred the appeal in A.S.No.94 of 1996 wherein the first appellate Court vide judgment and decree dated 24.03.1999 dismissed the appeal by upholding the decree and judgment passed by the trial Court. The appellate Court also found that the defendants



have not proved that the suit properties are ancestral properties. Further, the settlement deed executed in favour of plaintiff's vendor Alamelu was not challenged within the period of limitation and the settlement deed was executed as early as three decades ago prior to the institution of the suit.

8. Aggrieved against the concurrent judgments and decrees of the Courts below, the 1st defendant/appellant preferred the present second appeal, which was admitted by this Court on 25.07.2003 on the following substantial questions of law:-

i) Whether the Courts below are correct in holding that Ex.A1 Gift deed was accepted and acted upon when admittedly there was not even a single document or oral evidence from plaintiff and non examination of the said Alamelu Ammal

ii) Whether the Courts below are wrong in not accepting the documents Exs.B1 to B13 which are kist receipts, Adangal and lease deed in the name of 2nd defendant's lease.

iii) Whether the Courts below are wrong in not accepting the lawful possession of the 2nd defendant when admitting the possession of his lease.

iv) Is it not duty of the plaintiff to prove the



validity of the Gift deed that it was accepted and acted upon, when he claims the suit property through the said Gift deed.

9. The learned counsel appearing for the appellant would submit that Ex.A1-gift made by the father of the plaintiff's vendor has not been acted upon till the date of filing the suit. The 2nd defendant was in possession of the property until the execution of the Ex.A3-sale deed. The 2nd defendant only paid all the kists until the execution of the Ex.A3-sale deed. The properties stand in the name of the father of the 2nd defendant till the date of execution of the sale deed. Further, he would contend that the said Alamelu who is the vendor of the plaintiff was not in possession of the suit schedule property. She has settled down outside the State, in Bombay and she lost her husband and she never returned back. Therefore, he would contend that all these aspects have not been considered by both the trial Court and the first appellate Court in proper perspective. Ex.B12 is the lease deed which was executed on 24.01.1990 by the 2nd defendant and the same also had not been considered by the Courts below. Thereafter, Ex.A3-sale deed has been executed hence, he would contend that the judgments and decrees passed by the Courts below are liable to be set aside and the



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plaintiff is not entitled to the relief sought for in the suit.

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10. When the matter was taken up for hearing on 28.09.2022, there was no representation on behalf of the respondents either in person or through their counsel and hence the matter was adjourned to 29.09.2022. Today, when the matter is called, none appeared on behalf of the respondents.

11. Heard the learned counsel appearing for the appellant/1st defendant and perused the entire materials available on record. Though there is no appearance on behalf of the respondents, this Court is inclined to dispose of the matter on merits.

12. The properties originally belonged to the father of the plaintiff's vendor, namely, Kalvarayan. He settled the property by virtue of the Ex.A1-settlement deed in favour of his only daughter-Alamelu. The said Alamelu in turn, sold her property by virtue of the sale deed Ex.A2 on 11.09.1990 in favour of the plaintiff. While so, according to the appellant/1st defendant, 2nd defendant sold the suit schedule property by virtue of the sale deed Ex.A3 on 26.11.1990 in favour of the 1st defendant. Further, it appears in



the month of January Ex.B12-lease deed has also been executed by the 2nd defendant in favour of the 3rd defendant. Further, the contention of the 1st defendant/appellant was that the settlement deed Ex.A1 was not acted upon and the 2nd defendant who was in possession of the suit schedule property from 1954 to 1990 till the execution of the Ex.A3 sale deed. In order to prove his contention the defendants filed the kist receipt i.e., Exs.B1 to B11 and also lease deed as Ex.B12. Except these documents no other documents have been filed by the defendants and it is pertinent to note that even those receipts also stood in the name of the father of the 2nd defendant. It is to be noted here that the settlement was made in favour of his daughter-Alamelu.

13. Now, the issue is whether the settlement deed was acted upon or whether the settlement deed was challenged by the 2nd respondent. The 2nd defendant admitted that there was no challenge made to the settlement deed Ex.A1 till 1990 i.e., over the period of 26 years from the date of execution of the settlement deed. The kist receipt filed by the respondents also not in the name of the 2nd defendant but stood in the name of the father of the 2nd defendant. In fact, patta was granted in the name of Alamelu on 06.09.1990. A perusal of the deposition of the P.Ws.2 and 3, makes it clear



that the plaintiff's vendor, i.e. Alamelu was in possession of the suit property from the year 1954 till the execution of Ex.A2-sale deed. Later, she got married and settled down with her husband outside the place of the suit properties. However, the deposition of P.Ws.2 and 3 would indicate that she would come and visit the suit properties frequently and allowed somebody to use the property on lease. These depositions clearly show that the suit properties were exclusively in possession of the plaintiff's vendor. If at all, if there is any possession as claimed by the 2nd defendant, the same might have given by Alamelu in favour of the 2nd defendant by the reason that he is none other than her own brother to take care of the property. Therefore, based on the depositions of Pws1 to 3 and the documentary evidence available on record, this Court can able to understand that the suit properties were in possession of the plaintiff's vendor all along until the execution of the Ex.A2-sale deed. As already discussed above, the 1st defendant has produced only kist receipts, adangal and lease deed Exs.B1 to B13 to prove his case, which stood in the name of the father of the plaintiff's vendor and all these documents would not establish any title or possession in favour of the 2nd defendant. These aspects have been well considered and dealt with by the Courts below and accordingly, the substantial question Nos.2 and 3



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are answered against the appellant.

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14. As regards the substantial question Nos.1 and 4 are concerned, the learned counsel appearing for the appellant would submit that the Courts below have erred in holding that Ex.A1 gift deed was accepted and acted upon by the plaintiff's vendor despite there is no oral or documentary evidence to prove the same. The learned counsel has relied upon the judgment of the Hon'ble Supreme Court of India, in Civil Appeal No.4195 of 2008 (Renikuntla Rajamma (D) by LRS Vs. K.Sarwanamma) reported in 2014 9 SCC 445, and submitted that any gift if not acted upon by way of any acceptance during the life time of the donor, it becomes void.

15. It is well settled that during the life time of the donor, if the gift is not accepted by the donee, it becomes virtually void. However, in the present case, the recitals of Ex.A1 are very clear that the said Ex.A1-gift deed executed in favour of his daughter, Alamelu by her father, wherein it has been specifically stated therein that on the same day, the possession of the property was handed over to the donee, Alamelu, which was also signed and registered. Therefore, it is sufficient to hold that there is acceptance of



the gift by the donee. Accordingly, 1st and 4th substantial questions of law are also answered negatively against the appellant.

16. In the light of the above discussion, this Court has no hesitation to hold that both the trial Court as well as the first appellate Court have rendered well considered judgments, which require no interference by this Court.

17. In the result, the judgment and decree dated 24.03.1999 made in A.S.No.94 of 1996 on the file of the Subordinate Judge, Villupuram, confirming the judgment and decree dated 31.07.1996 made in O.S.No.308 of 1995 on the file of the District Munsif Court, Ulundurpet is hereby confirmed.

18. Accordingly, the Second Appeal is dismissed. Both parties shall bear their own costs throughout.

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29.09.2022

Index : Yes/No

Internet : Yes/No



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KRISHNAN RAMASAMY, J.,

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To

- 1.The Subordinate Judge,
Villupuram,
- 2.The District Munsif Judge,
Ulundurpet.

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