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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.03.2022

CORAM

THE HONOURABLE MRS. JUSTICE R. HEMALATHA

S.A.No.1517 of 2011
and M.P.No.1 of 2011

Balaji

...Appellant/Plaintiff

Vs.

President,
Nacharkuppam Village Panchayat Board,
Periankuppam Post,
Vaniyambadi Taluk.

...Respondent/Defendant

(Respondent amended vide order of Court
dated 21.02.2012 made in M.P. 1/2012)

Prayer : Second Appeal filed under Section 100 CPC, 1908 against the decree and judgment dated 29.07.2011 passed in A.S. No.30 of 2010, on the file of the Sub Court, Vaniyambadi confirming the judgment and decree in O.S.No.39 of 2008 dated 30.08.2010 on the file of the Principal District Munsif Court, Ambur, Vellore District.

For Appellant : Mr.PA.Sudesh Kumar

For Respondent : Mrs.V.Srimathi

JUDGMENT

The unsuccessful plaintiff before both the courts below has filed the present second appeal. The suit in O.S.No.39 of 2008 was filed by the plaintiff for declaration of title to the suit property and for a consequential relief of permanent injunction restraining the respondent/defendant from interfering with the peaceful possession and enjoyment of the suit property.

2. For the sake of convenience, the parties are referred to as per their ranking in the trial court and in appropriate places, their rank in the present appeal would also be indicated.

3. The case of the plaintiff, in nutshell, is as follows:

The suit property was purchased by the plaintiff through a registered sale deed dated 16.12.2002[Ex.A3] from one N.M.Raja Gounder S/o. Muthiah Gounder for valuable consideration and ever since the date of purchase, the plaintiff was in



possession and enjoyment of the suit property. According to the plaintiff, the suit property was gifted in favour of Kannadikuppam Panchayat Board for construction of a school, through a gift deed dated 25.09.1964 [Ex.A1] by Muthiah Gounder, father of vendor of the plaintiff. At that point of time, Nacharkuppam was a part of Kannadikuppam Panchayat Board. Subsequently, Nacharkuppam was bifurcated and on 28.02.2002, the Nacharkuppam Panchayat Board gifted the suit property in favour of Raja Gounder, son of Muthiah Gounder stating that the suit property was no longer required by the Panchayat for construction of a school. Thereafter, Raja Gounder executed a sale deed dated 16.12.2002 [Ex.A3] in favour of the plaintiff. However, the defendant is now attempting to trespass into the suit property. Therefore, the plaintiff filed the suit.

4. The suit was resisted by the defendant on the following grounds:

- i. The suit property was gifted in favour of Kannadikuppam Panchayat Board for constructing a school building on 25.09.1964 [Ex.A1] and the gift deed was also acted upon. Hence, the President of Nacharkuppam Panchayat Board does not have any right or authority to re-convey the said land in favour of the son of the original donor citing the reason that the land was no longer required.
- ii. The suit property was not in possession of the plaintiff. Therefore, the defendant prayed for dismissal of the suit.

5. The learned Principal District Munsif, Ambur, Vellore District, after framing necessary issues and after full contest, dismissed the suit filed by the plaintiff vide its decree and judgment dated 30.08.2010, on the ground that as per the provisions of Tamil Nadu Panchayats Act, 1994, once a land is gifted in favour of Panchayat Board, the same cannot be re-conveyed. It is further observed that the Nacharkuppam Panchayat Board did not follow the prescribed procedure before re-conveying the property in favour of the son of the original donor.

6. Aggrieved over the same, the plaintiff filed an appeal before the Subordinate Court, Vaniampadi in A.S.No.30 of 2010. The learned Subordinate Judge, after analyzing the oral and documentary evidence adduced on both sides, upheld the findings of the Trial Court vide its decree and judgment dated 29.07.2011.

7. Now the present second appeal is filed by the plaintiff. Notice of motion was ordered in the second appeal and after several adjournments, it is posted for final hearing today



(22.03.2022). Substantial questions of law raised in the grounds of appeal are extracted hereunder:

"i. Whether the findings of both the courts below are vitiated by non-consideration of relevant evidence, consideration of non-relevant evidence, misreading and non-appreciation of evidence, which are well available on record?

ii. Whether the Judgments of both the courts below are tainted for failure to follow the correct principles of law as enumerated in the Tamil Nadu Panchayat Act in the peculiar facts of this case?

iii. Whether application of principle emanated from Section 48-B of the Land Acquisition Act, 1894 will not apply, to the facts of the case, in the absence of "pari materia" provision in the Tamil Nadu Panchayat Act?

iv. Whether there is any other infirmity, perversity or illegality in the judgment of both the courts below in the facts and circumstances of the case? "

8. Heard Mr.PA.Sudesh Kumar, learned counsel appearing for the appellant and Mrs.V.Srimathi, learned counsel appearing for the respondent.

9. Mr.PA.Sudesh Kumar, learned counsel appearing for the appellant contended that both the Courts below had, without analyzing the evidence on record, dismissed the suit filed by the plaintiff, especially, when the plaintiff filed a registered sale deed executed by Raja Gounder in his favour and also proved his possession over the suit property.

10. Per contra, Mrs.V.Srimathi, learned counsel appearing for the respondent would contend that all the substantial questions of law mentioned in the grounds of appeal are merely questions of fact and that both the Courts below had passed well considered judgment which cannot be assailed in the present second appeal.

11. At the outset, it may be observed that the plaintiff admitted that the suit property was originally gifted in favour of Kannadikuppam Village Panchayat Board by Muthiah Gounder through a gift deed dated 25.09.1964 [Ex.A1]. This gift was made for the purpose of constructing a school building in the village. Subsequently, Kannadikuppam Village Panchayat was bifurcated in to Kannadikuppam Village and Nacharkuppam Village Panchayat. One Periyathambi, the then President of Nacharkuppam Village Panchayat Board executed a gift deed dated 28.02.2002



[Ex.A2] in favour of Raja Gounder S/o. Muthaih Gounder. It is the contention of the plaintiff that since the village Panchayat expressed an opinion that the suit property was no longer required for the purpose of constructing a school building, the property was once again re-conveyed in favour of the son of the original donor. Thereafter, Raja Gounder executed a sale deed in favour of the plaintiff on 16.12.2002.

12. The trial Court held that it is seen from Form 1-D of Tamilnadu Panchayats Act, 1994, the donee should enjoy the property free of all encumbrances. It is further observed that the president Nacharkuppam Village Panchayat did not follow the procedure contemplated under the Tamil Nadu Panchayats Act, 1994, before re-conveying the land.

13. Rule 5 of the Tamil Nadu Panchayats (Acquisition and Transfer of Immovable Property) Rules, 2000, reads as follows:

5. Transfer otherwise than by lease of immovable property belonging to a Village Panchayat or Panchayat Union Council. (1) A Panchayat shall not, without the previous sanction of the Inspector, make or sanction any transfer, except by way of lease, of any immovable property belonging to it or create or sanction the creation of any charge upon any such property. If the value of the property to be transferred or the amount for which the charge to be created exceeds fifty thousand rupees, the previous sanction of the Government shall also be obtained for such transaction.

(2) The deed of transfer shall be in the appropriate Form in Schedule I with such variations as circumstances may require."

14. Therefore, it is clear from the above Rules that without the previous sanction of the Inspector (an officer not below the rank of the District Collector), a panchayat cannot make or sanction any transfer, except by way of lease, of any immovable property belonging to it or create a charge upon any such property. The second part of the Rule states that if the value of the property exceeds fifty thousand, the previous sanction of the Government should be obtained.

15. In the instant case, there is no material to show that previous sanction was obtained before transferring the land in dispute.

16. The learned counsel for the appellant would contend that since the resolution passed by the Panchayat Board was not



challenged by any Government officials till date, the conveyance made in favour of the Raja Gounder should be held to be valid. This argument of the learned counsel appearing for the appellant cannot be accepted for the simple reason that, the property was not conveyed after getting proper sanction from the authorities concerned and thus the passing of resolution itself is void.

17. Both the Courts below had concurrently held that the plaintiff has not proved his title and possession over the suit property and all the observations made by both the Courts below are based on sound principles of law and by no stretch of imagination, they can be said to be perverse. Therefore, the second appeal fails and is dismissed.

18. In the result,

- i. the second appeal is dismissed. No costs. Consequently, connected miscellaneous petition is closed.
- ii. the decree and judgment dated 29.07.2011 passed in A.S. No.30 of 2010, on the file of the Sub Court, Vaniyambadi, and the decree and judgment dated 30.08.2010 passed in O.S. No.39 of 2008, on the file of the District Munsif Court, Ambur, Vellore District are upheld.

s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

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To

1. The Sub Court, Vaniyambadi
2. The District Munsif Court, Ambur, Vellore District.
3. The Section Officer, VR Section, High Court, Madras.

+1 CC to Mr.V. Raghavachari, Advocate sr 19210.

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SKM(CO)

SP(22/04/2022)