



S.A.(MD) No.643 of 2013

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 10.02.2023

CORAM : JUSTICE N.SESHASAYEE

S.A.(MD) No.643 of 2013

and

M.P.(MD) No.1 of 2013

John Kamalam (Died)

... 1st Appellant/Respondent/
Defendant

2.Thulasi

... 2nd Appellant/
LR of deceased sole appellant

*[2nd appellant – impleaded vide order dated 26.04.2016 made in M.P.
(MD) No.1 of 2015 in S.A.(MD) No.643 of 2013]*

Vs

The United Pentecostal Church in India,
Eastern District Tamil Nadu Registration No.56/61,
Rep., by its General Superintendent,
Having Office at Plot No.25-A,
S.R.Nagar, Kalai Nagar Extension,
Madurai-625 017.

Rep., by his Power of Attorney Holder,
Pastor H.Rajendran

... Respondent/Appellant/
Plaintiff

Prayer:- Appeal filed under Section 100 of Civil Procedure Code to set aside the judgment and decree dated 10.07.2013 made in A.S.No.37 of 2013 on the file of the Principal Subordinate Court, Nagercoil, setting aside the



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judgment and decree dated 25.03.2013 passed in O.S.No.509 of 2010 on the file of the Principal District Munsif Court, Nagarcoil, Kanyakumari.

For Appellant : Mr.Vadivelan
for Mr.K.Arunraj for 2nd appellant
For Respondent : Mr.V.Shathurthi Raja

JUDGMENT

The sole defendant, in O.S.No.509 of 2010 on the file of the Principal District Munsif Court, Nagercoil, which was laid for declaration of plaintiff's title and for certain allied relief of injunction *vis-a-vis* the suit property, is the appellant herein. For narrative convenience, parties are referred to by their rank before the trial Court.

2. The brief facts are:

(a) The suit property is described as a plot measuring 11 cents comprised in Re.S.No.132/8, correlated to Old S.No.7196 of Neendakarai-A Village, Agastheeswaram Taluk, Kanyakumari District.

(b) The suit property indisputably belonged to John Kamalam, the defendant in the suit. While so, on 28.03.1978, vide Ext.A.2-gift



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deed, the defendant had gifted the suit property in favour of the plaintiff-Church. Later, vide Ext.B.7, dated 22.03.2007, it was unilaterally cancelled by the defendant. On coming to know of the same, the plaintiff laid the suit for declaration of title based on Ext.A.2.

3.1 The suit was defended essentially on a plea that Ext.A.2-gift deed had not taken effect. The defendant has come forward with three prompt defences in his written statement:

- (a) That the plaintiff is not a qualified Pastor and is not qualified to represent the plaintiff-Church;
- (b) The defendant is a pious Christian and he has formed his own congregation and constituted a Pentecostal Church in the suit property known by the name 'United Pentecostal Church, Vairakudy'; and
- (c) The defendant had constructed a Church in the suit property and also a Pastor house. He had engaged Rajendran, who now represents the



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Church as his servant. The plaintiff is an absolute stranger to the suit property.

(d) It is true that the defendant had executed a gift deed in favour of United Pentecostal Church vide Ext.A.2-gift deed, but the affairs of the aforesaid United Pentecostal Church are in absolute chaos, that the Churches which came under its control have become defunct due to internal squabble between the members, and at no time, the gift was accepted by anyone, who had the authority to represent the Church to accept it. It is in the foregoing circumstances, the defendant cancelled Ext.A2, gift deed on 22.03.2007 and executed Ext.B14, Will dated 08.10.2009 in favour of the Managing Trustee of The Armies of the Lord God Church in India.

4. The dispute went to trial and before the trial Court, both sides adduced their oral and documentary evidences. On appreciating the evidence, the trial Court dismissed the suit essentially on the ground that unilateral cancellation of Ext.A.2-gift deed is impermissible in law, more particularly



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when the donor does not reserve a right to cancel the gift under the deed of gift. However, when the matter reached the first appellate Court in A.S.No. 37 of 2013 before the Principal Sub Court, Nagercoil, at the instance of the plaintiff, the first appellate Court came to the conclusion that the gift deed had not taken effect. Hence, this second appeal at the instance of the defendant.

5. The appeal was admitted for considering the following substantial questions of law:-

“i) Was not the first appellate Court in error in holding that Ext.A.2-gift deed had not taken effect, especially when the plaintiff had not even produced any document to indicate that they have accepted the gift and acted on it from the date of Ext.A.2 and till about the time when the suit was laid? and

ii) Whether is the plaintiff a defunct Church and as a person who represents it has the authority to represent the Church?”

6. During the pendency of the second appeal, the sole appellant died and he said to have executed a Will dated 01.09.2014 bequeathing the suit property



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in favour of the second appellant. To receive the same, the second appellant has taken out an application in CMP(MD) No.1639 of 2023. Even though arguments were made by both sides on the strength of this Will, and it was produced vide CMP.(MD) No.1639 of 2023. This Will however was not proved, but when arguments were advanced, this Court also believed that the Will has been proved, but there is an omission to prove the Will. Hence, on 12.10.2022, it indicated its intent to remand the matter back to the first appellate Court to give the second appellant an opportunity to prove the Will dated 01.09.2014. Later during the preparation of the judgment, it was noted that the Will was not made available before the Court and hence, this Court posted the matter for getting clarification from the counsel on either side. Subsequently, the second appellant has produced the Will dated 01.09.2014 vide CMP.(MD) No.1639 of 2023.

7. As already indicated this Will needs to be proved to establish the *locus standi* of the plaintiff to sustain the suit. As has been decided earlier on 12.10.2022, and disclosed to the parties on the date, this Court now allows



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the appeal, sets aside the decree of the first appellate Court in A.S.No.37 of 2013 and remands the matter back to the first appellate Court for receiving evidence in aid of proof of Will dated 01.09.2014. This apart, this Court also finds that Ext.B14 has not also been proved by examining any of its attesting witnesses. The defendant is also accorded an opportunity to prove the genuineness of Ext.B14 Will by examining one of its attesting witnesses.

8. In the result, the second appeal is allowed , the judgment and decree of the first appellate Court is set aside and the matter is remanded back to the first appellate Court for the purposes indicated above. No costs. Consequently, connected miscellaneous petition is closed.

9. The Registry is required to return the Will dated 01.09.2014 to the appellant.

10.02.2023

Index : Yes / No
Speaking order /Non-speaking order.
abr/ssb/ds



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To:

1. The Principal Sub Judge
Nagercoil,
2. The Principal District Munsif
Nagercoil, Kanyakumari.
3. The Section Officer
VR Section,
Madurai Bench of Madras High Court
Madurai.



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N.SESHASAYEE, J.

abr/ssb

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