



S.A.No.1600 of 1998

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 19.12.2022

CORAM

THE HON'BLE MR.JUSTICE S.SOUNTHAR

S.A.No.1600 of 1998
and
C.M.P(MD) No.3214 of 2018

1.Mother Superior, Adaikalamatha
K.Manniyar Madam, Irudhayapuram.

2.C.Alagappan

3.A.Alagappan ... Appellants/Respondents/
Defendants

Vs.

P.L.Shanmugham (Died) ... Respondent/Appellant/Plaintiff

2.Soodikoduthal

3.Gnanapoongothai Annamalai

4.Vasanthal Mani

5.Meenakshi Somasundaram

6.Meenakshi Kannan

7.Vadalooran

8.Meenakshi Senthinathan



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9. S.M.Meenakshi

10.S.M.Gnanasabhai

11.K.Arul Meenam

... Respondents 2 to 11

(Respondents 2 to 11 are brought on record as legal heirs of the deceased sole respondent vide Court order, dated 21.04.2022 in C.M.P(MD)Nos.2352 to 2354 of 2022)

PRAYER : Second Appeal filed under Section 100 of the Civil Procedure Code, against the judgment and decree, dated 23.07.1998 and made in A.S.No.34 of 1997 on the file of Additional District Judge cum Chief Judicial Magistrate, Pudukkottai, reversing the judgment and decree, dated 06.12.1993 and made in O.S.No.299 of 1992 on the file of Additional District Munsif, Pudukkottai.

For Appellants : Mr.P.Thiagarajan

For R2 - R11 : Mr. S.Anand Chandrasekar
for Mr.Sarvabhauman

JUDGMENT

The defendants in the suit are the appellants. The deceased first respondent filed a suit for recovery of possession against the appellants. Pending Second Appeal, the first respondent died and the respondents 2 to 11 were brought on record as his legal representatives. The suit filed by the deceased first respondent was dismissed by the trial Court. On



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appeal filed by the first respondent, the suit was decreed as prayed for.

Aggrieved the same, the defendants are before this Court.

2. According to the 1st respondent, who is the plaintiff, originally the suit property belonged to him. He executed a document dated 23.09.1968 gifting the suit property to the first appellant subject to the condition that the first appellant should perform the charity of “Thanneer Panthal” for the benefit of general public and school children who are studying in the school run by the first appellant in the suit property. It was also stated in the plaint that the deceased first respondent and the first appellant herein were entered into an agreement on 23.09.1968, whereunder, it was agreed that the charity mentioned in the gift deed dated 23.09.1968 should commence within one year from the date of execution of the document and if the first appellant fails to commence the charity within one year, the property should be retransferred to the deceased first respondent and the first appellant should also pay a sum of Rs.1,000/- to the first respondent. It was further stated in the plaint that the first appellant commenced the charity and carried out the same for a period of one year and subsequently the first appellant discontinued the charity and sold the suit properties to



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appellants 2 and 3 on 16.07.1970 under two sale deeds marked as Ex.B.1 and Ex.B.2.

3. The appellants filed a written statement and had taken a stand that under document dated 23.09.1968, the property was gifted to the first appellant and consequently the respondents cannot maintain the suit for recovery of possession. It was further averred by the appellants that the document dated 23.09.1968 was an irrevocable gift and hence the first appellant acquired absolute title under the same.

4. Before the trial Court, the deceased first respondent was examined as P.W.1 and one another witness was examined as P.W.2. Ex.A.1 to Ex.A.6 were marked on behalf of the 1st respondent/plaintiff. On the part of the appellants / defendants, no witness was examined. However, the sale deeds executed by the first appellant in favour of the appellants 2 and 3 were marked as Ex.B.1 and Ex.B.2.

5. The trial Court held that under Ex.A.1, first appellant acquired absolute title and in the absence of any recital in Ex.A.1, reserving the right of the first respondent to revoke the gift, the first appellant is



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entitled to treat it as her absolute property. Therefore, the trial Court held that the deceased first respondent / plaintiff was not entitled to maintain a

suit for recovery of possession as he was divested of his title under Ex.A.

1. The trial Court also held that under Ex.A.2, the first appellant has to commence the performance of charity within one year and as per the averments found in the plaint, the charity was commenced by the first appellant within the time stipulated. But however, the performance of charity was stopped after two years. The deceased first respondent / plaintiff ought to have filed the suit within 12 years from the date on which the performance of charity was stopped by the first appellant. But however the suit was filed only in the year 1993, after 23 years and therefore, the suit was barred by limitation.

6. Aggrieved by the dismissal of the suit by the trial Court, the deceased first respondent / plaintiff filed an appeal before the first appellate Court. The first appellate Court on consideration of Ex.A.1 and Ex.A.2 held that the first appellant would not acquire absolute right under Ex.A.1 styled as gift deed executed by the first respondent in favour of the first appellant. The first appellate Court also found that the suit property was given to the first appellant for performing “Thanneer



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Panthal Dharmam”, as she failed to continue the charity as per the condition imposed in Ex.A.1 and also the agreement under Ex.A.2, the deceased first respondent / plaintiff was entitled to seek recovery of possession and consequently allowed the appeal. Aggrieved by the same, the defendants have come up by way of this second appeal.

7. The Second Appeal was admitted by this Court on following substantial questions of law on 03.11.1998:

“(i) Whether the gift deed under Ex.A.1 is absolute and the transfer of absolute interest does not depend upon any condition as per the terms of Ex.A.1 / gift deed?

(ii) Whether the gift for mere recovery of possession without declaration or without any relief for setting aside the document Ex.A.1 / gift deed is maintainable?

(iii) When the plaintiff has not filed the suit for the performance of the charity as mentioned in Ex.A.1, is not the suit for possession liable to be dismissed? And

(iv) Whether the terms of Ex.A.2 can be enforced in the present suit especially when the provisions of Section 11, 31 and 126 of Transfer of



Property Act do not enable the plaintiff to ignore the gift under Ex.A.1?”

8. The learned counsel for the appellants submitted that under Ex.A.1, the property was absolutely gifted by the first respondent in favour of the first appellant and hence it is not open to him to impose any condition repugnant to the absolute gift made by him. In other words, it is the submission of the learned Counsel for the appellants, even assuming certain conditions were imposed under Ex.A.1, the said conditions would become inoperative in view of the clear recitals in Ex.A.1 giving absolute title to the first appellant. The learned counsel further submitted that even as per the averments found in the plaint, the performance of charity was discontinued within two years from the date of execution of Ex.A.1. In that case, the suit filed by the first respondent / plaintiff after lapse of 23 years hopelessly barred by limitation.

9. Per contra, the learned counsel for the respondents by taking this Court to the recitals found in Ex.A.1 to Ex.A.2 submitted that the suit property was given to the first appellant for the purpose of doing Thanneer Panthal Charity for the benefit of students and also the general



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public. It is the submission of the learned Counsel for the respondents that though Ex.A.1 was styled as gift, the recitals found thereon would make it as a deed creating a trust. Therefore, the first appellant cannot claim that she acquired absolute title over the suit property under Ex.A.1. At the most, the first appellant can be treated only as a person appointed to perform the charity. When the first appellant failed to perform the charity as mentioned in Ex.A.1 and Ex.A.2, the first respondent / plaintiff is entitled to get back the property for the purpose of continuing the charity.

10. Heard the arguments of the learned counsel for the appellants and respondents. Perused the records and typeset of papers.

11. A perusal of recitals found in Ex.A.1 executed by the first respondent in favour of the first appellant would make it clear that the suit properties were given to the first appellant for a specific purpose of doing Thanneer Panthal Charity for the benefit of general public in the name of “Appoothi Adigal Thanneer Panthal”.



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12. The relevant recitals found in Ex.A.1 is as follows:

“,jdbapy; fz;l GQ;ir epyj;jpy; nrz;L
50 ,UjpauJ il GQ;irapy; cs;s Nfzpapy; jhq;fs; rpyT
nra;J igg; itj;J lhQ;fp fl;b jz;zPu; vLj;J jz;zPu;ge;jy;
itj;J mg;G+jpabfs; jz;zPu; ge;jy; vd;W
ngaupl;L P.L.Shanmugam nghJ kf;fSf;Fk; il
gs;spapd; cgNahfq;fSf;Fk; ju;kk; nra;J tu jq;fSf;F
mbapy; fz;l GQ;ir epyq;fSk; ,jpy; cs;s fpzW
tpU\q;fisAk; ,jd; %yk; ,dhkhf vOjp nfhlJ;Jtpl;ljhj;
jhq;fs; mbapy; fz;l GQ;iriaAk; ,jpy; cs;s Gspakuk;
kw;w ,ju tpU\k; Rw;wpYk; nry;Yf;fhy;fs; fpzWfs;
cs;glTk; jhq;fs; vd;nwd;iwf;Fk; P.L.Shanmugam
ru;tRje;jpu ghj;jpaq;fSld; Mz;L mDgtpj;J tu
Ntz;baJ vd;Wk; gl;lhitAk; jq;fs; ngaupy; khUjyhFk;
gb gl;lh kDTk; nfhlJ;J tpl;ljhj; jhq;fs; me;jg;gb ju;k
ifq;fhupaq;fs; nra;J tu ,e;j ,dhk; rhrdk; vOjpf;
nfhlJ;Njd;.”

13. The learned Counsel for the appellants by relying upon the recitals found in the document submitted that the property was given to the first appellant as an absolute gift. A cursory look at recitals extracted above would make it clear that the first appellant acquired absolute title



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over the property under Ex.A.1. It is settled law in respect of the non testamentary documents, when there is conflict between the earlier clause and subsequent clause, the earlier clause will prevail over the subsequent clause. Under Ex.A.1, in the earlier clauses it was clearly mentioned that property was given to the 1st appellant for doing Thanneer Pandal Charity.

14. I would like to refer to the decision of Hon'ble Apex Court in *Kaivelikkal Ambunhi (dead) by LRs. and others Versus H. Ganesh Bhandary* reported in (1995) 5 SCC 444 in this regard. In the said case while considering rule of interpretation, the Apex Court explained the difference between testamentary document and non testamentary documents in interpreting inconsistent clauses found in a document. The observation of Apex Court is as follows:

“3. The rules of interpretation of the "Will" are different from the rules which govern the interpretation of other documents say, for example, a Sale Deed or a Gift Deed or a Mortgage Deed or, for that matter, any other instrument by which interest in immovable property is created. While in these documents if there is any inconsistency between the earlier or the



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subsequent part or specific clauses inter se contained therein, the earlier part will prevail over the latter as against the rule of interpretation applicable to a Will under which the subsequent part, clause or portion prevails over the earlier part on the principle that in the matter of "Will", the testator can always change his mind and create another interest in place of the bequest already made in the earlier part or an earlier occasion. Undoubtedly, it is the last Will which prevails."

The said view was reiterated in ***Mauleshwar Mani and Others Vs. Jagdish Prasad and Others*** reported in (2002) 2 SCC 468, wherein the Apex Court observed as follows:

"10.In Ramkishorelal V. Kamalnarayan [AIR 1963 SC 890] it was held that in a disposition of properties, if there is a clear conflict between what is said in one part of the document and in another where in an earlier part of the document some property is given absolutely to one person but later on, other directions about the same property are given which conflict with and take away from the absolute title given in the earlier portion, in such a conflict the earlier disposition of absolute title should prevail and the later directions of disposition should be



disregarded. In Radha Sundar Dutta v. Mohd. Jahadur Rahim it was held where there is conflict between the earlier clause and the later clauses and it is not possible to give effect to all of them, then the rule of construction is well established that it is the earlier clause that must override the later clauses and not vice versa.”

15. In the light of above settled rule of interpretation, let us examine Ex.A1. Merely because in the subsequent clause, it was mentioned that the property was gifted absolutely, it cannot be said that the first respondent would acquire absolute right over the property. The harmonious reading of all the clauses found in Ex.A.1 and also the agreement between the parties entered into on the same day, namely Ex.A.2, would make it clear that predominant intention of the author of Ex.A.1 was to do the charity and therefore, though Ex.A.1 was styled as a gift deed it should be treated as a deed creating a public trust for doing certain charity for the benefit of general public. Therefore, the contention raised by the appellants that the first appellant acquired absolute title over the suit property and hence the first appellant is entitled to sell the same to the second appellant cannot be accepted. However, having



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endowed the properties for doing the public charitable services, it is not open to the deceased first respondent / plaintiff to claim title over the suit property and recover possession. If at all, it is for the first respondent to explore the other remedies available under law for enforcement of the charity mentioned in Ex.A.1 and Ex.A.2.

16. The learned counsel for the respondents submitted that this Court can mould the relief and pass necessary orders for continuation of the public charity mentioned in Ex.A.1. The said contention cannot be accepted. The present suit is filed by the deceased first respondent for recovery of possession by claiming right over the suit property. For the forgoing reasons this Court comes to a conclusion, having endowed the property to perform charity, the 1st respondent cannot assert his title to the suit property. The substantial question of laws framed at the time of admission were answered accordingly. In the present suit, the first respondent cannot seek moulding of relief for any direction for performance of the charity mentioned under Ex.A.1. Therefore, the decree for recovery of possession granted by the first appellate Court is liable to be interfered with.



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17. The Second Appeal is allowed by setting aside the judgment and decree passed by the lower Appellate Court. However, it is open to the respondents to explore the other remedies available under law for enforcement of public charity mentioned under Ex.A.1.

18. In fine,

(a) The Second Appeal is allowed by setting aside the judgment and decree of the lower appellate Court in A.S.No.34 of 1997 on the file of the Additional District cum Chief Judicial Magistrate Court, Pudukkottai;

(b) The original suit stands dismissed with liberty to the respondents to file appropriate suit for enforcement of public charity mentioned under Ex.A.1; and

(c) In the facts and circumstances of the case, there will be no order as to costs. Consequently, the connected Miscellaneous Petition is closed.

19.12.2022

NCC : Yes / No
Index : Yes / No
Internet : Yes / No

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To

- 1.The Additional District Judge cum
Chief Judicial Magistrate,
Pudukkottai.
- 2.The Additional District Munsif,
Pudukkottai.
- 3.The Section Officer,
V.R.Section,
Madurai Bench of Madras High Court,
Madurai.



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S.SOUNTHAR,J.

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Judgment made in
S.A.No.1600 of 1998

Dated:
19.12.2022