



S.A No.924 of 2015

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.01.2023

CORAM:

THE HON'BLE MRS.JUSTICE T.V.THAMILSELVI

S.A No.924 of 2015

M.Raji

... Appellant

Vs.

1.S.Dhanasekar
2.S.Raji
3.S.Dasarathan
4.Tmt. Yellammal
5.M.Thandavarayan
6.Kalyaniammal

...Respondents

PRAYER: This Second appeal filed under Section 100 of the Code of Civil Procedure against the Judgment and Decree in A.S No.132 of 2014 dated 13.07.2015 on the file of the learned Subordinate Judge, Arakkonam reversing the judgment and decree made in O.S No. 157 of 2006 dated 12.11.2013 on the file of the learned District Munsif Court, Arakkonam.

For Appellant : Mr.G.Jeremiah



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For Respondents : Mr.A.Gowthaman

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JUDGMENT

The appellant herein is the plaintiff in suit O.S No.157 of 2006, on the file of the District Munsif Court, Arakkonam against the defendants/respondents herein for the relief of declaration and recovery of possession with other consequential relief in respect of suit properties as listed in the plaint schedule. Before the Trial Court both the parties adduced their evidence and on considering the documents and oral evidence the Trial Court framed issues held that the father of the plaintiff has no right to sell the property to the defendants 1 to 4 nor empower to execute mortgage in favour of the sixth defendant for the reason that already he executed gift settlement deed in favour of his minor son/plaintiff in the year 1986 by appointing his wife as guardian thereby declared suit property in favour of the plaintiffs and decreed the suit as prayed for.

2. Challenging the said findings the defendant 1 to 4 preferred an appeal in A.S No. 132 of 2014, on the file of the Sub Court, Arrakonam , which framed issues separately and analysed the facts held that the plaintiff failed to prove that said gift deed was acted upon nor his possession and



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enjoyment of the suit property. Besides plaintiff was not filed suit within three years after attaining his majority. Thereby the suit was dismissed by allowing appeal.

3. Challenging the reversal findings the plaintiff preferred this second appeal by contending that on the date of gift itself possession has been delivered but the lower appellate Court erred in holding that he has not proved the possession of the property by misconstruing Section 122 of Transfer of Property Act. Further it also erred in holding that as per article 58 of Limitation Act, suit as such was barred by limitation.

4. This Court admitted the second appeal with the following substantial questions of law:

i. Whether lower appellate Court has committed an error in law in holding that the gift settlement under the original of Ex.A1 was not acted upon by acceptance of the gift, ignoring the decision of the Supreme Court reported in 2013 (13) SCC 210?

ii. Whether the Judgment of the lower appellate Court cannot be construed to be a judgment as it is not in accordance with Order XLI Rule 31 CPC?

iii. Whether the lower appellate Court has committed an error in holding that the suit is barred by limitation?



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5. The brief facts of the case are as follows:

It is the case of the plaintiff that the suit property as described in the plaint schedule is belongs to his father Mani Reddiar and he executed Registered settlement deed dated 26.05.1976 in favour of the plaintiff by appointing Pachiammal/plaintiff's mother as guardian since the plaintiff was minor. Therefore after examination of the gift deed he has no right to deal with suit property, but in the year of 2006 the first defendant filed suit for redemption against sixth defendant in O.S No. 154 of 2000 then on verification of records plaintiff came to know that his father executed Usufructuary mortgage in favour of the sixth defendant in respect of A schedule property and delivered the possession when the plaintiff was minor. Further he came to know that his father sold A schedule property in favour of the one Subramaani father of defendants 1 to 3. As his father has no right to convey the property thereby said sale deed in favour of the the defendants 1 to 4 would not bind him. So also, the fifth defendant is the plaintiff's father's brother enjoyed the B schedule property as it was already coveyed by way of settlement deed in which the fifth defendant has no right. Hence, he filed suit for declaration of title over the suit property as well as recovery of possession.



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6. The contention of the first defendant is that the plaintiff's

father Mani Reddiar sold item 1 and 2 of A schedule property and item 1 and 3 of B schedule property to sixth defendant's father Subramani for valid consideration under registered sale deed dated 10.10.1988 the said deed was executed by plaintiff's father for himself and his minor/plaintiff herein. The father of the plaintiff sold the property to discharge the family debts and for the benefit of his family. However, said Mani Reddiar sold item **No. 3 of A** schedule property to one Kandhappa Reddy, in turn he sold the same property along with other property to the defendants 1 to 4 father for valid consideration ever since from the date of purchase his father being given to delivery, after his death the defendant 1 to 4 being the legal heirs are in possession and enjoyment of the property. Even assuming that the plaintiff claiming right based on gift deed he should have filed suit within three years after attaining majority, if fact he became major in the year 1994, so the suit ought to have been filed within three years i.e., 1997 instead it was filed in year 2004, after seven years from he attained majority, thereby suit was bared by limitation. Moreover these defendant's father Subramani purchased the suit property along with usufructuary mortgage made by the plaintiff's father in favour of the sixth defendant and for redemption of suit property



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the defendants' filed suit in O.S No. 154 of 2000 and preliminary decree was passed in the year of 2013 based upon that he proceed with execution proceedings and at that time taking delivery of possession of the suit property colluded with sixth defendant the plaintiff filed this vexatious suit. Hence he prayed to dismiss the suit as no merits. Fifth and sixth defendant remains exparte.

7. After considering the oral and documentary evidence the Trial Court concluded that based upon Ex.A1/settlement deed(certified copy) original was not produced plaintiff became absolute owner of the suit property and his father have no right to convey the property in favour of the first defendant's father subramani as he has no right after execution of gift settlement deed in favour of his son then minor plaintiff. Though original gift deed was not produced since because it was 30 years old document the certified copy of gift deed Ex.A1 was accepted. Further the Trial Court held that once gift deed was executed by his father he has no right to convey the property thereby sale deed is non est in law and not bound the plaintiff. Hence objection raised by the predecessor/first defendant is not accepted and the suit was decreed in favour of the plaintiff.

8. Against which the legal heirs of the purchaser Subramaini



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defendants 1 to 4 preferred an appeal before the Sub Court Arakkonam in A.S No. 132 of 2014, where framed the separate issues and analysed the facts and evidence concluded that gift deed was not acted upon nor the plaintiff accepted the gift and took possession of the property and the plaintiff's father entitled to sell the property since because the gift was not acted upon thereby held that purchase made by the defendants' father was valid. Besides, the plaintiff had not filed suit within three years after attaining his majority, near about 10 years later he filed suit as such is not maintainable and barred by limitation. Furthermore, from Ex.B9 and B10 the plaintiff was also having knowledge about the purchase made by the defendants 1 to 3's father in the year 2000 but the plaintiff filed the suit only on 2004 even beyond three years. Hence in all aspects plaintiff failed to establish his case accordingly appeal was allowed by dismissing the appeal.

9. The learned counsel for the appellant submitted that the lower appellate Court totally misconstrued the documentary and oral evidence on record while arriving its findings. Moreover, the lower appellate Court erred in not appreciating the genuineness of the Ex.A1/settlement deed



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and as per the recital, the property was settled in favour of the minor plaintiff and also delivered possession on the same day itself without appreciating that the lower appellate Court held that plaintiff not proved the delivery of the property by misconstruing under Section 130 of Transfer of Property Act and also sale deed relied by the first defendant would not confer any right over suit property for the reason that alienating of minor's property is contrary to section 11 of Act is *void ab initio* and that no interest in the property would be based to the transferring. Accordingly, the findings of the lower appellate Court is perverse and liable to be set aside.

10. By way of reply the learned counsel for the respondent submitted that the plaintiff failed not only to prove the fact of the case but also validity of the gift deed. Apart from that, the suit was not filed within three years after attaining his majority, instead only at age of 35 years he approached the Court as such it is not maintainable the lower appellate Court rightly appreciated this facts thereby dismissed the suit which needs no interference. Hence prayed to dismiss the second appeals as no merits.

11. Considering the rival submissions, the point to be decided



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is whether the plaintiff proved that as per the gift deed he became absolute owner of the suit properties beyond reasonable doubt.

12. According to the plaintiff, in the year 1976 when he was then minor his father Mani Reddiar executed gift settlement deed in respect of the suit properties in his favour by appointing his mother as guardian, to prove the same certified copy of gift deed Ex.A1 was produced. Admittedly his mother died in the year 1979 itself thereafter plaintiff's father deemed to be his guardian to deal with suit properties. While so, in the year of 1988 the plaintiff's father sold the suit property in order to discharge the loans in favour of the first defendant's father Subaramani and the sale deed was marked as Ex.B2, before that in the year 1986 plaintiff's father borrowed a loan to the tune of Rs. **20,000/-** from sixth defendant by executing the usufructuary mortgage deed in his favour. Hence, at that time of selling the property in favour of the defendant's father the said mortgaged debt also directed to discharge to that effect recitals are found in the sale deed Ex.B2 and Ex.B3 stands in the name of defendant's father. Thereafter the defendant's father demanded the sixth defendant to hand over the possession by receiving the amount for usufructuary mortgage but she refused. Hence, he filed suit for redemption in O.S No. 154 of 2000 and finally the suit was



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decreed in favour of the defendant's father. While executing said decree the plaintiff contended that he came to know about the sale deed executed by his father in favour of the defendant's father hence he approached the Court for to declare his right over the suit property based upon gift deed Ex.A1. However the first defendant denied the plaintiff's claim, based upon sale deed Ex.B2 and Ex.B3 they claimed absolute right over the suit properties. Now the burden is upon the plaintiff to prove that as to when the gift was acted upon and his possession after the settlement deed as required under Section 122 of Transfer of Property Act. The definition of gift contained in the Section 122 of the Transfer of Property Act provides that the essential elements thereof are:

- i. the absence of consideration
- ii. the donor
- iii. The donee
- iv. the subject matter
- v. the transfer and
- vi. The acceptance.

13. Hence in order to constitute a valid gift acceptance thereof is essential. But admittedly the Transfer of Property act does not prescribe



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any particular mode of acceptance. It is the circumstances attending to the transaction which may be relevant for determining the question.

14. But the learned counsel for the appellant submitted that it is not necessary to prove the acceptance for completing transaction of the gift because at the time of execution of the gift deed the plaintiff was minor and his mother was appointed as natural guardian it implies that his mother accepted the gift on behalf of the minor/plaintiff. But the contention of the defendants is that within three years of the execution of the gift deed i.e., in the year 1997 the mother of the plaintiff was died hence the father became the natural guardian of the plaintiff and he look after the family and the property and to discharge family debts he borrowed loan and to settle the loan he sold the property to the defendant's father in the year of 1988 thereby the gift was not acted upon and the plaintiff's father possessed and enjoyed the property as a absolute owner. So the foremost duty casted upon the plaintiff is to prove the validity of gift deed which executed in his favour and as to when was acted upon. It is pertinent to note that on the side of the plaintiff certified copy of gift deed was marked as Ex. A1 no explanation was offered on his side of the plaintiff for non production of the original gift deed but the Trial Court held that the document is more than 30 years old



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hence the plaintiff is not entitled to prove the same nor entitled to produce the original copy thereby the certified copy submitted by the plaintiff is sufficient and held that plaintiff proved the genuineness of Ex.A1 gift deed. But as rightly pointed out by the learned counsel for the respondent before invoking section 90 of Evidence Act the document is to be proved as 30 years old. However if the document rebutted or proved to be 30 years old and the person who relied the same would automatically received the favourable permission under section 90 of Evidence Act to that effect he relied the Judgment of the Supreme Court in the case of Om Prakash Vs Santhi Devi reported in MANU/SC/0002/2015:

15. In the instant case the plaintiff not stated any reason about the non production of original gift deed before the Trial Court, he is simply produced the certified copy on gift deed and the same was marked as Ex.A1 but the Trial Court accepted the document as valid stating reason that it was marked on the side of the plaintiff without any objection of the defendant. It is settled proposition that mere marking of the document would not amount to admission of contents of the document and the same has to be proved independently by the person who relying it. Moreover, **Ex.A1 gift deed, not like other document** the gift deed has to be proved as per the requirements



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under Section 122 of Transfer of Property Act. So mere production of certified copy of the gift deed without assigning any reason for non-production of original is not acceptable one but the Trial Court failed to taken note of this fact hence he is not entitled to get benefit under Section 90 of evidence Act this aspect is rightly appreciated by the lower appellate Court which needs no interference and the judgements relied by the defendant to that effect also support his contention.

16. The another objection raised by the first defendant is that neither the gift was acted upon nor the plaintiff took possession of the property as per the gift deed till filing of the suit in the year 2004. Further he ought to have filed suit within years after attaining majority instead he filed suit at the age of 35. But the plaintiff submitted that untill receiving notice in respect of suit in O.S No. 150 of 2000 from the first respondent against sixth defendant he does not know about Usufructuary mortgage executed by his father in favour of sixth defendant and also the sale deed executed by his father in favour of defendant's father/subramani. Thereafter he filed suit in the year of 2004. however, on seeing the address of the plaintiff he is residing where the suit properties are situated and defendants 1 to 3 residing in same village in such circumstances the contention of the plaintiff



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is not acceptable one that he was not aware of purchase made by the first defendant's father. That apart the sixth defendant is his close relative against him suit for redemption was filed by the purchaser. Admittedly, gift deed was said to be executed in the year of 1976 at that time he was minor but the suit was filed only in the year 2005 when he was aged about 35 years and the same was accepted by P.W.1 during the Trial. Being 35 years old man residing in the same village nearby the suit property not aware of the sale of the proeprerty as well as the mortgage is totally unbelievale. Therefore the plaintiff's version that he came to know about the Encumbrance over the property in the year 2004 is un-acceptable. Further, there is no evidence on the side of the plaintiff that he was not having cordial relationship with his Periasamy sixth defendant and his father's brother fifth defendant where residing in the same village. Therefore the version of the plaintiff that in the year 2004 he came to know about the alleged Encumbrance over the suit property is not acceptable one. As rightly pointed by the respondent counsel in the year 2000 to redeem mortgage there was issuance of notice between D.W.1 and the D.W.6 notice also issued to this plaintiff for which he gave reply, receipt of notice were marked as Ex.B7 and B9,B10, B11. Even assuming that the plaintiff was not aware about the encumbrance over the



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suit property all these year, but in the year 2000 itself he knew about the mortgage over the suit property but he has not filed suit within three years from the date of knowledge of the title but only in the year of 2004 after completion of three years he filed the present suit it also barred by limitation and the same was rightly appreciated by the lower appellate Court.

17. As discussed above, the gift was made in the year of 1976 in favour of the plaintiff/then minor and if any transfer made subsequently by his natural guardian as voidable at the extent of the minor as per sub Section (2) (3) of Section 8 of Hindu Minority and Guardianship Act, 1956 so the minor has entitled to set aside transfer of the properties made by his father/guardian within three years on from the date of attaining age of majority, under Article 60-A of limitation Act 1963 which provides limitation of three years. Admittedly no such suit was filed by plaintiff within three years period it seems that in the year 1976 the plaintiff was minor indeed only in the year 2004 he filed suit as if he was aware about the transaction in the year of 2004, but as discussed above the plaintiff being native man on that village where the suit property situated it is unbelievable. That apart he was issued with notice in the year of 2000 with regard to Encumbrance by the first defendant but he has not filed suit within three years from that



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notice, only in the year of 2004 after three years period of limitation he approached the Court to that effect the learned Counsel for the defendant relied the judgement of the Chattisgarh High Court in the case of Keshvram Vs Kubarcharan (dead) (through legal heirs) 2019 which squarely applicable to the facts of the present case. Therefore the plaintiff miserably failed to file the suit to declare his title withing three years after attaining majority. Furthermore to prove gift there is no proof on the side of the plaintiff that the gift was accepted, because his mother/guardian was passed away within two years of the gift deed. Thereafter his father natural guardian was managing his property there is no iota of evidence on the side of the plaintiff that until attaining majority the gift was acted upon nor he produced the original copy of the gift deed. Admittedly as per the gift he was not in enjoyment of the property till date, in order to constitute the valid gift the acceptance of the gift is essential. It is settled proposition that when gift made in favor of children of the donor who is the guardian of the children the acceptance of the gift can be presumed to have been made by him or on his behalf without any overt act signified acceptance by the minor. But coming to the facts of the case though Ex.A1/gift deed was made in the year 1976 by the plaintiff's father in favour of the minor son by appointing his



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mother as guardian within short period she died. Thereafter his father mortgaged the property borrowed the loan and executed sale deed in favour of defendant's father in order to discharge loan he borrowed for the family necessity including welfare of minor which itself proves that gift deed was not acted upon. Subsequently to discharge loan he executed mortgage and sold property to defendant's father. Furthermore possession of the property also given to the sixth defendant and there is no proof on the side of the plaintiff is that he was in possession of the property. Even after attaining majority the plaintiff has not taken any steps to recover the possession of the property from the sixth defendant within three years, only in the year of 2004 the plaintiff filed suit.

18. As discussed above plaintiff has not assigned any reason for non production of original gift deed and also there is no evidence that property was possessed and enjoyed by him as per the gift and also there is no reason assigned by him as to why he was not taken any steps to recover possession of the property from the sixth defendant immediately after attaining majority. Reason stated by the plaintiff that he know about the encumbrance over the property only in the year 2004 is totally unacceptable.



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On the other hand, defendant's proved his purchase of the suit property for valid consideration as bonafide purchaser from the father of the plaintiff and also deposited Rs.20,000/- to redeem the mortgage against sixth defendant and redeemed the mortgage and possessed and enjoyed the property which was purchased by him. The plaintiff and his family members colluded with each other denied the defendants 1 to 4 right over the suit property which was purchased by their father also forming part of the suit property as such is clearly proves that plaintiff not approached the court with clean hands. Findings rendered by the lower appellate Court is confirmed which needs no interference. Accordingly questions of laws are answered. The findings of the lower appellate Court is confirmed.

19. In result, the second appeal is dismissed. Thus suit is dismissed as no merits. There shall be no order as to costs. Consequentially connected miscellaneous petition is closed.

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T.V.THAMILSELVI,J.

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To

1. The Sub Court, Arakonam.
2. The District Munsif cum Civil Court, Arakonam.
3. The Section Officer,
V.R Section.



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