BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 09.02.2023

CORAM:

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

S.A(MD)No.498 of 2006
and
M.P(MD) No.1 of 2011

A.Dhinakaran ...Appellant

-Vs-

1.T.Padmavathy

2.Chandrasekaran

3.A.Prabhakaran

4.Rengarajan

5.Charles Appathurai

6.Charles Singh Gnanamuthu ... Respondents

PRAYER: Second Appeal is filed under Section 100 of the Code of Civil Procedure, to set aside the judgment and decree made in A.S.No.58 of 2004 dated 19.08.2005 on the file of the Principal Subordinate Court, Nagercoil, confirming the judgment and decree in O.S.No.296 of 1998, dated 04.09.2003 on the file of the 2nd Additional District Munsif Court, Nagercoil.

For Appellant : Mr.N.Krishnaveni
Senior Counsel
for Mr.R.Murugan

For R1 and R2 : Mrs.P.Jessi Jeva Priya
for Ms.A.Bhavaneswari

For R3 to R6 : No appearance

JUDGMENT

The plaintiff in the suit is the appellant. The appellant filed a suit for injunction restraining the second respondent from alienating the suit property in derogation of obligation contained in the deed of gift dated 16.07.1993 marked as Ex.A.5. The appellant also prayed for an alternative relief that in case any alienation is made during the pendency of the suit, the same shall be declared as void ab initio. The trial Court came to the conclusion that the conditions mentioned in Ex.A.5 so as to affect the absolute gift in favour of the second respondent was not valid and the appellant is not entitled to maintain a suit for injunction based on those conditions. Hence, the suit was dismissed by the trial Court. Aggrieved by the same, the appellant filed an appeal in A.S.No.58 of 2004 on the file of Principal Sub Court, Nagercoil. The first appellate Court also concurred with the findings of the trial Court. Aggrieved by the same, the appellant/plaintiff is before this Court.

2. According to the appellant, the first respondent is his mother and the second respondent is his brother. The suit property was settled by the first respondent in favour of the second respondent under Ex.A5 dated 16.07.1983 subject to a condition that the second respondent after attaining majority should not alienate the suit property without getting permission from the appellant. It was further averred that the second respondent was taking steps to alienate the suit property without consulting the appellant and hence, the appellant was constrained to file a suit for above said relief.

3. The respondents 1 and 2 filed a written statement and resisted the suit on the ground that the suit property was purchased by the first respondent out of her self earned income. It was also averred that the appellant had no source of income to provide funds for purchase of the suit property. The averment in the plaint as if the appellant furnished the funds for purchase of suit property in the name of the first respondent was specifically denied. It was also pleaded by the

respondents that the condition in the gift deed as if the second respondent should obtain permission from the appellant before alienating the suit property, was not valid in the eye of law. It was also averred by the respondent that the appellant herein led a wavered life and he stealthily removed oral documents and other items, when he walked out of the family and therefore, the first respondent cancelled the gift deed executed by her under Ex.A5 and executed another settlement giving absolute right to the second respondent under Ex.B2 dated 05.05.1998. On these pleadings, the respondents sought for dismissal of the suit laid by the appellant.

4. The trial Court, on appreciation of oral and documentary evidences available on record, came to the conclusion that the condition imposed in Ex.A5-gift deed, curtailing the power of alienation available to the donee was not valid in view of Section 10 of Transfer of Property Act. The trial Court further observed that in view of Ex.B2-gift deed executed by the first respondent in favour of the second respondent on 05.05.1998, the earlier condition imposed under Ex.A2 got relaxed and consequently, came to the conclusion that the suit filed by the appellant was not maintainable and dismissed the same. Aggrieved

by the same, the appellant filed an appeal before first appellate Court in A.S.No. 58 of 2004 on the file of Principal Sub Court, Nagercoil. The First Appellate Court also concurred with the findings of the trial Court and dismissed the first appeal. Aggrieved by the same, the plaintiff is before this Court.

5. At the time of admission, this Court formulated the following substantial questions of law:-

"1.Whether the restriction of alienation by the donor in a gift deed does not come within the purview of Section 10 of the Transfer of Property Act?

2.Have not the Courts below erred in law, in non suiting the plaintiff when under Section 126 of the Transfer of Property Act, the donor is permitted to impose condition under the gift deed?

3.Whether the Courts below have failed to note that once the settlor executes a settlement deed, she has no right to cancel the same?"

6. The learned counsel for the appellant elaborating the substantial questions of law framed at the time of admission, submitted that there is no absolute curtailment of power of alienations to the donee. The first respondent at

the time of executing gift in favour of the second respondent having regard to the interest of the minor son, namely, the second respondent, imposed a condition that on attaining majority, he can alienate the property only with the permission of his elder brother, namely, the plaintiff. The learned counsel further submitted that the partial restraint on power of alienation imposed on the second respondent is only for his benefit and the same cannot be treated as total curtailment of power of alienation available to the donee. The learned counsel further by relying on Section 126 of Transfer of Property Act, submitted that the donor is entitled to impose a condition under the gift deed with regard to the manner of enjoyment of property by the donee.

7. Per contra, the learned counsel appearing for the respondents tried to support the judgments of the Courts below by saying that under Ex.A5, the first respondent gifted the property absolutely in favour of the second respondent. It is not open to her to restrict power of alienation by imposing condition that before alienation the second respondent should obtain permission from the appellant. The said contention, which is repugnant to the gift made under Ex.A5, is void ab initio. The learned counsel also by taking this Court to the subsequent document

executed by the first respondent under Ex.B2 submitted that the condition imposed in the earlier gift deed was revoked by the first respondent in the subsequent document marked as Ex.B2. Therefore, the learned counsel sought for dismissal by confirming the judgments and decrees passed by Courts below.

8. Heard the learned Senior counsel appearing for the appellant and that of the learned counsel for the respondents 1 and 2 and perused the typed set papers and other available documents on record.

9. The questions of law formulated at the time of admission of the second appeal are relating to the validity of the condition imposed by the first respondent in the gift deed executed under Ex.A5. A perusal of Ex.A5 gift deed would make it clear that the first respondent gifted the suit property in favour of the second respondent. Though the second respondent was given absolute right over the suit property, a condition was imposed on him to get permission from the appellant in case, he decides to alienate the suit property, after attaining majority. Once the gift deed is executed settling the property absolutely in favour of the donee, any further condition repugnant to the absolute gift, is not valid. In this

connection it would be appropriate to refer Section 10 of Transfer of Property Act, which reads as follows:-

> *"10.Condition restraining alienation:- where property is transferred subject to a condition or limitation absolutely restraining the transferee of any person claiming under him from parting with or disposing of his interest in the property, the condition or limitation is void, except in the case of a lease where the condition is for the benefit of the lessor or those claiming under him: provided that property may be transferred to or for the benefit of a women (not being a Hindu, Muhammadan or Buddhist), so that she shall not have power during her marriage to transfer or charge the same or her beneficial interest therein."*

10. A perusal of above provision would make it clear that there cannot be a restriction on power of alienation available to the transferee in a document involving transfer of property. In the case on hand, the first respondent executed a gift deed under Ex.A5 gifting the suit property absolutely to the second respondent. Thereafter, by a subsequent clause, she imposed condition that in case the second respondent decided to alienate the property after attaining majority, he shall do so only with the concurrence of the appellant. Such a

condition would amount to taking away the power of alienation available to the donee. In other words, the power of alienation available to the donee is made subject to the sweet will of the third party, namely, the appellant in the present case. Such a condition would amount to absolute restraint on the power of alienation, which is normally available to a donee under absolute gift. Hence, the subsequent clause in Ex.A5 restricting the power of alienation available to the donee is repugnant to the absolute gift made under the document. Therefore, the said condition is hit by Section 10 of Transfer of Property Act and therefore, it should be treated as a void condition.

11. The present suit is filed for injunction restraining the second respondent from alienating the suit property in derogation of obligation contained in the deed of gift. However, this Court comes to a conclusion that the obligation imposed on the second respondent in the deed of gift is not valid and void ab initio. The cause of action for maintaining the suit fails. Therefore, both the Courts below correctly came to the conclusion that the suit filed by the appellant was not maintainable and consequently, dismissed the suit. I do not find any perversity in the approach made by both the Courts below. Accordingly, the

substantial questions of law formulated at the time of admission are answered against the appellant.

12. As far as the contention made by the learned Senior counsel regarding entitlement of donor to impose a condition under Section 126 of Transfer of Property Act is concerned, Section 126 of Transfer of Property Act is only with regard to the suspension or revocation of gift on mutual agreement between donor and donee. However, it does not enable the donor to impose any condition under the deed of gift so as to affect the absolute gift made in favour of donee. Therefore, the said contention is also rejected. Accordingly, the second appeal is dismissed.

13. In fine,

(i) The Second Appeal is dismissed by confirming the judgment and decree dated 19.08.2005 passed in A.S.No.58 of 2004 on the file of the Principal Subordinate Court, Nagercoil, confirming the judgment and decree in O.S.No.296 of 1998 dated 04.09.2003 on the file of the 2nd Additional District Munsif Court, Nagercoil;

(ii) In the facts and circumstances of the case, there will be no order as to costs; and

(iii) Connected miscellaneous petition is closed.

09.02.2023

NCC : Yes/ No
Index : Yes / No
Internet : Yes / No
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To
1.The Principal District Judge,
Dindigul.
2. The District Munsif, Palani.

3.The Record Keeper,
V.R.Section,
Madurai Bench of Madras High Court,
Madurai.

S.SOUNTHAR, J.

CP

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