



S.A.(MD).No.465 of 2017

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Reserved on : 15.02.2023

Pronounced on : 22.02.2023

CORAM

THE HONOURABLE MR.JUSTICE SUNDER MOHAN

S.A.(MD).No.465 of 2017

and

C.M.P.(MD).No.9760 of 2017

1.M.S.Susai Raj

2.Chinnammal @ Sowri Ammal

... Appellants/ Appellants/
Defendants 2 & 4

Vs.

1.Jesu Rathinam

... 1st Respondent / 1st Respondent / Plaintiff

2.Adaikalam

3.Fathima Mary

...Respondents 2 & 3 / Respondents 2 & 3/
Defendants 3 & 5

Prayer: Second Appeal filed under Section 100 of the Civil Procedure Code, to set aside the judgment and decree dated 18.07.2017 made in A.S.No.111 of 2013 on the file of the Sub Court, Sivagangai confirming the judgment and decree dated 12.08.2013 made in O.S.No.208 of 2010 on the file of the District Munsif Court, Sivagangai and allow this Second Appeal pending on the file of this Court.



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For Appellants : Mr.S.Srinivasa Raghavan

For R-1 : Mr.H.Lakshmi Shankar

For R-2 and R-3 : No Appearance

JUDGMENT

The second and the fourth defendants in the Trial Court are the appellants before this Court. The plaintiff is the first respondent. The dispute is between the first appellant/second defendant and the first respondent/plaintiff. For the sake of convenience, the parties are referred to as per their rank before the Trial Court.

2. The plaintiff/first respondent filed a suit in O.S.No.208 of 2010. He had claimed that the first defendant, namely, his father, executed a settlement deed in his favour on 21.10.2009 in respect of the suit schedule properties, which consist of eight items. The first defendant cancelled the settlement deed on the very next day, i.e., 22.10.2009 and thereafter executed another settlement deed in favour of the second defendant on 23.10.2009. The plaintiff claimed that the first defendant after executing the settlement deed in his favour had no authority to unilaterally cancel the settlement deed. Since the unilateral cancellation of settlement deed is void, the subsequent settlement deed in favour of the second defendant is also void. Therefore, the plaintiff prayed for



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declaration of the cancellation of settlement deed dated 22.10.2009 and the settlement deed dated 23.10.2009 in favour of the second defendant as null and void.

3. The second defendant filed a written statement stating that the first defendant had executed the settlement deed in favour of the plaintiff on 21.10.2009 under coercion. The settlement deed dated 21.10.2009 in favour of the plaintiff was not acted upon at all and hence, the cancellation of the said settlement deed is legal. Thereafter, the first defendant executed a settlement deed in favour of the second defendant and ever since then, he has been in possession and enjoyment of the suit schedule properties.

4. The Trial Court framed the following issues:

1. Whether the Gift settlement dated 21.10.2009 was executed by the the defendants No.1 in favour of the plaintiff because of coercion as alleged?

2. Whether the plaintiff is entitled to the relief of declaration of nullity over the cancellation deed dated 22.10.2009?

3. Whether the plaintiff is entitled to the relief of declaration of nullity over the gift deed executed by the 1st defendant in favour of the 2nd defendant, dated 23.10.2009?



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4. *Whether the suit is bad without the relief of declaration of title?*

5. *To what other reliefs?*

5. Before the Trial Court, the plaintiff examined P.W.1 and P.W.2 and marked exhibits A1 to A5. On the side of the defendants, D.W.1 to D.W.6 were examined and exhibits B1 to B6 were marked. The Trial Court after considering the oral and documentary evidence decided all the issues in favour of the plaintiff and decreed the suit as prayed for.

6. The second and the fourth defendants/appellants challenged the said judgment and decree before the Sub Court, Sivagangai in A.S.No.111 of 2013.

The points for determination before the Appellate Court were as follows:

1. *Whether there was a partition in respect of the suit properties?*

2. *Whether the Ex.A1 Gift Settlement Deed was executed by the 1st defendant in favour of the plaintiff under coercion ?*

3. *Whether the plaintiff is entitled to have a relief of declaration that Ex.A2 Cancellation of Gift Settlement is null and void?*

4. *Whether the plaintiff is entitled to have a relief of declaration that Ex.A3 Gift Settlement Deed is null and void?*



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5. *Whether the suit is bad without the relief of declaration of title?*

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The Appellate Court decided all the points in favour of the plaintiff/first respondent.

7. Aggrieved, the second and fourth defendants/appellants are before this Court. The fourth defendant/second appellant has no say in the matter and she is only a formal party. Likewise, the other defendants, namely, the defendants 3 and 5/respondents 2 and 3 have no say in the matter. The first defendant, namely, the father of the plaintiff and the second defendant is no more. He died pending trial. The Second Appeal was admitted on the following substantial questions of law:

1. Have not the courts below committed a mistake by holding that a Deed of Inam Settlement / Gift Deed is irrevocable in all circumstance without resorting to the ingredients of the Deed of Inam Settlement under the Transfer of Property Act?

2. Whether the findings of the courts below relating to revocability of a Deed of Inam Settlement are sustainable in view of the fact that the Deed of Inam Settlement executed by the settler in favour of the 1st respondent/plaintiff was not acted upon and that the possession and enjoyment of the suit property was never handed over to the 1st respondent/ plaintiff?



3. *Whether the Courts below were right not appreciating the law relating to gift deed and whether the courts below were right in failing to find that the Deed of Inam Settlement can be cancelled when the same has not been acted upon by the settler and when there is no proof of acceptance of the gift by the settlee immediately thereafter?*

4. *Whether the Courts below have failed in finding that the possession and enjoyment of the suit property in the hands of the first appellant / 2nd defendant would prove that the property in dispute was not handed over to the 1st respondent/ plaintiff by the settler and the Deed of Inam Settlement in favour of the 1st respondent/ plaintiff was not acted upon?*

8. Mr.S.Srinivasa Raghavan, learned counsel for the appellants/defendants 2 and 4 would submit that the gift deed executed in favour of the plaintiff/first respondent was not acted upon at all. The plaintiff was never put in possession of the properties as claimed by him in the suit. The plaintiff has not established acceptance which is a mandate under Section 122 of the Transfer of Property Act in order to constitute a valid gift. Since the plaintiff was never put in possession of the properties, it has to be presumed that there was no acceptance of the gift. Since there was no acceptance, the gift is void and the subsequent settlement deed therefore in favour of the second defendant/first appellant is valid in law.



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9. (i) Mr.H.Lakshmi Shankar, learned counsel for the first respondent/plaintiff would contend that the documents of title in respect of all the items of the suit schedule property were handed over to the plaintiff immediately on the execution of the settlement deed, Ex.A1. The gift was therefore accepted by the plaintiff. The gift is unconditional and since the documents of title have been handed over to the plaintiff, it establishes acceptance on behalf of the plaintiff. The learned counsel further submitted that the evidence of D.W.5/first defendant, the settlor, is of no avail to the second defendant/first appellant. The learned counsel relied upon the judgment of the Hon'ble Supreme Court in the case of *Asokan Vs. Lakshmikutty and others* reported in (2007) 13 SCC 210 in support of his submission.

(ii) The learned counsel for the first respondent/plaintiff further submitted that in any event, the first defendant/father, who had executed a settlement deed in favour of the plaintiff, had no right whatsoever after the execution of the settlement deed to deal with the property. The Sub Registrar ought not to have allowed the registration of the deed of cancellation since it was a unilateral cancellation made by the donor. The learned counsel relied upon the decision of the Full Bench of this Court in the case of *Sasikala Vs. Revenue Divisional Officer Cum Sub Collector, Devakottai, Sivagangai and*



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another reported in **2022 SCC OnLine Mad 4343 : AIR 2022 Mad 323** in support of his submission.

10. Heard the learned counsel for the appellants and the learned counsel for the first respondent. Though notice has been served on the respondents 2 and 3 and their names are printed in the cause list, there is no appearance for the respondents 2 and 3.

11. Admittedly, the first defendant had executed a settlement deed in favour of the plaintiff/first respondent on 21.10.2009. He had executed a cancellation deed on the very next day, namely, on 22.10.2009. The said cancellation deed is marked as Ex.A2. In the said cancellation deed, the first defendant had stated that he was unhappy with the conduct of the plaintiff after the execution of the settlement deed and therefore, he was cancelling the settlement deed. On the very next day, the first defendant executed another settlement deed in favour the second defendant/first appellant by Ex.A3 document. The first defendant has not filed any written statement. However, he was examined as D.W.5 on behalf of the defendants. In order to assail the first settlement deed, the second defendant would state in his written statement that the settlement deed was executed under coercion. Both the Courts below



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have held that coercion has not been established by the second defendant. That apart, in Ex.A2 cancellation deed and Ex.A5 legal notice sent on behalf of the first and second defendants, there is no mention about coercion. That being the factual position, this Court finds no reason to interfere with the finding on facts as regards the alleged coercion in execution of Ex.A1 in favour of the plaintiff.

12. The next point for consideration is whether the settlement deed in favour of the plaintiff/first respondent was acted upon. Section 122 of the Transfer of Property Act reads as follows:

“122. “Gift” defined.—“Gift” is the transfer of certain existing moveable or immoveable property made voluntarily and without consideration, by one person, called the donor, to another, called the donee, and accepted by or on behalf of the donee. Acceptance when to be made.—Such acceptance must be made during the lifetime of the donor and while he is still capable of giving. If the donee dies before acceptance, the gift is void.”

The essential elements of gift under the above provision of the Transfer of Property Act are as follows:

- a) transfer
- b) movable or immovable property



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- c) made voluntarily
- d) without consideration
- e) by the donor to another, namely, donee
- f) acceptance by the donee
- g) such acceptance must be made during the lifetime of the donor.

The plaintiff's case is that the above conditions have been satisfied. The Act does not prescribe any particular mode of acceptance. This question was dealt with by the Hon'ble Supreme Court in the case of **Asokan Vs. Lakshmikutty and others** reported in **(2007) 13 SCC 210**. The Hon'ble Supreme Court had held as follows:

“14. Gifts do not contemplate payment of any consideration or compensation. It is, however, beyond any doubt or dispute that in order to constitute a valid gift acceptance thereof is essential. We must, however, notice that the Transfer of Property Act does not prescribe any particular mode of acceptance. It is the circumstances attending to the transaction which may be relevant for determining the question. There may be various means to prove acceptance of a gift. The document may be handed over to a donee, which in a given situation may also amount to a valid acceptance. The fact that possession had been given to the donee also raises a presumption of acceptance.

15. Concept of payment of consideration in whatever form is unknown in the case of a gift. It should be a voluntary one. It should



not be subjected to any undue influence.

16. While determining the question as to whether delivery of possession would constitute acceptance of a gift or not, the relationship between the parties plays an important role. It is not a case that the appellant was not aware of the recitals contained in deeds of gift. The very fact that the defendants contend that the donee was to perform certain obligations, is itself indicative of the fact that the parties were aware thereof. Even a silence may sometimes indicate acceptance. It is not necessary to prove any overt act in respect thereof as an express acceptance is not necessary for completing the transaction of gift.”

13. The handing over of documents of title may also amount to a valid acceptance. Further, in the instant case, there is a specific recital in Ex.A1, which says that possession was handed over to the plaintiff/first respondent. In view of the said recital and the fact that the original title deeds have been handed over to the plaintiff/first respondent, there is a presumption in favour of the validity of the gift. The only contention of the second defendant/first appellant is that it was obtained under threat and coercion, which is factually negated by both the Courts below. This Court finds that there is no error in such a factual finding. In such circumstances, this Court is of the view that Ex.A1 is a valid gift in favour of the plaintiff/first respondent and the same has



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been accepted by the plaintiff/first respondent. The first and the second defendants have not been able to show that the gift would fall under any of the circumstances mentioned in Section 126 of the Transfer of Property Act. In the absence of such circumstances, the gift cannot be revoked.

14. Further, we find that unilateral cancellation of settlement deed ought not to have been accepted for registration by the Sub Registrar. Even assuming that the grounds raised by the second defendant/first appellant are correct, the first and second defendants ought to have filed a civil suit to establish the grounds for challenge to the gift deed, Ex.A1 and had no authority to execute the unilateral cancellation. This Court had held that such unilateral cancellation of settlement deed cannot be registered by the Sub Registrar unless it satisfies the following conditions:

(a) There must be an agreement between the donor and donee that on the happening of a specified event which does not depend on the Will of the donor the gift shall be suspended or revoked by the donor.

(b) Such agreement shall be mutual and expressive and seen from the document of gift.

(c) Cases which do not fall under Section 126 of Transfer of Property Act, unless the cancellation of Gift or Settlement is mutual, the registering authority shall not rely upon the self serving



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statements or recitals in the cancellation deed. For example questioning whether the gift deed was accepted or acted upon cannot be decided by the registering authority for the purpose of cancelling the registration of gift or settlement deed.

Admittedly, the present case does not fall within any of the above exceptions stated by the Full Bench of this Court. Hence, for this reason also, the cancellation deed has to be declared null and void. Thus, we hold that the gift Ex.A1 is valid. The Courts below were right in holding that the gift deed was valid in law. The substantial questions of law are answered accordingly.

15. In view of the above, the Second Appeal deserves to be dismissed and hence dismissed. There shall be no order as to costs. Consequently, connected miscellaneous petition stands closed.

22.02.2023

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



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To

- 1.The Sub Court,
Sivagangai.
- 2.The District Munsif Court,
Sivagangai.
- 3.The Section Officer,
V.R.Section,
Madurai Bench of Madras High Court,
Madurai.



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SUNDER MOHAN, J.

Lm

Pre-Delivery Judgment made in
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