



S.A.Nos.1630 & 1631 of 2008

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.02.2024

CORAM

THE HONOURABLE Mr. JUSTICE G.ARUL MURUGAN

S.A.Nos.1630 & 1631 of 2008

and

M.P.Nos.1 & 1 of 2008

1.Susendran

2.Lakshmi

... Appellants 1 & 2 in both S.As

3.Meena

4.Sharmila

5.Pramila

6.Sujji

... Appellants 3 to 6 in

S.A.No.1630 of 2008

vs.

1.Kannammal

2.Sundariammal

3.Ruckmaniammal

...Respondents 1 to 3 in both S.As

4.Subbiammal

5.Halliammal

6.Lakshmi

7.Shanthi

8.Sumathi

9.Jayanthi

...Respondents 4 to 9 in

S.A.No.1630 of 2008

Prayer in both Second Appeals:- Second Appeals filed under Section 100 of the Civil Procedure Code against the judgment and decree dated 28.02.2007 in A.S.Nos.1 of 2007 & 19 of 2006, respectively, passed by the learned District Judge, The Nilgiris at Udthagamandalam, confirming the judgment and decree dated 03.08.2006 in O.S.No.14 of 2004 passed



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by the learned Subordinate Judge, The Nilgiris at Udhagamandalam.

For appellants in both S.As : Mr.S.Mukunth, Senior Counsel
for Mr.N.Baskaran

For respondents 1 to 3
in both S.As : Mr.S.Kingston Jerold
for Mr.S.K.Rakhunathan

For R4 to R7 in
S.A.No.1630 of 2008 : No appearance

For R8 in S.A. No.1630 of 2008: Unclaimed

For R9 in S.A. No.1630 of 2008: Left

COMMON JUDGMENT

The Second Appeal in S.A.No.1630 of 2008 has been filed as against the judgment and decree dated 28.02.2007 in A.S.No.1 of 2007 on the file of the District Court, The Nilgiris at Udhagamandalam, and the Second Appeal in S.A.No.1631 of 2008 has been filed as against the judgment and decree dated 28.02.2007 in A.S.No.19 of 2006 on the file of the District Court, The Nilgiris at Udhagamandalam, decreeing the suit declaring that the plaintiffs are entitled to the decree for future mesne profits, which will be assessed in a separate proceedings under Order XX Rule 12 of C.P.C. Both the Second Appeals arise out of the judgment and decree dated 03.08.2006 in O.S.No.14 of 2004 on the file of the



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Subordinate Court, The Nilgiris at Udhagamandalam.

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2. The defendants 2, 3 & 7 to 10 are the appellants, plaintiffs and defendants 4 to 6 and 11 to 13 are the respondents in S.A.No.1630 of 2008. The second and third defendants in the suit are the appellants and plaintiffs are the respondents in S.A.No.1631 of 2008.

3. For the sake of convenience, the parties will be referred to according to their respective ranking as before the Trial Court.

4. Since both the Second Appeals arise out of the common judgment and decree passed by the Lower Appellate Court, both the Second Appeals are disposed of by this common judgment.

The brief facts, which gave rise to these Second Appeals, are that:

5. According to the plaintiffs, the plaintiffs are the daughters of the first defendant and Late Sennaiyammal, who admittedly, is the first wife of the first defendant. The first defendant lost his son Muthan in an accident and since the first defendant wanted a male heir, he married the



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third defendant as his second wife. The second defendant is the son born through the second wife.

6. According to the plaintiffs, Sennaiyammal belonged to an affluent family and from the periodical amounts given by her brothers, she used to save money and using the money saved, she purchased the item no.2 of the suit properties to an extent of 0.30 acres under sale deed dated 05.12.1966 in Ex.A1. Further, since the first defendant married the third defendant as his second wife, to avoid future disputes, the first defendant executed a registered gift deed dated 09.10.1967 in Ex.A2 by gifting the item nos.1, 3 and 4 of the suit properties to an extent of 2.03 acres in favour of his first wife Sennaiyammal. In all, an extent of 2.33 acres belonged to Sennaiyammal and the said Sennaiyammal had executed the gift deed dated 25.08.1995 in Ex.A5 in favour of the plaintiffs. Pursuant to the gift deed, the same was acted upon and the possession of the properties was handed over to the plaintiffs and the plaintiffs became the owners of the suit properties and were in possession and enjoyment of the same.

7. According to the plaintiffs, the second defendant prevailed



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upon the said Sennaiyammal to revoke the gift deed dated 25.08.1995 and the plaintiffs' mother Sennaiyammal executed a revocation of gift deed on 01.12.1995 in Ex.B1. According to the plaintiffs, once the gift deed has been executed by Sennaiyammal in favour of the plaintiffs and the gift deed has been acted upon, she did not have any right to cancel or revoke the gift deed unilaterally. Hence, the gift deed dated 01.12.1995 in Ex.B1 is void and will not bind the plaintiffs.

8. Further, according to the plaintiffs, the first and second defendants have entered into the suit properties and cut several silver oak shade trees and they have incurred damages to the tune of Rs.1,50,862/-. In view of the disputes made by the defendants, after issuance of the notices, the plaintiffs came up with the suit for declaration of title, delivery of possession and for damages for a sum of Rs.1,50,862/-.

9. The first defendant resisted the suit by filing the written statement contending that his first wife Sennaiyammal was only a binamidhar; she did not have any independent income and she was a housewife; as such the said gift deed executed by him in favour of his



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first wife is sham and nominal and it was never intended and act upon.

The first defendant further contended that the revenue records explicitly evidence the continuous possession and enjoyment of the first defendant.

The non acceptance of the gift is evidenced by the fact that Sennaiyammal never affixed her signature in the gift deed. The written statement filed by the first defendant has been adopted by his son/second defendant also.

Evidence and documents:

10. During trial, on the side of the plaintiffs, the third plaintiff examined herself as P.W.1 and marked Exs.A1 to A8. On the side of the defendants, the second defendant examined himself as D.W.1 and marked Exs.B1 and B2. An Advocate Commissioner was appointed and the report and plan submitted by him were filed as Exs.C1 and C2.

Findings of the Courts below:

11. The Trial Court, after appraising the evidences and documents, decreed the suit in so far as the declaration of title and recovery of possession is concerned, however, dismissed the suit insofar



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as the claim for damages for a sum of Rs.1,50,862/- is concerned. The Trial Court found that when admittedly the registered gift deed has been executed by the said Sennaiyammal on 25.08.1995 in Ex.A5 and the gift deed has been acted upon and the plaintiffs have taken over the possession of the property, the plaintiffs have become the owners of the suit properties and the said Sennaiyammal did not have any right to unilaterally cancel the gift deed and therefore, the cancellation of gift deed executed on 01.12.1995 in Ex.B1 is not valid and is not binding on the plaintiffs.

12. Aggrieved by the judgment and decree passed by the Trial Court, the defendants filed appeal in A.S.No.1 of 2007 as against the suit decreed in respect of declaration and recovery of possession and the plaintiffs also preferred another appeal in A.S.No.19 of 2006 in so far as the dismissal of the suit for the relief of damages.

13. The Lower Appellate Court, after reappraising the evidences, by a common judgment dated 28.02.2007, dismissed the appeal filed by the defendants in A.S.No.1 of 2007 and partly allowed the appeal in



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A.S.No.19 of 2006 declaring that the plaintiffs are entitled to a decree for future mesne profits which will be assessed in a separate proceedings in Order XX Rule 12 of C.P.C by the Trial Court.

14. Aggrieved by the judgment and decree passed by the Lower Appellate Court in A.S.Nos.19 of 2006 & 1 of 2007, the defendants are before this Court in these Second Appeals.

15. This Court, by order dated 18.12.2008, only ordered notice of motion.

Submission on both sides:

16. The learned Senior Counsel for the defendants/appellants contended that when the first defendant himself had given evidence before the Trial Court that the said Sennaiyammal did not have any independent income, as she was only a house wife, the gift deed was only executed by him as a benamidar and the gift deed was never acted upon. Even assuming that based on the gift deed executed by the first defendant, Sennaiyammal became the owner of the suit properties and



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also she has executed the gift deed in favour of the plaintiffs on 25.08.1995 in Ex.A5, she herself by taking note of the subsequent developments, cancelled the gift deed on 01.12.1995 in Ex.B1. Seennayammal has clearly stated that the earlier gift deed was executed by her in Ex.A5 by threat and undue influence and therefore, she had executed the cancellation deed in Ex.B1.

17. According to the learned Senior Counsel, once the gift deed has been cancelled through Ex.B1, the properties earlier granted in favour of the plaintiffs in Ex.A5 automatically stood cancelled and also the properties reverted back to Sennaiyammal. Hence, it is available for all the defendants and the plaintiffs cannot make an exclusive claim in respect of the suit properties.

18. Further, according to the learned Senior Counsel, when Sennaiyammal herself executed cancellation of gift deed in Ex.B1 in favour of the plaintiffs, the plaintiffs have never challenged the cancellation deed and therefore, the properties gifted in favour of the plaintiffs can no longer be available with them in view of the subsequent



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cancellation.

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19. The learned Senior Counsel contended that both the Courts below have not considered the documents and evidence in proper perspective and erroneously decreed the suit and sought for allowing these Second Appeals.

20. Per contra, the learned counsel for the plaintiffs/respondents contended that when admittedly, through the sale deed executed in favour of Sennaiyammal favour in Ex.A1 in respect of item 2 of the suit properties and the gift deed dated 09.10.1967 executed in Ex.A2 by the first defendant in her favour in respect of the items nos.1, 3 and 4, Sennaiyammal became the owner of the suit properties. On the strength of the same, on her own will and volition, she had executed a gift deed in favour of the plaintiffs, who are the daughters, on 25.08.1995 in Ex.A5 and the gift deed was acted upon. Sennnayammal did not have any rights to cancel the gift deed executed by her, unilaterally, on 01.12.1995 in Ex.B1 and the same is not valid and the Courts below have rightly taken note of these aspects and decreed the suit. The learned counsel contended



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that there are no substantial questions of law involved in these Second Appeals and sought for dismissal of these Second Appeals.

21. Heard the learned counsel on either side and perused the materials on record.

Analysis of the submissions:

22. Admittedly, item nos.1, 3 and 4 of the suit properties originally belonged to the first defendant and the 2nd item of the suit property had been purchased by Sennaiyammal through a registered sale deed dated 05.12.1966 in Ex.A1. The first defendant had executed gift deed dated 09.10.1967 in Ex.A2 in favour of his first wife Sennaiyammal in respect of 1, 3 & 4th items of the properties in her favour. These documents have not been questioned by anyone and it is only the contention of the first defendant that he had executed the gift deed as benamidar and the gift deed was not acted upon. But, from the materials available on record, it could be seen that the first defendant had executed the gift deed in favour of Sennaiyammal and she took possession of the properties and based on the documents available in Ex.A2 and A1,



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Sennaiyammal became the absolute owner of all the 4 items of the suit properties measuring 2.33 acres.

23. Admittedly, Sennaiyammal had executed the gift deed dated 25.08.1995 in favour of the plaintiffs in Ex.A5. It is the case of the plaintiffs that the gift deed has been acted upon and the plaintiffs were put in possession of the suit properties and there is no contra evidence or material available to show that the gift was not acted upon and the gift deed was not voluntarily executed by Sennaiyammal. Both the Courts below concurrently found that the gift deed executed by Sennaiyammal in favour of the plaintiffs was acted upon and the possession was handed over in favour of the plaintiffs and they were in possession of the suit properties.

24. When the gift deed executed by Sennaiyammal is valid and the same has been acted upon, she did not have any further right to deal with the suit properties. Therefore, the cancellation of gift deed executed unilaterally on 01.12.1995 in Ex.B1 is not valid and it is a void document. The plaintiffs are not bound by the cancellation of the gift



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deed executed in Ex.B1, since the suit properties have already been executed in their favour and the properties got vested with them through the gift deed dated 25.08.1995 in Ex.A5.

25. Neither the first defendant nor Senniyammal and the defendants have let in any materials on record to show that the gift deed in Ex.A5 was executed by threat and undue influence or the gift deed was not acted upon and possession was not handed over. Based on the documents filed by the plaintiffs and the evidence available on record, a finding of fact has been arrived at by both the Courts below that the gift deed in Ex.A5 in favour of the plaintiffs has been acted upon and they have been put in possession of the suit properties. Therefore, the finding of fact arrived at by both the Courts below is based on materials available on record and are not perverse.

26. Further, since both the Courts below concurrently held that the suit property became vested with the plaintiffs in view of the gift deed executed by their mother and the plaintiffs were in possession and enjoyment of the properties, it was also found that the second defendant



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trespassed into the suit properties and cut down the trees and thereby caused damages to the plaintiffs. The Lower Appellate Court has rightly arrived at a finding and decreed the suit declaring that the plaintiffs are entitled to decree for future mesne profits which will be assessed in a separate proceedings.

27. In such circumstances, this Court does not find any substantial question of law arising for the consideration of this Court in the above Second Appeals.

28. In the result, these Second Appeals are dismissed. Consequently, connected miscellaneous petitions are closed. There shall be no order as to costs.

13.02.2024.

Internet : Yes
Index : Yes/No
Speaking order/Non-speaking order
apd

To



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1. The District Judge, The Nilgiris at Udhagamandalam.
2. The Subordinate Judge, The Nilgiris at Udhagamandalam.
3. The Section Officer, V.R.Section, High Court, Madras.

G.ARUL MURUGAN,J



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