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S.A. Nos.584 & 569 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :28.08.2024

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THE HONOURABLE MRS. JUSTICE T.V. THAMILSELVI

Second Appeal Nos. 584 & 569 of 2024

G.Kalavathy

... Appellants in both SAs

Versus

1.Parvathy

2.M.Arasakumar

3.Ravikumar

4.Sundari

5.Dhanasingh

.. Respondents in both SAs

6.The Sub-Registrar,

Office of Konnur Sub-Registrar,

Villivakkam, Chennai-600 049.

.. Respondents in SA No.584/2024

PRAYER in S.A.No.569 of 2024 : Second Appeal filed Under Section 100 of the Civil Procedure Code, against the Judgment and decree passed in A.S.No.71 of 2020 on 12.01.2024 by the learned IVth Additional Judge, City Civil Court, Chennai, confirming the suit made in O.S.No.5395/2013, on the file of XVIIth Assistant Judge, City Civil Court, Chennai.

PRAYER in S.A.No.584 of 2024 : Second Appeal filed Under Section 100 of the Civil Procedure Code, against the Judgment and decree passed in A.S.No.72 of 2020 on 12.01.2024 by the learned IVth Additional Judge, City Civil Court, Chennai and consequently allowing the suit made in O.S.No.4448/2013, on the file of XVIIth Assistant Judge, City Civil Court, Chennai.



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For Appellants in both SAs : Mr.A.M.Krishnamoorthy

For R6 in SA.No.584/2024 : Dr.S.Suriya,
Additional Government Pleader

COMMON JUDGMENT

The appellants have preferred these Second Appeals against the Judgment and decree passed in A.S.Nos.71 & 72 of 2020, respectively on 12.01.2024 by the learned IVth Additional Judge, City Civil Court, Chennai and consequently allowing the suit made in O.S.Nos.5395 & 4448 of 2013 respective, on the file of XVIIth Assistant Judge, City Civil Court, Chennai.

2. For the purpose of convenience, the parties herein are referred to as they are ranked in the suit.

3. Challenging the concurrent findings of the lower Court, the plaintiff has preferred these appeals. Before the trial Court, she filed a suit for partition in O.S. No. 5395 of 2013, seeking a declaration that the sale deed executed in favor of D2 and D3, allegedly by the deceased, is not valid. She also filed another suit, O.S. No. 4448 of 2013, for partition, claiming a 1/5th share in the suit property, stating that the entire property was self-acquired by their parents, and she is entitled to a 1/5th share.



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4. D2 and D3 contested the case before the trial Court. After hearing both sides, the learned trial Judge dismissed both suits. The Court found that in 1980, a settlement deed was executed by their parents in favor of D2 and D3, which had been acted upon.

5. Subsequently, D2 and D3 constructed and enjoyed the suit property. The plaintiff was found to have no right to make a claim. Furthermore, the deed was executed in 1985, and the suit was only filed in 2013. In the meantime, the defendants borrowed a loan and constructed on the property, thereby affirming that the gift deed had been acted upon. D2 and D3 continued to reside on the property, and the plaintiff was found to have no right to declare the deed as null and void or to claim any share in the suit property.

6. Consequently, both suits were dismissed, leading to the appeal in A.S. Nos. 71 & 72 of 2020. The First Appellate Court also confirmed the findings of the trial Court, disagreeing with the plaintiff's claim. Therefore, challenging the concurrent findings, the plaintiff has now preferred these appeals.

7. The learned counsel for the appellant submitted that both the Courts below erroneously decreed the suit in favor of the plaintiff without taking note of the fact that the conditions imposed in the gift deeds were violated by the



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beneficiaries, D2 and D3, who mortgaged the property to the bank and one of the defendants executed a gift deed in favor of their children. It was argued that the conditions imposed in the gift deed were not complied with, thereby abusing the life interest given by the parents, making the settlement deed executed by the father null and void.

8. However, both Courts have concurrently held that the gift deed in favor of D2 and D3 is valid and is not liable to be set aside. The plaintiff's parents had purchased the property in 1949, subsequently, they executed a gift deed in favor of D2 and D3 on 05.06.1985, as observed by the trial Court in Para 9 of the judgment. The reason for executing the gift deed in favor of their two sons was clearly narrated, including the rationale for not executing the gift deed in favor of their other son and daughters.

9. The gift deed provided a life interest to the sons. After the execution of the gift deed in 1985, D2 and D3 borrowed a loan, constructed on, and resided in the suit property, with no objections raised by the parents during their lifetime. Nearly 13 years later, the plaintiff sought to declare the document null and void, alleging that the property was mortgaged and encumbered, but the Courts rightly concluded otherwise.



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10. Furthermore, the parents provided clear and sufficient reasons for not executing the gift deed in favor of their other daughter and son, including the fact that one son had left the family and was therefore given the property of D2 and D3. This Court finds no merit in the appeal, and there is no substantial question of law.

11. Accordingly, these Second Appeals are dismissed as devoid of merits and the findings rendered by the Courts below are confirmed in both second appeals. There shall be no order as to costs.

28.08.2024

Index : Yes/No

Neutral Citation : Yes/No

Speaking/Non Speaking order

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To

- 1.The IVth Additional Judge, City Civil Court, Chennai.
2. The XVIIth Assistant Judge, City Civil Court, Chennai.
- 3.The Section Officer, VR Section, High Court of Madras.



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T.V.THAMILSELVI, J.

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