



S.A(MD)No.154 of 20

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : **19.09.2024**

WEB COPY

CORAM

THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

S.A(MD)No.154 of 2006

Mrs.Amjath Begum

... Appellant / Defendant

Vs.

Ameer Sulthan (Died)

2.Mumtaj Begum

3.Rafeena

4.Minor.Rajitha

5.Minor.Mohamed Rajith

(Respondents 2 to are brought on
record as LR's of the deceased
sole respondent vide Court Order
dated 20.12.2022)

... Respondents / Plaintiffs

Prayer: Second Appeal filed under Section 100 of the Code of Civil Procedure against the judgment and decree, dated 08.04.2004 passed in A.S.No.24/2003, by the Sub-Court, Periyakulam allowing the appeal filed against the judgment and decree dated 27.11.2002 passed in O.S.No.171 of 1998 by the learned District Munsif, Uthamapalayam dismissing the suit.

For Appellant : Mr.R.Suriyanarayanan

For R1 to R5 : Mr.SA.Ajmalkhan



WEB COPY

S.A(MD)No.154 of 20



JUDGMENT

The appellant, who is defendant in the suit, filed the present appeal against the judgment and decree, dated 08.04.2004, made in A.S.No.24 of 2003, on the file of the Sub-Court, Periyakulam dismissing the Judgment and Decree in O.S.No.171 of 1998, dated 27.11.2002, on the file of the District Munsif, Uthamapalayam.

2. For the sake of convenience, the appellant and the respondents shall be referred to as per their ranks in the plaint, as the defendants and plaintiff respectively.

3. Originally, the suit was filed by the plaintiff viz., S.K.Ameer Sulthan, seeking recovery of possession of the disputed property and hand over the possession to him. According to the plaintiff, the entire property was purchased by him and he is in possession and enjoyment of the same. The plaintiff and defendant got married on 04.07.1985 as per the Islam Customs and Rituals. The plaintiff and the defendant were living as husband and wife in the suit property. According to the plaintiff, the defendant is not in a position to give birth to a child and she was not in good health condition and in spite of taking treatment, she



is not in a position to gave birth the child. The defendant was not behaving as a normal family woman and she has not given respect to the plaintiff and she was behaving on her own. Since, the defendant did not change her character, the plaintiff has given 'Muthalak' on 18.01.1996 and obtained a decree of divorce. Inspite of that, the defendant did not vacate the suit property belonging to the plaintiff and she is residing in the upstairs. Since the defendant did not vacate the property inspite of compromise arrived between them, the plaintiff filed the suit for recovery and hand over the possession.

4. The defendant filed a written statement stating that the suit is not maintainable as per law. On 04.07.1985 they got married as per the Islam law. The defendant has denied the fact that they got divorce on 18.01.1996 and there is cause of action arose for the same and the plaintiff has not paid the proper Court fee. The documents Nos.2 to 5 filed by the plaintiff are created one. The plaintiff executed a settlement for maintenance in favour of the defendant on 05.06.1995 and accordingly, he has given the suit property as well the other property and hence, the plaintiff has no right in the suit property and the defendant is in possession and enjoyment of the property. According to the defendant, original facts have been suppressed by the plaintiff. As per the Islam Law, once the property has been settled



as per the settlement deed in favour of any person, it cannot be cancelled. The defendant being the owner of the property has prayed for dismissal of the suit.

5. Before the trial Court, on the side of the plaintiff, the plaintiff was examined as P.W.1 and two other witnesses were examined as P.Ws.2 & 3 and Exs.A1 to A9 were marked. On the side of the defendant, the defendant was examined as D.W.1 and another witness was examined as D.W.2 and marked 2 documents as Ex.D1 & Ex.D2.

6. On the basis of the rival pleadings made on either side, the trial Court, after framing necessary issues and after evaluating both oral and documentary evidence, had dismissed the suit.

7. Aggrieved by the Judgment and decree passed by the trial Court, the plaintiff had filed an Appeal Suit in A.S.No.24 of 2003 before the Sub-Court, Periyakulam. The first appellate Court, after hearing both sides and upon re-appreciating the evidence available on record, had allowed the appeal and set aside the judgment and decree of the trial Court.



8. Challenging the said reversal findings of the first appellate Court, the present Second Appeal has been filed by the defendant.

9. At the time of admitting the present second appeal, this Court had formulated the following substantial question of law for consideration:

"1) Whether the Gift Deed be legally revoked as claimed by the respondent/plaintiff?

10. The learned counsel appearing for the appellant would submit that the lower appellate Court grossly erred in placing the reliance on Ex.A5, dated 08.05.1995 executed against the appellant thereby, cancelling the earlier settlement deed Ex.B1, dated 05.06.1995 and the reasons given by the lower appellate Court for relying on this document are invalid and based on surmises and conjectures. Placing the reliance on Ex.A6 to Ex.A9 dated 18.01.1996 through which the respondent divorced the appellant and the reasons given by the lower appellate Court for relying on the documents to confirm Ex.A5 dated 08.09.1995 are invalid under the principles of Mohammedan Law. The lower appellate Court grossly erred in not



considering the position of law that Ex.B1 settlement deed cannot be cancelled under Ex.A5.

WEB COPY

11. The learned counsel appearing for the respondent would submit that alimony settlement is not customary in Islamic Law. As per Islamic law, if a husband divorces his wife, it is accepted that he is only required to pay her alimony of 100 days called 'Idat' and this fact was accepted by the trial Court. But, the alimony arises after getting the divorce. Ex.D1 settlement was executed on 05.06.1995 i.e., when the plaintiff accepted the defendant as his wife. Even though, the Islamic Law on gifts, does not mention about the alimony, it is said that such gifts should be treated as gifting only the benefits of the property. In Islamic Law, property and the benefits of property are separately referred to as "Ain" and "Manafil". The contention of the plaintiff is that he is entitled for recovery of possession was not accepted by the trial Court and the trial Court had dismissed the suit. Against which, the plaintiff had filed the first appeal. The Sub-Court, Periyakulam has considered the prayer of the parties and found that the documents which relied on by the defendant has not been came into existence and it has not been proceeded further. Based on the said document, the wife/defendant has no right over the property. Based on the Ex.P5 the plaintiff has executed a revocation deed on



08.09.1995. Hence, the said document has got no validity and held in favour of the plaintiff/husband and reversing the judgment and decree of the trial Court.

12. I have heard the learned counsels appearing on either side and perused the materials on record.

13. Indisputably, the property in question belonged to the plaintiff. After the plaintiff and defendant got married on 04.07.1985, as per the Islam Customs and Rituals, the plaintiff executed Ex.B1, Gift Deed, in favour of the plaintiff. The plaintiff and the defendant were living as husband and wife in the suit property peacefully for some time. Thereafter, differences of opinion arose between them. According to the plaintiff, the defendant is not in a good health condition and inspite of taking treatment, she is not in a position to gave birth the child. Further, the defendant was not behaving as a normal family woman and she has not given respect to the plaintiff and she was behaving on her own. Since, the defendant did not change her character, the plaintiff has given 'Muthalak' on 18.01.1996 and obtained a decree of divorce. Therefore, the plaintiff wanted back the gifted portion from the defendant what is gifted is a portion of house. Admittedly, the defendant is residing in the said house in a



small portion. According to the defendant, she wants to live in the portion gifted, till her life time alone.

WEB COPY

14. It appears that Ex. B-1, Settlement Deed in question was executed by the plaintiff in favour of the defendant out of love and affection. It may incidentally be mentioned that soon after the execution of Ex.B-1, Settlement Deed, due to difference of opinion between them, a suit was filed by the plaintiff claiming a portion of the suit property. No doubt, in the present case, the plaintiff intended to give a portion of the suit property by way of Ex.B1, Settlement Deed. It must be remembered that the Settlement Deed is only in favour of the defendant and nobody else. Therefore, the document can be construed as conferring an absolute interest on the defendant. Therefore, in the present case, the defendant having been granted a gift it can be construed as an absolute gift with an invalid condition attached to it. For all the aforesaid reasons, I find no reason to interfere with the Judgment and Decree passed by the trial Court. The respondents are directed to not to disturb appellant/defendant living in the suit schedule property till her life time. It is further made clear that the defendant is entitled to live in that house till her last breath and the plaintiff shall not interfere with her peaceful possession and enjoyment of the house till such time.



S.A(MD)No.154 of 20

WEB COPY

15. In fine, the Second Appeal is allowed by setting aside the Judgment and Decree, passed in A.S.No.24 of 2003, by the Sub-Court, Periyakulam, by confirming the Judgment and Decree, dated 27.11.2002, passed in O.S.No.171 of 1998, by the learned District Munsif, Uthamapalayam. However, there shall be no order as to costs.

19.09.2024

Index : Yes/No
Internet : Yes/No
am

To

- 1.The Sub-Judge,
Periyakulam.
- 2.The District Munsif,
Uthamapalayam
- 3.The Record Keeper,
V.R. Section,
Madurai Bench of Madras High Court,
Madurai.



WEB COPY



S.A(MD)No.154 of 20

V.BHAVANI SUBBAROYAN, J.

am

Judgment made in
S.A(MD)No.154 of 2006

19.09.2024