



S.A.(MD)No.672 of 2005

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 01.08.2024

CORAM

THE HONOURABLE MR.JUSTICE **S.SOUNTHAR**

S.A.(MD)No.672 of 2005

1.Sreeman Narayanaswamy Temple,
represented by its President,
C.Mohana Muthuthinaharan

2.C.Radhakirshnan

...Appellants

-Vs-

1.T.Radhakrishnan
2.A.Sahayaraj
3.Hydrose
4.Jeyakumar
5.Jegadeesh (Died)
6.Mahesh
7.Soloman
8.Mohan Roy
9.Panneer
10.Rajalingamperumal
11.Vincent Jeba
12.Sundar Raj
13.A.Jebamani
14.J.Eswin

... Respondents

(Respondents 13 and 14 were brought on record as legal representatives of the deceased fifth respondent vide order of this Court, dated 27.01.2002 in C.M.P.(MD)No.444 of 2022)



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PRAYER: Second Appeal is filed under Section 100 of the Code of Civil Procedure, to set aside the judgment and decree dated 20.12.2004, made in A.S.No.87 of 2003 on the file of the Principal Subordinate Judge in Nagercoil affirming the judgment and decree dated 18.08.2003 made in O.S.No.201 of 1997 on the file of the Principal District Munsif, Nagercoil.

For Appellants	:Ms.S.Rajasekar
For R1, R2, R7	
R8, R13 and R14	:Mr.N.Mohan
	for Mr.R.Jeyaraj
R10 and R12	:No appearance
R3, R4, R6, R9	
and R11	:Dispensed with
R5	:Died

JUDGMENT

The unsuccessful plaintiffs in the suit are the appellants herein. The appellants/plaintiffs filed a suit seeking decree for injunction restraining the defendants from interfering with the management and administration of Santhi Vasaga Mandarm and its properties by the plaintiffs. The suit was dismissed by the trial Court. The findings of the trial Court were affirmed by the first appellate Court. Aggrieved by the concurrent findings, the plaintiffs have come by way of this Second Appeal.



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2. According to the appellants/plaintiffs, the suit property originally belonged to one Palvanna Perumal and he executed a sale deed, dated 18.09.1989 in favour of Santhi Vasaga Mandram represented by its Administrators, Thangavel vagaiyara. The plaintiffs claimed that as per the gift deed, dated 13.02.1997, the first plaintiff has got title and possession over the suit property and also has got right to administer the Santhi Vasaga Mandram and its properties. It was claimed by the plaintiffs that the defendants, who are third parties, having no manner of right, attempted to interfere with the management of Santhi Vasaga Mandram and its properties. Therefore, the plaintiffs were constrained to file the suit for the aforesaid relief.

3. The defendants filed a written statement and contended that the suit property originally belonged to Palvanna Perumal and he had put up a small building in the suit schedule property and dedicated the same for running a library for the benefit of the villagers in the name and style of “Santhi Vasaga Mandram”. They further contended that a sale deed was executed by



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Palvanna Perumal in favour of then office bearers of Santhi Vasaga Mandram, namely, Thangavel vagaiyara. The defendants, who are also the members of Santhi Vasaga Mandram, questioned the irregularities in the administration of the Mandram. Enraged over the same, the office bearers of Santhi Vasaga Mandram instigated the plaintiffs to file the present suit. It was also claimed by the defendants that the office bearers of Santhi Vasaga Mandram had no right to execute gift deed in favour of the plaintiffs. The resolution, dated 01.11.1996 relied on by the plaintiffs was also disputed as forged one. The defendants also disputed the right of the second plaintiff to represent the first plaintiff Temple and sought for dismissal of the suit.

4.Before the trial Court, the second plaintiff was examined as PW-1 one Thinakaran was examined as PW-2. On behalf of the defendants, two witnesses were examined as DW-1 and DW-2. On the side of the plaintiffs, four documents were marked as Ex-A1 to Ex-A4. On the side of the defendants, 19 documents were marked as Ex-B1 to Ex-B19.

5.The trial Court, on consideration of oral and documentary evidence



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available on record, came to the conclusion that the gift deed under which the plaintiffs claim right over the suit property and management of Santhi Vasaga Mandram was not proved by examining the attestors and hence, dismissed the suit. Aggrieved by the same, the plaintiffs preferred an appeal in A.S.No.87 of 2003 on the file of the Principal Subordinate Court, Nagercoil. The first appellate Court affirmed the findings of the trial Court. Aggrieved by the concurrent findings, the plaintiffs have come by way of this Second Appeal.

6.At the time of admission, this Court formulated the following substantial questions of law for consideration by order, dated 05.08.2005:

“1.When it is well settled that when the suit property was transferred to the first appellant by way of registered deed and it conveys all the subject of the transfer to the transferee by the operation of Section 8 of the Transfer of Property Act, which provides that a transfer passes forthwith all the interest which, the transferor is capable of transferring and in the instant case, the transfer was registered as per the provisions of the Registration Act and unless the transfer is set aside by the competent court for valid reasons, whether the respondents can claim any right over the property?

2.Whether the Lower Appellate Court has erroneously held that the Deed of Gift was not duly proved since one of the attestors was not examined as witness, when the donee deposed before the



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court about the Registered Gift?

3. Whether the Trial Court as well as the first appellate court committed an error of law by framing an issue regarding the validity of the registered document?"

7.The learned Counsel appearing for the appellants submitted that the registered gift deed executed in favour of the plaintiffs by the office bearers of Santhi Vasaga Mandram was marked as Ex-A1 and the second plaintiff, who represents the first plaintiff, Donee appeared before the Court and deposed about the gift. The Courts below without taking into consideration of the said fact, erroneously held that the gift deed was not proved by examining the attesters and non-suited the plaintiffs. The learned Counsel for the appellants further submitted that when registered gift deed is produced before the Court, it is for the person who challenge the same to lead evidence that it was an invalid document.

8.Under Section 68 of the Indian Evidence Act, a document, which requires attestation, shall be proved only by calling one of the attesters to the document. It is needless to mention that the gift deed is a document, which requires attestation. Therefore, whenever, execution of the gift deed is



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disputed, the same shall be proved by calling one of the attestors. In the case on hand, the plaintiffs failed to examine the attestors to Ex-A1, gift deed and prove the same. The plaintiffs claim right over the suit property and also the right to administer Santhi Vasagam Mandram only under the gift deed, dated 13.02.1997 marked as Ex-A1.

9. When the gift deed was not proved by examining the attestors to the document, the Courts below rightly came to the conclusion that the plaintiffs failed to establish his right over the suit property and also right to manage Santhi Vasagam Mandram. The Courts below also pointed out that the resolution copy relied on by the plaintiffs marked as Ex-A4 is only a xerox copy and none of the settlors who executed Ex-A1, gift deed, appeared before the Courts below and deposed in favour of the plaintiffs. Therefore the Courts below on proper appreciation of oral and documentary evidence available on record rightly came to the conclusion that the plaintiffs failed to prove Ex-A1 gift deed and therefore, the plaintiffs were not entitled to maintain a suit for injunction. The substantial questions of law framed at the time of admission are answered against the appellants and in favour of the



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respondents. Accordingly, the Second Appeal is dismissed. No costs.

10.It is made clear that the dismissal of the Second Appeal will not come in the way of plaintiffs in filing a suit for declaration of title and establishing their right in the manner known to law.

01.08.2024

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

cmr

To

- 1.The Principal Subordinate Judge,
Nagercoil.
- 2.The Principal District Munsif, Nagercoil.
- 3.The Record Keeper,
V.R.Section,
Madurai Bench of Madras High Court,
Madurai.



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S.SOUNTHAR, J.

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