



S.A(MD)No.53 of 2017

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 12.07.2024

Pronounced on : 09.09.2024

CORAM

THE HONOURABLE MR.JUSTICE P.VADAMALAI

S.A(MD)No.53 of 2017

and

C.M.P(MD)No.1153 of 2017

1.Periya Samy

2.Ponnu Samy

... Appellants/Defendants 3 & 4

Vs.

1.Vijaya Kumar (Died)

2.Ariyammal

3.Arumugam

... 1st Respondent/Plaintiff

... 2nd & 3rd Respondents/
Defendants 1 & 2

4.Panchavarnam

5.Vignesh Kumar

6.Revathi

... Respondents 4 to 6

PRAYER :-

This Second Appeal is filed under Section 100 of the Civil Procedure Code, to set aside the judgment and decree, dated 24.08.2016 made in A.S.No.68 of 2015 on the file of the Principal District Court, Dindigul, confirming the judgment and decree passed dated 30.10.2015 made in O.S.No.97 of 2013 on the file of the Sub Court, Veda sandur and to allow this Second Appeal.



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For Appellants : Mr.G.Gomathi Sankar
For R1 : Died
For R2 : Mr.S.Balakarthick
For R3 : Dismissed
For R4 to R6 : Mr.C.Senthil Murugan

JUDGMENT

This Second Appeal is preferred against the judgment and decree, dated 24.08.2016 passed in A.S.No.68 of 2015 on the file of the Principal District Court, Dindigul, confirming the judgment and decree, dated 30.10.2015 passed in O.S.No.97 of 2013 on the file of the Sub Court, Veda sandur.

2. The appellants are defendants 3 and 4 and the respondents 1 to 3 are the plaintiff and defendants 1 & 2 in O.S.No.97 of 2013 on the file of the Sub Court, Veda sandur. The 1st respondent/plaintiff filed the suit for specific performance directing the 1st defendant to execute sale deed after receiving the balance sale consideration of Rs.55,000/- in respect of the suit property.

3. For the sake of convenience, the parties referred as plaintiff and defendants as arrayed in O.S.No.97 of 2013 on the file of the Sub Court, Veda sandur.



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4. Case of the plaintiff:

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The suit property originally belonged to the first defendant's mother Marudayammal. Marudayammal purchased the suit property from Ellammal and another by virtue of a registered sale deed, dated 09.04.1999. Then, Marudayammal gifted the suit property to the first defendant by executing unconditional gift settlement deed, dated 09.09.2011. The plaintiff and the first defendant entered into a sale agreement, dated 27.10.2012 regarding the suit property for a total sale consideration of Rs.1,30,000/- (Rupees One lakh thirty thousand only) and a sum of Rs.75,000/- (Rupees Seventy five thousand only) was paid as advance. The time for completion of sale deed was fixed as six months. The plaintiff was ready and willing to pay balance and get the sale deed executed, but, the first defendant had been evading to receive the balance sale consideration and register the sale deed. The plaintiff issued a legal notice, dated 22.04.2013. The first defendant sent a reply admitting the sale agreement, sale consideration and receipt of advance sale amount. However, the first defendant informed that her mother Marudayammal cancelled the gift settlement deed and sold the suit property to 2nd defendant, who in turn sold the same to defendants 3 and 4. The first defendant also informed that his brother forcefully evicted the first



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defendant and captured all the original deeds and hence, he lodged a police complaint. The plaintiff further learnt that in order to avoid the execution of sale deed, the first defendant colluded with her mother and defendants 2 to 4 cancelled the gift settlement deed and executed the sale deed. Hence, the suit.

5. Case of the 1st Defendant:

The first defendant admitted the sale agreement, dated 27.10.2012 entered into with the plaintiff. Despite the plaintiff attempted to pay the balance sale consideration, due to existence of family dispute the first defendant was unable to receive the balance and execute the sale deed. Without knowledge of the first defendant, her brothers and her mother Marudayammal cancelled the gift settlement deed executed in favour of the 1st defendant and sold the suit property to 2nd defendant, who in turn sold to defendants 3 and 4. The brothers forcibly evicted the first defendant from the suit property and took away all the original deeds. The first defendant is always ready and willing to execute the sale deed but in the absence of all the originals she is unable to perform her part of contract. The suit is to be dismissed.



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6. Case of the defendants 2 to 4:

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It is true that the suit property belonged to Marudayammal, mother of the first defendant, by virtue of sale deed, dated 09.04.1999. But she had not executed a gift deed to the first defendant on 09.09.2011. The first defendant asked her mother to execute a power of attorney to look after the property and as per request, her mother had executed a power without knowing that it was a gift settlement deed. The said settlement deed is a forged one by the first defendant with the assistance of third person. Possession was not given to the first defendant and the deed never came into force. On coming to know the fraudulent act of the first defendant, her mother Marudayammal cancelled the gift deed on 31.01.2013 and thereafter, she executed a sale deed in favour of the 2nd defendant on 12.02.2013 for valuable sale consideration. She handed over the possession to the 2nd defendant and Patta was also mutated in the name of the 2nd defendant. Thereafter, the 2nd defendant executed a registered sale deed in favour of the 4th defendant and now defendants 3 & 4 are in possession. The defendants 2 to 4 are *bona fide* purchasers. On coming to know about the gift cancellation and subsequent sale, the first defendant and plaintiff falsely created the sale agreement mentioning anti-date. While the 2nd defendant purchased the suit



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property, the plaintiff and the first defendant have not disclosed about the sale agreement and have not objected the sale. The first defendant has no right over the property or any right to execute the sale agreement. The defendants were not aware of the alleged sale agreement till the receipt of the suit summon. Therefore, the suit is liable to be dismissed.

7. During trial, on the plaintiff's side P.W.1 to P.W.3 were examined and Ex.A.1 to Ex.A.7 were marked. On the defendants' side D.W.1 to D.W. 5 were examined and Ex.B.1 to Ex.B.19 were marked.

8. After hearing both and considering evidences of both sides, the learned Sub Judge, Vendasandur concluded that the plaintiff has proved the sale agreement and his case and the defendants have not proved their case that the sale agreement is forged and the cancellation of gift deed is invalid one. Accordingly, the trial Court granted the relief of specific performance to the plaintiff by passing judgment and decree, dated 30.10.2015.

9. Aggrieved by the judgment and decree in O.S.No.97 of 2013, the defendants 3 and 4 preferred the Civil Appeal in A.S.No.68 of 2015 on the



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file of the Principal District Court, Dindigul. The first Appellate Court after hearing both passed judgment, dated 24.08.2016 dismissing the appeal in A.S.No.68 of 2015 and confirmed the judgment and decree passed in O.S.No.97 of 2013.

10. Challenging the judgment and decree of the First Appellate Court, the defendants 3 and 4 preferred this Second Appeal and the same has been admitted on 06.02.2017 on the following substantial questions of law:-

"(1) Whether the Courts below are decreed the suit is correct when the sale agreement was not proved by the plaintiff?"

(2) Whether the 1st defendant is having perfect title to execute a sale deed to the plaintiff?"

(3) Whether the settlement deed was acted upon and the possession of the DI was proved?"

11. The learned counsel for the appellants/defendants 3 and 4 submitted that since the first defendant has not taken care of her mother Marudayammal, her mother cancelled the Ex.A.2 - gift settlement deed through Ex.B.8 cancellation deed and subsequently, sold the suit property to the 2nd defendant, who in turn sold the same to the defendants 3 and 4 under



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Ex.B.9 and Ex.B.10. The defendants 2 to 4 have mutated Patta transfer and they are in possession of the suit properties under Ex.B.11 to Ex.B.16. Further, the plaintiff issued Ex.B.1 - legal notice, for which, the first defendant sent Ex.B.2. The first defendant has stated everything in Ex.B.2 - reply notice, but she has not stated that the cancellation gift settlement deed is not valid. In such circumstances, the Courts below have not considered the genuineness of sale agreement in right perspective. Though the plaintiff has examined the scribe of sale agreement as P.W.3 and the attesor as P.W.2, the plaintiff has not proved his readiness and willingness to perform his part of the contract. Even at the time of filing the suit, the plaintiff has not deposited the balance sale consideration into the Court to prove his readiness and willingness. When the plaintiff has not established readiness and willingness, he is not entitled to discretionary relief of specific performance. The learned counsel further contended that since the first defendant has no valid title over the suit property, after cancellation of gift settlement deed, she could not execute sale deed. The Courts below have not considered all these facts and erred in decreeing the suit. The plaintiff is not entitled to the relief of specific performance. The Courts below misconstrued the facts and decreed suit. Hence, he prayed to allow this Second Appeal. In support of



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his argument, the learned counsel for the appellants/defendants 3 and 4 relied on the following citations:

**"(i) 2022 (5) MLJ 433
(U.N.Krishnamurthy (Deceased) Thr. LRs. /v/
A.M.Krishnamurthy)**

**(ii) 2020 (3) MLJ 115 (Muthulakshmi &
Ors. /v/ Balaguru Pandiyan)**

**(iii) 1975 AIR (Madras) 379
(Rajendrakumar Bhandari /v/ Poosammal and
Ors.)"**

12. Per contra, the learned counsel for the first respondent/plaintiff contended that Marudayammal was the owner of the suit properties under Ex.A1 - sale deed and she executed the settlement deed Ex.A.2. Thereafter, the first defendant executed Ex.A.3 - sale agreement in favour of the plaintiff. The plaintiff has proved the sale agreement by examining the scribe as P.W.3 and attester as P.W.2. Moreover, the first defendant has also admitted the sale agreement and receipt of advance amount and readiness and willingness of the plaintiff both in his written statement as well as in his evidence as P.W.1. So, admission is the best evidence and the same need not be corroborated. Though the first defendant stated some family dispute, she has not examined her mother to prove the same. So, the trial Court has



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correctly concluded that the plaintiff proved the sale agreement and decreed the suit and aggrieved by the same the defendants 3 and 4 preferred the first appeal and the same was also dismissed. The gift settlement deed is a registered one and no condition was imposed in the deed. But, the mother of the first defendant unilaterally cancelled the gift deed upon force of the siblings of the first defendant and forcibly took away all the original deeds from the first defendant. To prove the same, the first defendant lodged a police complaint which is marked as Ex.B.3. Though the defendants 2 to 4 said that the settlement deed was forged, they did not examine their mother.

13. The 2nd defendant as DW2 has also deposed that he did not know the averments made in the written statement. The first defendant's mother executed three settlement deeds on the same day, but, there is no reason assigned to execute Ex.B.8 cancellation settlement deed. The appellants/defendants 3 and 4 are third parties to the settlement deed and they cannot question the settlement deed. So, the settlement deed by the mother of the first defendant was also proved. The 2nd defendant is not a *bona-fide* purchaser and the appellants/defendants 3 and 4, who claimed right through him are also not *bona-fide* purchasers. In order to harass the



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plaintiff they created documents against law. The Courts below have given concurrent findings and the same cannot be reversed, in the Second Appeal. This Court could not re-appreciate the evidences once again. Concurrent findings could not be set aside unless questions of law decided favouring appellants in the Second Appeal. The questions of law could not be decided in favour of the appellants as the suit was factually decided by the Courts below. Therefore, the learned counsel prayed to dismiss this Second Appeal.

14. Heard the arguments of both and perused the material records of the case. It is admitted by both the plaintiff and defendants that originally the suit property belonged to the mother of the first defendant and she executed a gift settlement deed, dated 09.09.2011 in favour of the first defendant. It is admitted by both the plaintiff and the first defendant that they entered into a sale agreement, dated 27.10.2012 in respect of the suit property and fixed the sale consideration at Rs.1,30,000/- and a sum of Rs.75,000/- was paid towards advance and received by the first defendant. The Courts below gave concurrent findings.



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15. It is a settled proposition of law that concurrent findings of fact by the Courts below cannot be disturbed or interfered by the High Court in Second Appeal except they are perverse and ignored certain facts as held by the Hon'ble Supreme Court in the case of **Nazir Mohamed v. J.Kamala** reported in **(2020) 19 SCC 57**, in the following words:-

“37 (iv). The general rule is, that the High Court will not interfere with the concurrent findings of the courts below. But it is not an absolute rule. Some of the well recognized exceptions are where: (i) the courts below have ignored material evidence or acted on no evidence; (ii) the courts have drawn wrong inferences from proved facts by applying the law erroneously; or (iii) the courts have wrongly cast the burden of proof. A decision based on no evidence, does not refer only to cases where there is a total dearth of evidence, but also refers to cases where the evidence, taken as a whole, is not reasonably capable of supporting the finding.”

Keeping in mind of the above ruling, we have to see whether the concurrent findings of the Courts below fall within the above criteria. Needless to mention here, both the Courts below after appreciating the



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evidences adduced on both sides had come to the concurrent conclusion that the plaintiff is entitled to specific performance.

16. It is the contention of the appellants/defendants 3 and 4 that as per the sale agreement, though the plaintiff pleaded that he was ready and willing to perform his part, the plaintiff has not proved the same and hence, the plaintiff is not entitled to the discretionary relief of specific performance by relying upon the judgments reported in **2020 (3) MLJ 115 (Muthulakshmi /v/ Balaguru Pandiyan)** and **2022 (5) MLJ 433 (U.N.Krishnamurthy /v/ A.M.Krishnamurthy (SC))**. On perusal of the said rulings, it is held that though the plaintiff proved the execution of sale agreement, if the plaintiff failed to prove his readiness and willingness he is not entitled to the discretionary relief of specific performance. But, in this case on hand, the plaintiff pleaded in the plaint as well as in his evidence that he was always ready and willing to perform his part. The first defendant has also admitted in his written statement and her evidence that the plaintiff was ready and willing to get the sale deed executed, however, the first defendant stated that due to family dispute, she was unable to receive the balance and to execute the sale deed. When the first defendant has clearly admitted that



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the plaintiff was always ready and willing to perform his part, the same need not be corroborated by any other evidence. Hence, the contention of the appellants/defendants 3 and 4 is not acceptable and the citation relied on by them are also not applicable to the facts of this case.

17. The next contention that the first defendant has no marketable title, as the gift settlement deed executed in her favour was executed by misrepresentation and it was also cancelled by her mother. For this contention, the appellants/defendants 3 and 4 relied on the judgment reported in **1975 AIR (Madras) 379 (Rajendrakumar Bhandari /v/ Poosammal and Ors.)**, for the proposition that in a suit for specific performance, if the vendor has no marketable title, the vendee is not entitled to the equitable relief of specific performance.

18. But in this case, the first defendant alleged that her brothers forced her mother to cancel the registered gift settlement deed and took away all the original deeds, for which she lodged a police complaint. The police complaint was not at all disputed by other defendants and hence the first defendant's allegation was undisputed. Further, the mother of the first



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defendant executed a registered unconditional gift settlement deed in favour of the first defendant. If so it is to be decided whether the unilateral subsequent cancellation of registered unconditional settlement deed is valid in the eyes of law.

19. Before considering the respective pleadings, evidences of both sides, citations and decisions of the Courts below, it is pertinent to extract certain provisions of law relating to the Transfer of Property upon an instrument of settlement, its registration and suspension/revocation of such registered instrument.

"Section 6 of the Transfer of property Act deals about invalid transfers, which reads, *"Property of any kind may be transferred, except as otherwise provided by this Act or by any other law for the time being in force."* In this section, the list of properties or right which could not be transferred are mentioned.

Section 8 of the Transfer of Property Act, which deals with operation of transfer say, *"Unless a different intention is expressed or necessarily implied, a transfer of property passes forthwith to the transferee all the interest which the transferor is*



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then capable of passing in the property, and in the legal incidents thereof.” What are the legal incidents is mentioned in the later part of this section.

Chapter VII of the Transfer of Property Act deals about “Gift”. While Section 122 defines gift, Section 123 tell the procedure how a gift can be effected. Section 126 deals with when gift may be suspended or revoked.

The substance of these three Sections namely 122, 123 and 126 is that, Gift is a transfer of property made voluntarily and without consideration, by one person called donor, to another person called donee, and accepted by or on behalf of the donee. For the purpose of making a gift of a immovable property, the transfer must be effected by a registered instrument signed by or on behalf of the donor, and attested by at least two witnesses. Any such gift of immovable property duly registered can be suspended or revoked subject to the satisfaction of event mentioned in this Section and not otherwise.

Section 126 of the Transfer of Property Act, reads as below:-

126. When gift may be suspended or



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revoked.— The donor and donee may agree that on the happening of any specified event which does not depend on the will of the donor a gift shall be suspended or revoked; but a gift which the parties agree shall be revocable wholly or in part, at the mere will of the donor, is void wholly or in part, as the case may be. A gift may also be revoked in any of the cases (save want or failure of consideration) in which, if it were a contract, it might be rescinded. Save as aforesaid, a gift cannot be revoked.

20. In this case, the gift settlement deed is unconditional. When there is no condition imposed upon the donee for compliance then, the gift is a complete one in all respect. Once a gift is complete, the same cannot be rescinded unilaterally. Particularly, the subsequent conduct of a donee cannot be a ground for rescission of a valid gift. This Court has already held in **Writ Petition No.27277 of 2019 (Mrs.V.Devika Rani @ V.R.Dhevika case)** that the remedy for the donor is to invoke the right under Section 31 of the Specific Relief Act or resort to Maintenance and Welfare of Parents and Senior Citizenship Act, 2007. Unilateral cancellation of the duly registered settlement deed is against the public policy. It has been held in numerous cases by the Hon'ble Supreme Court that gifts that are given on free will



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cannot be retracted by the donor afterwards. Thus, once unconditional gift settlement deed is registered, the donor does not have the right to revoke or cancel the deed at a later stage except upon the circumstances above mentioned.

21. On perusal of records, there is no agreement between the first defendant and her mother that the gift shall be suspended or revoked on the happening of a specified event. Though the defendants 2 to 4 stated that the gift settlement has been executed by playing fraud, but they have not established the same. The mother of the first defendant has not been examined on their side to prove any fraud. The signature of the first defendant's mother found in the settlement deed is proved and the attestors to the deed also gave evidence supporting the settlement. The first defendant's mother or the defendants 2 to 4 have not taken any steps to file a suit for cancellation of settlement deed. The first defendant states that on the date of execution of gift settlement deed in her favour by her mother, her mother has also executed some other settlement deeds in favour of other siblings of the first defendant. There is no explanation as to why the mother wanted to cancel the settlement deed executed in favour of the first



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defendant alone. On perusal of judgments of the Courts below, it has been correctly concluded that the Marudayammal has not filed any suit for cancellation of settlement deed, but unilaterally cancelled after 17 months from the date of registration that too without the knowledge of the plaintiff and hence, the cancellation of settlement deed is void one. Therefore, the subsequent cancellation of registered settlement deed is not valid in the eyes of law. That being the legal position, the first defendant cannot be termed as she has no marketable title to execute the sale deed. Based on the invalid cancellation deed, the defendants' purchased property through subsequent sale deeds which were also not valid in the eyes of law. The citation **1975 AIR (Madras) 379** (supra) relied on by the appellants/defendants 3 and 4 is not applicable to the facts of this case. In other respects, the Courts below correctly appreciated the evidence adduced on both sides and gave findings. The evidence cannot be reappreciated by the High Court in the Second Appeal as the concurrent findings of the Court below does not fall within the above criteria stated supra.

22. From the above facts and circumstances conjoined with evidences oral and documentary adduced in this case, the Courts below gave concurrent



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findings, which did not warrant interference by this Court by way of Second Appeal. Hence, the questions of law framed in this Second Appeal are answered against the appellants/defendants 3 and 4. Thus, this Second Appeal fails.

23. In the result, the Second Appeal is dismissed. The judgment and decree, dated 24.08.2016 passed in A.S.No.68 of 2015 on the file of the Principal District Court, Dindigul, confirming the judgment and decree, dated 30.10.2015 passed in O.S.No.97 of 2013 on the file of the Sub Court, Veda sandur, is confirmed. No costs. Consequently connected Miscellaneous Petition is closed.

09.09.2024

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

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To

- 1.The Principal District Court,
Dindigul.
- 2.The Sub Court,
Vedasandur
- 3.The Record Keeper,
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai.



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P.VADAMALAI, J.

VSD

**Pre-Delivery Judgment made in
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