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S.A(MD)No.125 of 20



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 30.10.2024

CORAM

THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

S.A(MD)No.125 of 2004

Meganathan ... Appellant/Appellant/Defendant

Vs.

Kamardeen ... Respondent/Respondent/Plaintiff

Prayer: Second Appeal filed under Section 100 of the Code of Civil Procedure against the judgment and decree, dated 22.04.2004 passed in A.S.No.18 of 2004 on the file of the Principal District Court, Ramanathapuram, confirming the judgment and decree dated 23.12.2002 passed in O.S.No.127 of 2000 on the file of the Principal District Munsif Court, Ramanathapuram.

For Appellant : Mr.S.Ramesh

For Respondent : Mr.M.Rajaraman



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JUDGMENT

The concurrent Judgments and decrees passed in O.S.No. 127 of 2000 on the file of the Principal District Munsif Court, Ramanathapuram and in A.S.No.18 of 2004 on the file of the Principal District Court, Ramanathapuram, are being challenged in the present Second Appeal.

2.The respondent herein as the plaintiff, instituted a suit in O.S.No.127 of 2000, on the file of the trial Court as against the defendant seeking for the relief of declaration and permanent injunction.

3.For the sake of convenience, the parties are referred to as, as described before the trial Court.

4.According to the plaintiff, the suit properties are situated in Kosavankudi Village and the same originally belonged to one Mohamed Ismail and during his young age, he went to Malaysia and



passed away leaving behind him, his three daughters, namely Makroon Beevi, Savvanu Beevi and Hairiya Beevi. The original owner Mohamed Ismail has orally gifted the suit properties and its adjoining property in favour of his three daughters. The said Makroon Beevi and Savvanu Beevi have sold the suit properties in favour of the plaintiff under a registered sale deed, dated 31.07.2000 and since then, he has been in possession and enjoyment of the suit properties as a rightful owner. The defendant was known to the plaintiff and he had acted as a broker for the sale effected in favour of the plaintiff and in fact, he put his signature as an attesting witness in the sale deed, dated 31.07.2000. Since the defendant has acted as a broker in between the plaintiff and his vendors, the plaintiff has directed the defendant to receive the original sale deed from the Sub Registrar Office. After receiving the same, the defendant failed to hand it over to the plaintiff. In the meanwhile, the defendant had demanded a sum of Rs.10,000/- as a commission from the plaintiff and he has refused to give the same and having enraged at the conduct of the plaintiff, the defendant had instigated the vendors of the plaintiff to cancel the sale deed, dated 31.07.2000 by a cancellation deed, dated 21.08.2000. Further, the defendant had created a false sale deed in his favour on 21.08.2000 in respect of the suit properties. The alleged cancellation deed, dated



21.08.2000 is not valid in law. The defendant has not derived any title in his favour under a sale deed, dated 21.08.2000. The plaintiff has paid the entire sale amount to his vendors. Further, the defendant had demanded a sum of Rs.1,20,000/- from the plaintiff so as to permit him to enjoy the suit properties. Under the said circumstances, the plaintiff has filed the present suit for the abovestated relief.

5.The defendant filed a written statement admitting the fact that the suit properties originally belonged to Mohamed Ismail. But it is false to say that for the past 25 years, he has not come down from Malaysia and further, it is false that he has passed away and even now, he is alive. It is also equally false to say that his three daughters have enjoyed the suit properties and its adjoining property after changing the patta in their names. The sale deed, dated 31.07.2000 executed in favour of the plaintiff has not come into effect. It is false to say that the defendant has acted as a broker in between the plaintiff and his vendors and the plaintiff has directed the defendant to receive the original sale deed from the Sub Registrar Office. The sale deed, dated 31.07.2000 has been cancelled by a cancellation deed, dated 21.08.2000 and after cancellation, the defendant has purchased the suit properties under two registered sale deeds, dated 21.08.2000 and



14.09.2000 from the power agent of the original owner viz., Mohamed Ismail and also from his daughters. The suit properties have been mortgaged in favour of one Rasool Beevi on 21.07.1975 by the original owner and the said mortgage deed has been discharged by the defendant. The present suit is bad for non-joinder of necessary parties.

6.The defendant filed an additional written statement stating that the original owner of the suit properties viz., Mohamed Ismail has not orally gifted the properties to his daughters at any point of time. The suit properties have been enjoyed by the mortgagee viz., Rasool Beevi under the guise of a mortgage deed, dated 21.07.1975. The defendant discharged the same on 11.09.2000 and there was no merit in the suit and the same deserves to be dismissed.

7.Before the trial Court, on the side of the plaintiff, he himself was examined as P.W.1 and P.W.2 was examined and Exs.A1 to A7 were marked. On the side of the defendant, he himself was examined as D.W.1 and D.W.2 and D.W.3 were examined and Exs.B.1 & B.14 were marked.



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

9.Aggrieved by the Judgment and decree passed by the trial Court, the defendant herein as appellant, had filed an Appeal Suit in A.S.No.18 of 2004 on the file of the first Appellate Court.

10.The first Appellate Court, after hearing both sides and upon reappraising the evidence available on record, dismissed the appeal suit.

11.Challenging the said concurrent judgments and decrees passed by the Courts below, the present Second Appeal has been preferred at the instance of the defendant as the appellant.



12.At the time of admitting the present second appeal, this Court had framed the following substantial questions of law for consideration:

'1.Whether the plaintiff has title to the property in the absence of proof of title of his predecessors?

2.Whether the Courts below were right in granting a declaration decree relying on a oral gift, when there was no specific pleading as to the particulars of the gift in reference to the claim of title?

3.Whether Section 54 of Transfer of Property Act has any application, scope in the nature of the case put forward by the defendant, that the plaintiff purchase is devoid of title?

4.Whether death of a man can be presumed in the absence of specific plea as to date of death or at least some evidence under Sections 108 and 114 of the Evidence Act?

5.Whether the trial Court can compare signatures and decide about genuineness in the absence of admitted document for comparison?'



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13.The learned counsel appearing for the appellant/defendant would submit that the plaintiff's case is based on an oral gift said to have been made by one Mohammed Ismail in favour of his daughters Makroon Bibi, Savannu Bibi and Hairiya Bibi and that the plaintiff had purchased from two daughters under Ex.A.1, dated 31.07.2000, but both the Courts below ignored the necessity for a specific plea regarding gift; the trial Court failed to see that there is no plea by the plaintiff as to lay necessary ingredients of a valid gift, such as the date and time, declaration, acceptance and delivery; the trial Court erroneously omitted to find that there is absolutely no evidence as to the particulars of a valid gift required under law; the Courts below erroneously ignored the fact that D.W.2, one of the vendors of the plaintiff a daughter of Mohamed Ismail, denies the gift; the trial Court failed to understand the nature and scope of the suit by the plaintiff and suit being one for declaration of title, the plaintiff should establish truth and the validity of the transfer to claim title; the trial Court failed to note the total negation of title in the vendors of the plaintiff under Ex.A.1; the Appellate Court erred in embarking on an investigation, discussion and conclusion as to the validity under Ex.A.2 of the cancellation of Ex.A.1. If Ex.A.1 does not convey any title to the plaintiff, cancellation is immaterial and inconsequential; the Appellate



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Court failed to note that there is no valid, acceptable evidence of death of the admitted owner Mohammed Ismail and there is no sufficient evidence under law to assume death of Mohammed Ismail, the original owner; the Appellate Court failed to note that Ex.B.3 and Ex.B.13 are deeds of power and Ex.B.4, a letter are all from Mohammed Ismail, clinchingly proves, Mohammed Ismail is alive; the Appellate Court ought to have held that the purchase by the defendant directly from Mohammed Ismail through power agent is valid and evidence of better title in defendant and the Appellate Court has erred in its conclusion on the question of non-joinder and the vendors of the plaintiff have denied the validity of Ex.A.1 and executed Ex.A.2 and conveyed the property to the defendant. Hence, the vendors of the plaintiff are necessary parties and prayed for allowing the Second Appeal.

14.The learned counsel appearing for the respondent/plaintiff reiterated the averments made in the suit and the appeal suit and prayed for dismissal of the Second Appeal.



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15.Heard the learned counsel appearing for the appellant and the learned counsel appearing for the respondent and also perused the records carefully.

16.The case of the plaintiff is that the suit properties originally belonged to one Mohamed Ismail and during his young age, he went to Malaysia and passed away leaving behind him, his three daughters, namely Makroon Beevi, Savvanu Beevi and Hairiya Beevi. The original owner Mohamed Ismail has orally gifted the suit properties and its adjoining property in favour of his three daughters. The said Makroon Beevi and Savvanu Beevi have sold the suit properties in favour of the plaintiff under a registered sale deed, dated 31.07.2000 and since then, he has been in possession and enjoyment of the suit properties as a rightful owner. The defendant was known to the plaintiff and he had acted as a broker for the sale effected in favour of the plaintiff and in fact, he put his signature as an attesting witness in the sale deed, dated 31.07.2000. Since the defendant has acted as a broker in between the plaintiff and his vendors, the plaintiff has directed the defendant to receive the original sale deed from the Sub



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Registrar Office. After receiving the same, the defendant failed to hand over to the plaintiff. In the meanwhile, the defendant had demanded a sum of Rs.10,000/- as a commission from the plaintiff and he has refused to give the same and having enraged at the conduct of the plaintiff, the defendant had instigated the vendors of the plaintiff to cancel the sale deed, dated 31.07.2000 by a cancellation deed, dated 21.08.2000. Further, the defendant had created a false sale deed in his favour on 21.08.2000 in respect of the suit properties. The alleged cancellation deed, dated 21.08.2000 is not valid in law. The defendant has not derived any title in his favour under a sale deed, dated 21.08.2000. The plaintiff has paid the entire sale amount to his vendors. Further, the defendant had demanded a sum of Rs.1,20,000/- from the plaintiff so as to permit him to enjoy the suit properties.

17.The defendant admitted the fact that the suit properties originally belonged to Mohamed Ismail. But it is false to say that for the past 25 years, he has not come down from Malaysia and further, it is false that he has passed away and even now, he is alive. It is also equally false to say that his three daughters have enjoyed the suit properties and its adjoining property after changing the patta in their names. The sale deed, dated 31.07.2000 executed in favour of the



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plaintiff has not come into effect. It is false to say that the defendant has acted as a broker between the plaintiff and his vendors and the plaintiff has directed the defendant to receive the original sale deed from the Sub Registrar Office. The sale deed, dated 31.07.2000 has been cancelled by a cancellation deed, dated 21.08.2000 and after cancellation, the defendant has purchased the suit properties under two registered sale deeds, dated 21.08.2000 and 14.09.2000 from the power agent of the original owner viz., Mohamed Ismail and also from his daughters. The suit properties have been mortgaged in favour of one Rasool Beevi on 21.07.1975 by the original owner and the said mortgage deed has been discharged by the defendant. The present suit is bad for non-joinder of necessary parties. The defendant further stated that the original owner of the suit properties viz., Mohamed Ismail has not orally gifted the properties to his daughters at any point of time. The suit properties have been enjoyed by the mortgagee viz., Rasool Beevi under the guise of a mortgage deed, dated 21.07.1975. The defendant discharged the same on 11.09.2000.

18.On going through the materials available on record, it is seen that it is an admitted fact that the suit properties originally belonged to one Mohamed Ismail. The case of the plaintiff is that he

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has passed away and the case of the defendant is that he is still alive.

However, it is made clear that the vendors of the plaintiff, namely Makrron Beevi, Savvanu Beevi and Hairiya Beevi are the daughters of the said Mohamed Ismail.

19.The appellant/defendant stated that the present suit is bad for non-joinder of necessary parties. It has been contended that the respondent/plaintiff has not impleaded his alleged vendors in the suit properties for the purpose of establishing his alleged title and on that score, the suit is bad for non-joinder of necessary parties. It has already been decided and held that under Ex.A.1, the plaintiff has derived a valid title. It is an admitted fact that the plaintiff has instituted the present suit for the reliefs of declaration and permanent injunction. In the plaint, it has been specifically stated that the present defendant has acted against the interest of the plaintiff and he has also created so many bogus documents so as to grab the suit properties from the plaintiff. Therefore, the plaintiff has rightly instituted the suit against the defendant. In the present suit, the vendors of the plaintiff are not necessary parties. Under the said circumstances, the plea of non-joinder of necessary parties raised on the side of the appellant cannot be accepted and the same is also rejected. The plaintiff has



having valid title to the suit properties under Ex.A.1. In fact, the defendant has created many bogus documents so as to derive title to the suit properties.

20.The title of the property was transferred from the vendors of the plaintiff by way of sale which their father had gifted by way of oral gift in which the defendant admitted as an attesting witness and later on colluded with the vendors and tried to cancel it subsequently. Further, they had executed a sale deed in favour of the defendant himself. Hence, it is to be proved that the defendant had admitted the title of vendors of the plaintiff. The oral gift made under Muslim law is valid even if it is not reduced to writing or registered regardless of its value and acceptance can be either expanded or implied. Hence, the daughters have accepted the gift and sold it twice to the parties would prove the same. Section 54 of the Property Act, 1882, defines that 'sale is a transfer of ownership in exchange for a price paid or promised or part-paid and part-promised. Hence, the sale can be made only by a registered instrument as its value is more than Rs.100/-. The vendors have sold the property by registered document for a valid consideration. Hence, the sale is valid as per law. On the basis of the oral gift the vendors of the plaintiff sold the property and



the person who claims that the father is alive has to produce the evidence of his whereabouts or his death and not the plaintiff. The patta stands in the name of the vendors of the plaintiff which has been admitted by the defendant, hence date of death is not necessary. It is also to be pointed out on the basis of the alleged power of attorney executed by Mohammed Ismail, the defendant has purchased the properties once again from the parties is also not acceptable and will not give any right as the date of death of Ismail was also not known and if he died before the execution of the sale date then the said power of attorney would have become a void document. When that being the case, the defendant's case cannot be accepted as he has not come with clean hands and trying to play fraud.

21.The defendant relied upon Ex.B.11, the mortgage deed alleged to have been executed by Mohamed Ismail in favour of one Rasool Beevi. Even assuming that Ex.B11 is true and valid, it is nothing but a simple mortgage deed and no delivery of possession has been effected thereto. Therefore, under Ex.B.11, the Court cannot come to a conclusion that the alleged mortgage viz., Rasool Beevi has been in possession and enjoyment of the properties covered under the same. At this juncture, D.W.2 in her evidence stated that she and one of her



sisters had sold the house of their father in favour of the husband of one Jaban Beevi and further, she derived the suit properties from her father. Further, in Ex.A.1 as well as in Ex.A.2, it has been clearly stated that the suit properties are in possession and enjoyment of D.W.2 and her another sister by name Savvanu Beevi. Therefore, it is very clear that till the execution of Ex.A.1, the vendors under Ex.A.1 have been in possession and enjoyment of the suit properties. On the basis of the evidence of D.W.2 as well as the recital found in Ex.A.1 and Ex.B.2, the Court can easily come to a conclusion that the oral gift alleged to have been given by the original owner of the suit properties viz., Mohamed Ismail has been proved by the plaintiff. Hence, it is made clear that the contention urged on the side of the appellant/defendant is totally erroneous and the same cannot be accepted.

22.At this juncture, it would be more relevant to look into Exs.B.1 and B.13. Ex.B.3 is a deed of power of attorney alleged to have been executed by the said Mohamed Ismail in favour of one S.K.M.Mohamed Ismail on 16.06.2000. Ex.B.13 is another deed of power of attorney alleged to have been executed by the said Mohamed Ismail in favour of one S.K.M.Mohamed Ismail in favour of one K.Baskaran. In fact, the Court has collected the alleged signatures of



Mohamed Ismail found in Exs.B.3 and B.13 and also with the signatures of the said Mohamed Ismail found in Ex.B.4. It is not an exaggeration to say that each signature varies from one another. Further the signatures in found in Exs.B3, B4 and B13 have not been identified by the proper person viz., D.W.2. Further, D.W.2 has not filed any letter alleged to have been written by her father. Under the said circumstances, on the basis of Exs.B.1 and B.13 coupled with the evidence of D.W.2, the Court cannot come to a conclusion that the alleged Mohamed Ismail is still alive in Malaysia. The specific case of the defendant is that he purchased the suit properties under Exs.B.2 and B.14. Ex.B2 has been executed by Makrron Beevi and Savvanu Beevi in favour of the defendant in respect of the suit properties. Ex.B.14 is alleged to have been executed by the alleged power agents of Mohamed Ismail in favour of the defendant. Since the fact that the said Mohamed Ismail is alive has not been established by the defendant, it is needless to say that under Ex.B.14, the defendant has not derived any title to the suit properties and since under Ex.A.1, the plaintiff is having a valid title. Under Ex.B.2, the defendant does not have any semblance of title over the suit properties. Hence, both the Courts below have concurrently held that the respondent/plaintiff is entitled to get the reliefs of declaration and permanent injunction and



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the appellant/defendant is not entitled to get any of the reliefs sought for in the Appeal.

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23.From the above, this Court is of the view that the Judgments and Decrees of the Courts below are accompanied with sufficient reasons, in which, this Court does not want to make any interference. Accordingly, the substantial questions of law framed are ordered as against the defendant and in favour of the plaintiff.

24.In the result, the Second Appeal stands dismissed. No costs.

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Internet : Yes/No
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To

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



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V.BHAVANI SUBBAROYAN, J.

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Judgment made in
S.A(MD)No.125 of 2004

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