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S.A.No.1569 of 2000

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.10.2025

CORAM :

THE HONOURABLE MR.JUSTICE V. LAKSHMINARAYANAN

S.A.No.1569 of 2000

1.Abdul Hameed (Died)

2.Sheik Abdullah

nd
(2 *appellant brought on record as LR of the deceased*
sole appellant)

... Appellants

VS

1.Bajir Beevi (Died)

2.Mohammad Thalif

nd
(Since the 2 *respondent remained exparte*
in the lower court, notice may be
dispensed with)

3.Meera Hussain Beevi

4.Mohammed Iqbal

5.Meharaj Begam

6.Barhath Bivi

(R3 to R6 brought on record as LR of deceased sole appellant vide order of court dated 23.1.2020 made in CMP.115 to 117/2009 in SA.1569/2000)

7.Nabeeza Begam

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8.Barakath Nisha

9.Faridha Begam

10.Mohammed Aslam

11.Rabiyathul Basria

... Respondents

(R7 to R11 brought on record as

st

LRs of deceased 1 respondent vide
order of court dated 2.2.2021 made
in CMP.5670/2020 in SA.1569/2000)

Prayer: Second Appeal filed under Section 100 of the Code of Civil Procedure against the judgment and decree made in A.S.No.7/99 on the file of the Court of Subordinate Judge, Chidambaram dated 11.2.2000 in confirming the judgment and decree made in O.S.No.36/96 on the file of the court of District Munsif-cum-Judicial Magistrate, Porto Novo dated 26.2.99.

For Appellants : Mr.A.Muthukumar

For Respondents : Mr.K.Ranjith
for Ms.Mythili Srinivas
(for R2, R8 and R9)

R1 – Died

No Appearance (for R3, R4, R5,
R6, R7, R10 & R11)

JUDGMENT

As ordered by this Court, cost has been paid. A memo has been filed. It is recorded.



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2. The present Second Appeal arises out of the judgment and decree of the Court of the Subordinate Judge, Chidambaram in A.S.No.7 of 1999 dated 11.02.2000, in confirming the judgment and decree in O.S.No.36 of 1996 on the file of the learned District Munsif-cum-Judicial Magistrate, Porto Novo, dated 26.02.1999.

3. For the sake of convenience, the parties shall be referred to, as per their ranks before the Trial Court. The plaintiff appeals.

4. O.S.No.36 of 1996 was originally presented as O.S.No.519 of 1987 on the file of the District Munsif Court, Chidambaram. With the creation of a District Munsif Court in Porto Novo and as the suit property falling within the jurisdiction of that Court, the suit stood transferred to the file of the District Munsif Court, Parangipettai. It was re-numbered as O.S.No.36 of 1996.

5. The suit was presented for a relief of permanent injunction restraining the defendants, their men, agents and subordinates, etc., from interfering with the plaintiff's peaceful possession and enjoyment of the suit schedule mentioned property.

6. The plaintiff is the brother of the 1st defendant and the maternal uncle of the 2nd defendant. The plaintiff pleaded that the suit property originally belonged to one Mohamed Ghouse. The said Mohamed Ghouse had gifted the suit property to the 1st defendant by way of a registered



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document dated 15.07.1978. The 1st defendant, thereafter, gifted the property to the plaintiff's vendor, who is none-else than the sister of the 2nd defendant and the daughter of the 1st defendant, one, Nabeeza Begum. The gift was executed when the said Nabeeza Begum was given in marriage to one Liyagath Ali.

7. The plaintiff adds that Nabeeza Begum sold the suit property to the plaintiff under a registered sale deed dated 29.10.1982, for a valuable consideration of Rs.25,000/-. The plaintiff added on account of the purchase made by the plaintiff of the suit property, the 1st defendant became inimical towards him. He further added that one Mohamed Sheriff, his brother in law, filed two suits against the 1st defendant in O.S.Nos.256 & 490 of 1984 on the file of the District Munsif Court, Chidambaram, with respect to his property. For the purpose of prosecuting that case, the said Mohamed Sheriff had executed a power of attorney in favour of the plaintiff. This too, added fuel to the fire which had already been set purchase.

8. The plaintiff further submitted that taking advantage of the situation, the defendants attempted to cut and remove the casuarina and manila trees, which were standing over the 5th item of the suit schedule property. They also attempted to remove the coconut trees growing over suit items 2 to 4. In pursuance of this threat, the defendants 1 and 2 also



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attempted to dismantle a dilapidated hut existing over suit item No.1.

Hence, the suit for the aforesaid relief.

9. Summons were served on the defendants. The 1st defendant filed a detailed written statement. She admitted to the fact that the property belonged to her husband Mohamed Ghouse, and the execution of the registered Hiba deed by him in her favour on 15.07.1978. She also accepted that the Hiba/settlement deed is true, valid, accepted and acted upon. She pleaded that Mohamed Ghouse died in the year 1978. She denied the right, title and interest of the plaintiff over the suit property and pleaded that she was enjoying the property as its absolute owner. Insofar as the gift at the time of wedding is concerned, she pleaded that she had gifted 20 sovereigns of gold and Rs.10,000/- as cash to Nabeeza Begum, her daughter and vendor of the plaintiff, at the time of marriage, but was categorical that she did not give any immovable property, as alleged by the plaintiff.

10. She further pleaded that as Nabeeza Begum does not have a right over the suit properties, the sale deed executed in favour of the plaintiff by the said Nabeeza Begum is null and void, and will not bind her interest over the suit property. She specially averred in paragraph No.5 of the statement, that as the plaintiff does not derive any title, his remedy is to file a suit for declaration of title and that a suit for bare



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injunction is not maintainable. She urged that she was not aware that the Tahsildar of Chidambaram had mutated the revenue records in favour of the plaintiff. She added that the Tahsildar did not conduct any enquiry prior to grant of patta in favour of the plaintiff. She also denied that she attempted to dispossess the plaintiff. She pointed out that the plaintiff had initiated a criminal proceedings in C.C.No.205 of 1985 on the file of the Judicial Magistrate Court, Porto Novo, and that after an elaborate trial, the same came to be dismissed.

11. She pleaded that it was only on account of the dismissal of the criminal complaint, the plaintiff has come forth with the suit to wreak vengeance on her. Consequently, she pleaded for the suit to be dismissed.

12. On the basis of these pleadings, the learned District Munsif, Porto Novo framed the following issues for consideration:

'1.வாதி வழக்குச் சொத்தின் வசத்தில்

இருக்கிறாரா?

2.வாதிக்கு நிரந்தர உறுத்துக்கட்டளைப்

பரிகாரம் பெற தகுதி உள்ளதா?

3.வாதிக்கு என்ன பரிகாரம் கிடைக்கக்

கூடியது?'

13. On the side of the plaintiff, he examined himself as PW1 and marked Exs.A1 to A9. He examined two other witnesses to substantiate his case. PW2 is said to be the assistant of the Town Kazi, who officiated



at Nabeeza Begum's marriage to Liyagath Ali. PW3 is a third party to the family. On the side of the defendants, the 1st defendant examined herself as DW1 and marked Exs.B1 to B3.

14. The learned trial Judge came to a conclusion that the gift alleged to have been made by the 1st defendant in favour of the plaintiff's vendors, had not been proved in accordance with the Islamic Law. Consequently, he dismissed the suit.

15. Aggrieved by the same, the plaintiff preferred an appeal to the file of the learned Subordinate Judge, Chidambaram. The appeal was received as A.S.No.7 of 1999. By a judgment and decree dated 11.02.2000, the learned Subordinate Judge confirmed the decree of the trial Court. Against the concurrent decrees of the Courts below, the present Second Appeal arises before this Court.

16. This Court entertained the appeal and framed the following substantial questions of law:-

'(1) Whether the lower appellate court not erred in law in placing the burden of proof of gift on the plaintiff when D-1 admits her signature in Ex.A-6 Marriage Dafthar Register, wherein the gift made by her in favour of the plaintiff's vendore has been recorded as per Mohammanan Law?

(2) Whether the 1st defendant, the donor, is not estopped from contending that the suit properties were not given as gift at the time of her daughter's marriage when she admits that another property



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was given as gift as evidenced by Ex.A-6?

(3) Whether the lower appellate court not erred in law in holding that there was no declaration and acceptance of gift, when overwhelming documentary evidence to support the case of gift and delivery of possession and subsequent possession by the plaintiff?

(4) Whether the lower appellate court not erred in law in holding that the suit items 1,3 and 4 were not subject matter of the gift when the admitted case of the parties is that items 2,3 and 4 were mentioned as one single unit in Ex.A-6?'

17. Pending the first appeal, the learned appellate Judge had received certain documents under Order 41 Rule 27 of Code of Civil Procedure in I.A.No.234 of 1999 and marked the same as Exs.A10 to A26. As he had not followed the procedure under Order 41 Rule 28 of Code of Civil Procedure, this Court, by an order dated 02.02.2023, directed the learned Subordinate Judge to record the evidence and thereafter, send the evidence to this Court for the purpose of disposal of the Second Appeal. The records having been received, the appeal was taken up for disposal.

18. I heard Mr.A.Muthukumar, learned counsel for the appellants, and Mr.K.Ranjith for Ms.Mythili Srinivas, learned counsel for the respondents.

19. As the questions of law are inextricably connected, they all answered together in this judgment.



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20. Mr.Muthukumar points out that under Ex.A6, it has been recorded by the Town Kazi that the properties, including the suit properties, had been given by way of a gift to Nabeeza Begum by the 1st defendant and, therefore, the Court below erred in ignoring Ex.A6. He points out that under Exs.A2 to A4, the revenue records were mutated in favour of the plaintiff and this points out to the possession and enjoyment of the suit property by the plaintiff and hence, the trial Court and the lower appellate Court erred in dismissing the suit. He further pointed out that the decision of the trial Court, as Ex.A6 is unregistered, cannot be relied upon is contrary to the provisions of the law applicable to Muslims and, therefore, a serious error has occurred, which requires interference by this Court. He also pointed out that there is no necessity for the plaintiff to seek for declaration of title, as held by the lower appellate Court, and that both the Courts below had misconstrued and misappreciated the evidence, and consequently, the judgments being perverse, it requires the interference by this Court.

21. Per contra, Mr.K.Ranjith argues that the plaintiff had not proved the necessary ingredients of a gift, as required by Muslim Law, and even if this Court were to ignore the findings on Ex.A6 given by the learned trial Judge, still the conclusion arrived at by the Courts below is perfectly justified. He pleads that, being concurrent findings, this Court



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should not re-appreciate the evidence, and should only see whether the appreciation by the Courts below has been proper, and if it has been so, the appeal must be dismissed.

22. I have carefully considered the submissions of both sides and I have gone through the records.

23. The relationship between the parties is not in dispute. The plaintiff is the brother of the 1st defendant and the uncle of the 2nd defendant. His vendor is Nabeeza Begum the daughter of D1 and sibling of D2. Both the parties agree that on 15.07.1978, the original owner, Mohamed Ghouse, had executed a registered Hiba in favour of his wife, the 1st defendant. The digression on facts between the parties arise only on the plea that a gift had been executed by the 1st defendant to Nabeeza Begum. Whereas the plaintiff asserts that the gift had been made, the 1st defendant states that no gift of any immovable property had been made by her in favour of her daughter, and consequently, the alienation by Nabeeza Begum in favour of the plaintiff is null and void.

24. This takes me to the question of law, as to whether the plaintiff should have filed a suit for declaration of title, instead of seeking permanent injunction. In the celebrated judgment of *Anathula Sudhakar v. P.Buchi Reddy* (AIR 2008 SC 2033), the Supreme Court held that where a cloud over plaintiff's title is raised by the defendant, then it is the



duty of the plaintiff to either amend the suit into one for declaration of title, or withdraw the suit for injunction with leave and file a fresh suit on the same cause of action claiming title, with or without the relief of injunction or possession, as the case may be.

25. In the facts of the present case, the defendants had specifically denied the title of the plaintiff. She did not raise a bare denial, but cut at the root of the plaintiff's title by stating that, she had never executed a gift in favour of the plaintiff's vendor. Once this plea is taken, it is the duty of the plaintiff, to have amended his plaint and sought for a declaration, that the Hiba executed at the time of marriage is true and genuine, or atleast should have sought for declaration of his title by proving the gift. In a suit for injunction based on possession, which is the present case, a Court loathes to go into the issue of title. The plaintiff had an option to sue for injunction based on his title, but chose not to do so. This is clear from the valuation of the suit under Section 27(c) of the Tamil Nadu Court Fee and Suit Valuation Act, 1959.

26. If the plaintiff put forth an injunction suit, only on the basis of possession, and when the defendant proves that she is the owner of the suit property and the gift was not executed by her, the plaintiff could not have continued with the said suit. This is for the simple reason, that a suit for injunction can be maintained by any person in possession against the



entire world, other than the true owner. When the ownership of the 1st defendant is conceded by virtue of acceptance of the settlement deed dated 15.07.1978, and when she has denied the title of the plaintiff, the plaintiff ought to have taken steps to get his title declared through the process of Court. That not having been done, I am of the opinion that the view taken by the lower appellate Court, that a suit for bare injunction is not maintainable, cannot be found fault with.

27. This takes me to the second issue, whether the plaintiff has, if at all, proved the gift executed by the 1st defendant in favour of Nabeeza Begum. Law demands evidence to be given for three essentials to establish a gift to be valid. The three essentials are

- (i) declaration of the gift by the donor,
- (ii) acceptance of the gift, either expressly or impliedly, by or on behalf of the donee, and
- (iii) delivery of possession of the subject matter of the gift by the donor to the donee. Even if one of these essential ingredients are not proved, law demands that the plea of gift be rejected.

28. The substratum of the case of the plaintiff is Ex.A6. Ex.A6 is to be an extract of the Nikka Nama duly witnessed and signed by the Town Kazi. The plaintiff did not examine the Town Kazi in this case. Instead, he examined PW2, who is said to be the assistant to the Town

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Kazi. PW2 was specifically cross examined by the plaintiff, as to whether there is any proof to show that he is the assistant to the Town Kazi. Unfortunately for the plaintiff, PW2 responded that there is no such record. As to why the original of Ex.A6 was not produced before the Court, remains unexplained. The plaintiff has also not produced the original of the title deed, namely, the settlement deed, executed by Mohamed Ghouse in favour of the 1st defendant. What had been produced is only a certified copy of the said document.

29. Mr.Muthukumar attempted to explain this omission by stating that there are certain other properties covered under Ex.A5 and, hence, the original could not be produced. This explanation is an ingenious argument raised by Mr.Muthukumar at the second appellate stage. I do not find even a single ground raised in the appeal, nor a pleading to this effect in the plaint before the trial Court.

30. It is a settled position of law that where there are no foundational pleadings, the question of letting in evidence or on entertaining arguments on the said basis do not arise.

31. I now turn to Exs.A2 to A4, which are house tax receipts relating to suit item Nos.2 to 4, and the patta granted in favour of the plaintiff for the 5th item of the suit property. A careful perusal of all these documents shows that they have come into force in the years 1985 and



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1986, corresponding fasli year 1395.

32. Acting upon of the gift should be by Nabeeza Begum and not by the plaintiff. Even if the case of the plaintiff is construed at its highest, the gift allegedly executed by the 1st defendant was not to him, but to his niece, Nabeeza Begum. No records have been tendered to prove that Nabeeza Begum had taken possession of the property, after the execution of the gift under Ex.A6, even if I were to assume for a moment that Ex.A6 is a true and genuine document.

33. The mutation of the revenue records in favour of the plaintiff only points out that the municipal and the revenue authorities were satisfied to recover tax from the plaintiff, but, it certainly cannot lead to the conclusion that the 1st defendant had executed a gift deed, and it had been acted upon. Law demands acting upon by the donee and not by a purchaser claiming through the donee.

34. I would consider another factor which is fatal to the case of the plaintiff. The plaintiff, no doubt, is the maternal uncle of his vendor. A reading of the plaint and written statement points out that there has been a dispute between the plaintiff's and the defendant's families. Under such strained circumstances, it is quite possible that the 1st defendant would have tried to withdraw the benefit that she had earlier given to her daughter. Hence, it was the duty of the plaintiff to have examined

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Nabeeza Begum as a witness on his side to substantiate the plea of the gift.

35. The interval between the execution of the gift and filing of the suit is not so distant that the plaintiff could not have examined his vendor. Furthermore, the vendor had a duty under Section 55 of the Transfer of Property Act, to convey proper title to her vendee. When the best evidence is kept away from the Court, the Court necessarily has to look against the person, who has failed to produce the evidence.

36. When these aspects were pointed out, Mr.Muthukumar pleaded that the defendant had not produced any evidence to substantiate her case. However, it is the appellant, who had come forth with the suit and not in the 1st defendant. Even if the 1st defendant had remained exparte, the burden of proving the gift lay heavily on the plaintiff. Only if he had discharged the initial onus of proving the gift, would the onus have shifted to the 1st defendant to prove her claim. It is the obligation of a party who dons upon himself the role of a plaintiff to prove his case. However weak the defence may be of the defendant, the plaintiff cannot rely on the same when foundational facts have not been proved by the plaintiff.

37. In the light of the above discussion, I have no other option than to confirm the judgment and decree of the Courts below. The Second

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Appeal is dismissed. Since the parties are closely related, I am not inclined to impose costs.

38. At this stage, Mr.Muthukumar points out that the 1st defendant passed away and his vendor Nabeeza Begum had been brought on record as the legal representative of the 1st defendant. As the sale deed had been executed by Nabeeza Begum in favour of the plaintiff and since the 1st defendant has passed away, if it is open to the plaintiff, it is open to him to file a suit for partition, and work out his rights in a manner known to law.

30.10.2025

Index:Yes/No

Speaking order/Non-speaking order

Neutral Citation:Yes/No

vs

To

1.The Subordinate Court,
Chidambaram.

2.The District Munsif-cum-Judicial Magistrate,
Porto Novo.



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V.LAKSHMINARAYANAN, J.

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