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S.A. Nos.544 & 708 of 2007

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.11.2025

CORAM

THE HONOURABLE MRS. JUSTICE T.V. THAMILSELVI

Second Appeal Nos. 544 & 708 of 2007

S.A.No.544 of 2007 :

- 1.Annamalai(died)
- 2.A.Jothi
- 3.A.Balakrishnan
- 4.A.Mohanraj
- 5.A.Sudha
- 6.A.Selvakumari
- 7.A.Anjalidevi

... Appellants

(A1 died, A2 to A7 brought on record as legal heirs of the deceased A1 vide Court order dated 06/04/2022 made in CMP.Nos.18407 and 18409 of 2021 in S.A.No.544 of 2007 (RHJ).

Versus

- 1.Kanagasabai
- 2.Appu Padayachi
- 3.Valli Ammal

.. Respondents

S.A.No.708 of 2007 :

Kanagasabai

... Appellant

Versus



S.A. Nos.544 & 708 of 2007

- 1.Annamalai(died)
- 2.Appu Padayachi
- 3.Valliammal
- 4.A.Jothi
- 5.A.Balakrishnan
- 6.A.Mohanraj
- 7.A.Sudha
- 8.R.Selvakumari
- 9.A.Anjalidevi

... Respondents

(R1 died, RR4 to 9 are brought on record as legal heirs of the deceased R1 vide Court order dated 03/02/2023 made in CMP.Nos.14159 of 2021 in S.A.No.708 of 2007 (RHJ).

PRAYER in S.A.No.544 of 2007 : Second Appeal filed Under Section 100 of the Civil Procedure Code, prays to set aside the Judgment and decree as made in O.S.No.11 of 2004 dated 31.03.2005, on the file of the District Munsif – cum – Judicial Magistrate, Portonovo, as confirmed in Judgement and decree as made in A.S.No.31 of 2005 dated 29.11.2006, on the file of the Subordinate Judge, Chidambaram.

PRAYER in S.A.No.708 of 2007 : Second Appeal filed Under Section 100 of the Civil Procedure Code, against the Judgment and decree passed in A.S.No.50 of 2005, dated 29.11.2006, on the file of the Court of Subordinate Judge, Chidambaram in confirming the judgement and decree passed in O.S.No.11 of 2004, dated 31.03.2005, on the file of the Court of District Munsif cum Judicial Magistrate, Parangaipattai.

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For A2 to A7 : Mr.S.Vediappan for
Mr.R.Karthikeyan

For A1 : Died

For R1 : Mr.A.Muthukumar

For R2 & R3 : No appearance



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S.A.No.708 of 2007:

For Appellants : Mr.A.Muthukumar

For R4 to R9 : Mr.S.Vediappan for
Mr.R.Karthikeyan

For R2 & R3 : Ex-parte

For R1 : Died

COMMON JUDGMENT

The appellants have preferred these Second Appeals against the Judgment and decree dated 29.11.2006, passed in A.S.Nos. 31 & 50 of 2005 on the file of the Subordinate Judge, Chidambaran in confirming the judgment and decree dated 31.03.2005 passed in O.S.No.11 of 2004, on the file of the District Munsif cum Judicial Magistrate, Parangaipattai.

2. For the purpose of convenience, the parties herein are referred to as they are ranked in the suit.



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3. Challenging the concurrent findings of the Courts below, the plaintiff has preferred S.A. No.708 of 2007, and the first defendant has preferred S.A. No.544 of 2007. Both the appeals arise out of a common judgment.

4. Before the Trial Court, the plaintiff, Kanagasabai, filed a suit seeking a declaration in respect of 'A' Schedule and 'B' Schedule properties and also prayed for a permanent and mandatory injunction in respect of the 'B' Schedule properties, against three defendants. The second and third defendants are the father and sister of the plaintiff respectively. The first defendant is the purchaser of a portion of the suit properties from the third defendant.

5. Before the Trial Court, the first defendant alone contested the suit. Defendants 2 and 3 remained ex parte. Based on a gift deed executed by his grandmother, as well as an alleged oral gift made by his father, the plaintiff claimed a declaratory right over the suit properties. The first defendant contended that the gift deed executed by the grandmother of the plaintiff had been cancelled. Thereafter, she sold the properties to one Ramakrishnan, from whom the second defendant purchased the properties and subsequently executed a gift deed in favour of his daughter, the third defendant, from whom the first defendant later purchased the same. Thus, the first defendant disputed the title claimed by the plaintiff.



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6. Both parties adduced oral and documentary evidence. Finally, the Trial Court held that, in respect of Items 2 and 3 in the 'A' Schedule, the plaintiff is entitled to the relief of declaration and injunction. However, in respect of Item 1 in the 'A' Schedule and the entire 'B' Schedule, the plaintiff is not entitled to the relief of declaration. Accordingly, the suit was partly decreed.

7. Challenging the said findings, the plaintiff preferred an appeal in A.S. No.50 of 2005, and the first defendant preferred an appeal in A.S. No.31 of 2005 before the Subordinate Court, Chidambaram. The learned First Appellate Judge analysed the entire facts, framed points for determination, and on consideration of the evidence and materials on record, held that the grandmother of the plaintiff had executed a valid gift deed in favour of the plaintiff. It was also found that the said deed was acted upon, and therefore, the grandmother, being the settlor, had no right to cancel the settlement deed. Such cancellation is not permissible under Section 126 of the Transfer of Property Act. Once a valid gift deed is executed, it cannot be revoked except in accordance with Section 126 of the said Act. The reasons assigned for the cancellation of the document were also found to be invalid.

8. Therefore, as per Ex.A3 – the Settlement Deed – the plaintiff was held to be the absolute owner of Items 2 and 3 of the 'A' Schedule. However, with



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respect to Item 1 of the 'A' Schedule and the 'B' Schedule properties, the claim of oral gift made by the plaintiff was held to be invalid in law. Further, the plaintiff had not perfected title by adverse possession. Consequently, the learned First Appellate Judge confirmed the findings of the Trial Court and dismissed both appeals, thereby upholding the Trial Court's decree. Aggrieved by the same, both the plaintiff and the first defendant have preferred the present Second Appeals — the plaintiff in S.A. No.708 of 2007 and the first defendant in S.A. No.544 of 2007.

9. Heard both sides.

10. According to the plaintiff, the first item in the 'A' Schedule and the 'B' Schedule properties originally belonged to his father, who purchased the same from one Ramakrishna Padayatchi. Thereafter, his father handed over the said properties to him by way of an oral gift. The patta, marked as Ex.B6, also stands in his name for the entire properties. However, the Courts below failed to properly appreciate this aspect.

11. Furthermore, as per Ex.B5, the sale deed, possession was not handed over to the first defendant by the third defendant. Therefore, the sale deed as well as the alleged gift deed relied upon by defendants 2 and 3 were not acted upon, and the first defendant had not perfected any right over the suit



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properties based on the said sale deed executed by D3. Nevertheless, the Courts below, by misappreciating both facts and law, erroneously denied relief to the plaintiff in respect of Item 1 of the 'A' Schedule and the 'B' Schedule properties. Hence, the plaintiff prays for setting aside the concurrent findings by allowing the appeal.

12. The S.A.NO.708 of 2007 is admitted on 06.09.2007, on the following substantial question of law:

“ Whether the lower appellate Court has committed an error of law in not considering Ex.B6?”

13. Per contra, the learned counsel for the respondent / first defendant submitted that the Courts below failed to properly appreciate the cancellation of the gift deed made by the original settlor through Exhibit B1, as the settlor's son, namely the second defendant, had failed to maintain her. Therefore, she was entitled to cancel the gift deed. Accordingly, the deed was cancelled through Exhibit B1. Subsequently, she sold the suit properties to one Ramakrishna Padayatchi through Exhibit B2 in the year 1962, from whom the plaintiff's father purchased the properties in the year 1969 through Exhibit B3. Thereafter, in the year 1991, the settlor executed a settlement deed (Exhibit A4) in favour of her daughter, the third defendant. Consequently, the third



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defendant sold the property to the first defendant in the year 2002. Thus, the first defendant became the absolute owner of the properties. The reason for the cancellation of the earlier gift deed was also stated in the cancellation deed, Exhibit B1.

14. However, the Courts below, without proper appreciation of facts and circumstances, erroneously granted relief in favour of the plaintiff by ignoring the cancellation of the documents as well as the subsequent sale deed. Hence, the findings of the Courts below are erroneous and liable to be set aside.

15. Accordingly, the S.A.No.544 of 2007 is admitted on 30.05.2007 on the following questions of law:

“A. Whether the findings of the Courts below are right in holding that Ex.B1 cancellation of gift deed is not in accordancend with Section 126 of the Transfer of Property Act when the 2 respondent has given reasons to cancel the gift dated 26.09.1969, as made in Ex.A3?

B. Whether the suit as filed by the plaintiff is barred by limitation under Article 58 of the Limitation Act, 1963?

C. Whether the Courts below are right in holding that Ex.A3 dated 26.09.1969, is valid in spite of the same was cancelled by Ex.B1 dated 08.09.1970 by the donor herself ? ”

The first defendant prays that the appeal be allowed.



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16. Considering the submissions made on both sides, the point for consideration is: *“Whether the original gift pleaded by the plaintiff is sustainable in respect of the first item in the ‘A’ and ‘B’ Schedule properties, and whether the cancellation of the gift deed standing in the name of the third defendant is valid in law.*

17. At the time of filing the suit, the plaintiff claimed right and title over the ‘A’ and ‘B’ Schedule properties. The ‘A’ Schedule contains three items of property. In respect of Items 2 and 3 of the ‘A’ Schedule, the third item had been gifted to the plaintiff when he was a minor by his grandmother, the settlor, through Exhibit A3-Settlement Deed, executed in the year 1969, appointing his father as guardian. The first defendant, however, contended that the said settlement deed (Exhibit A3) was cancelled by the settlor in the year 1970 through Exhibit B1.

18. The plaintiff, by producing Exhibit A3, contended that possession of the properties was immediately handed over to his father at the time of the settlement. When he attained majority, he continued to possess and enjoy the properties covered under Exhibit A3. He also produced revenue records marked as Exhibits A6, A7, and A8 to substantiate his possession. Hence, the Settlement Deed (Exhibit A3) was proved to have been acted upon.



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19. Once the first defendant claimed that the settlement was cancelled, the burden shifted upon him to prove that such cancellation was valid, as well as the subsequent execution of the sale deed by the settlor. The validity of the subsequent settlement executed by the plaintiff's father in favour of the third defendant through Exhibit B4, Settlement Deed dated 1991, also falls to be tested under Section 123 of the Transfer of Property Act. It is a settled proposition of law that once a gift is executed and accepted, it cannot be revoked except in accordance with Section 126 of the Transfer of Property Act.

“Section 126 of the Transfer of Property Act:

126. When gift may be suspended or 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.

Nothing contained in this section shall be deemed to affect the rights of transferees for consideration without notice.”

20. In the present case, the first defendant contends that after the execution of the gift deed, the father of the plaintiff failed to maintain the settlor, his mother, and therefore she cancelled the settlement deed. However,



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no such condition was imposed in Exhibit A3, the original settlement deed, empowering revocation for non-maintenance. Moreover, the first defendant is not competent to speak about such circumstances since he came into the picture only after purchasing the property from the third defendant in the year 2002.

21. Therefore, once a valid gift has been executed, it cannot be revoked. Consequently, in respect of Items 2 and 3 of the 'A' Schedule, the plaintiff is the absolute owner as per the Settlement Deed, Exhibit A3. Hence, the cancellation deed and the subsequent settlement executed by the plaintiff's father would not bind the plaintiff. To that extent, the findings rendered by the Trial Court require no interference. Accordingly, Questions of Law A and B in Second Appeal No.544 of 2007 are answered against the appellant.

22. Ever since the execution of the Settlement Deed, Exhibit A3, in the year 1969, the plaintiff has been the absolute owner of Items 2 and 3 of the 'A' Schedule. Until he attained majority, his father possessed and enjoyed the properties as guardian, and thereafter the plaintiff became the absolute owner. It is a settled proposition that title follows possession. Therefore, the claim of possession made by the first defendant is not valid in law. To that extent, the findings rendered by the Courts below require no interference. Accordingly, Question "C" is answered, and there is no merit in the appeal. Hence, the



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Second Appeal filed by the first defendant S.A.No.544 of 2005 is dismissed.

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23. In respect of the first item in the 'A' and 'B' Schedule properties, the contention of the plaintiff is that his father purchased the said item from Ramakrishna Padayatchi after discharging the loan and thereafter made an oral gift in his favour in the year 1981. He claimed that he enjoyed the third item of the 'A' Schedule as absolute owner along with the knowledge of other defendants and, thereby, perfected title by adverse possession.

24. However, as rightly pointed out by the learned counsel for the respondents, an oral gift is not permissible under law. Under Section 123 of the Transfer of Property Act, a valid gift requires registration. To that effect, the proposition laid down in **2011 (2) CTC 88**, in the case of *PSG.Ganga Naidu & Sons Charities, rep by its Managing Trustee, GR.Karthikeyan Vs. The special Commissioner & Commissioner Land Reforms / Land Commissioner, Ezhilagam, Chepauk, Chennai-5 and others*, squarely supports the respondents' contention. Therefore, the plea of oral gift made by the plaintiff in respect of Item 1 of the 'A' Schedule and the 'B' Schedule is unacceptable in law.

25. Although the plaintiff pointed out that the patta for the entire property (Exhibit B2) stands in his name, it is well settled that patta is not a



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document of title, it is only a record maintained for revenue purposes.

Therefore, the plea of oral gift put forth by the plaintiff is unsustainable. To that effect, the findings rendered by the Trial Court require no interference. Accordingly, Questions of Law in S.A. No.708 of 2007 is answered against the appellant.

1.Hence, the alleged possession claimed by the plaintiff with respect to those properties is not sustainable, as he has no right or title over the same based on the alleged oral gift. The findings rendered by the Courts below require no interference.

2.

27. Accordingly, **both the Second appeals are dismissed.** The findings of the Courts below are confirmed. There shall be no order as to costs. The suit stands decreed partly in respect of Items 2 and 3 of the 'A' Schedule. The plaintiff is declared to be the absolute owner of those properties and is not entitled to the relief of injunction in respect of the third item of the 'A' Schedule property and entire "B" Schedule property.

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Index : Yes/No



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Neutral Citation : Yes/No
Speaking/Non Speaking order

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To

- 1.The Subordinate Judge, Chidambaram.
- 2.The District Munsif cum Judicial Magistrate, Parangaipattai.
- 3.The Section Officer, VR Section, High Court of Madras.

T.V.THAMILSELVI, J.

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