IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : **04.06.2025**

CORAM

THE HONOURABLE MRS. JUSTICE T.V. THAMILSELVI

A.S.No.365 of 2018

K.Dinesh Kumar ... Appellant/Plaintiff

Vs.

1.M.Nagarajan

2.M.Pongodi ... Respondents/Defendants

PRAYER: Appeal Suit filed under Section 96 of the Code of Civil Procedure against the Judgment and Decree dated 13.02.2018 passed in O.S.No.1 of 2015 on the file of the learned Principal District Judge, Erode.

For Appellant : Mr.Tinus Enock
for Mr.I.C.Vasudevan

For Respondents : Mr.M.Guruprasad for R2
R1 – No appearance

JUDGMENT

The above Appeal Suit is filed challenging the Judgment and Decree dated 13.02.2018 passed in O.S.No.1 of 2015 on the file of the learned Principal District Judge, Erode.

2.The parties are referred to in the same litigative status as in the Original Suit.

3.Aggrieved by the findings against the 2nd defendant, the plaintiff preferred this Appeal Suit. The appellant herein is the plaintiff in O.S.No.1 of 2015 filed for recovery of Rs.13,37,000/- with subsequent interest @18% per annum for the Principal amount of Rs.10,00,000/- from the date of the Suit till the date of payment from the defendants 1 and 2 jointly and severally.

4.The 1st defendant and 2nd defendant are the brother and sister. The 1st defendant remained *ex parte*. The 2nd defendant alone contested the suit. After analyzing the oral and documentary evidence on record, the Trial Judge partly decreed the suit by granting a Decree in favour of the plaintiff against the 1st defendant and in respect of the 2nd defendant, the suit was dismissed. Challenging the said findings, the present Appeal Suit is preferred by the plaintiff.

The facts in brief which are necessary for disposing of the above

Appeal Suit are hereinbelow set out:

5.The 1st defendant is the family friend of the plaintiff and he used to borrow loan from the plaintiff whenever he needs of money. While so, on 20.01.2013, the 1st defendant in the presence of one Venkatesh, a common friend, borrowed a sum of Rs.10 lakhs by cash for his business promising to repay the same with interest. To discharge the said liability, he issued a post dated cheque bearing No.784849 dated 20.03.2013 for a sum of Rs.10 lakhs drawn on Axis Bank, Erode in favour of the plaintiff. Neither he paid the interest nor the Principal amount as assured. He requested the plaintiff not to present the Cheque for collection and he would ready to pay the amount within a month. The plaintiff under a bonafide belief has not presented the Cheque for collection. Inspite of repeated demands, the 1st defendant has not paid the Principal amount nor interest. While so, in the 1st week of December 2014, the plaintiff came to know that the defendants in order to defraud the plaintiff's claim collusively and fraudulently transferred the property to an extent of 2.65 acres to his sister, the 2nd defendant, under a Gift Settlement Deed dated 27.03.2013. Since the said document was executed by the 1st defendant, while subsisting the loan payable to the plaintiff, the 2nd defendant is also personally liable to pay the debts payable by the 1st defendant. On 16.12.2014, the plaintiff issued a notice to the defendants 1 and 2 demanding repayment but, the 1st defendant did not receive notice and the 2nd defendant also gave a false reply. Hence, this suit.

6.The 1st defendant remained *ex parte*. The 2nd defendant by way of Written Statement disputed the financial capacity of the plaintiff and also contended that the alleged Cheque filed along with the Plaint is not a true and genuine one. After the sale in favour of the 2nd defendant, it is a created one. The Gift Settlement Deed was not executed by the 1st defendant while the alleged loan was subsisting payable to the plaintiff. The husband of the 2nd defendant Thangarasu was a Government Servant and he was working as Teacher in an Elementary School at Seelampatti. After demise of her husband, she received a sum of Rs.13,00,000/- towards monetary benefits. Hence, her brother advised her to invest the same in the immovable property and also offered to sell his property to her. Accordingly, the Sale price was fixed at Rs.10 lakhs and the 1st defendant received Rs.10 lakhs from the 2nd defendant for the sale consideration. On the advise of the Stamp Vendor, to avoid Stamp Duty and considering the blood relationship, a Gift Settlement Deed was executed on 27.03.2013 and possession was also handed over to her and thereafter, she is in exclusive possession of the property. While so, her brother demanded further a sum of Rs.2 lakhs saying that he had sold the properties for an inadequate price for which she refused to pay the same. Hence, the 1st defendant developed a hostile attitude against the 2nd defendant and in collusion with the plaintiff, the 1st defendant fabricated the ante dated cheque. Therefore, they have come forward with this false and fraudulent suit. Further, there is no cause of action. Hence, she prayed for dismissal of the suit.

7.Before the Trial Court, 6 issues have been framed. On the side of the plaintiff, P.W.1 to PW3 were examined and Ex.A.1 to Ex.A.9 were marked. On the side of the defendants, DW1 and DW2 were examined and no documents were marked.

8.Before the Trial Court, the arguments adduced against the 2nd defendant by the plaintiff is that there is no collusion between the plaintiff and the 1st defendant. The property which was gifted under Ex.A.3 -

Settlement Deed is the only property belongs to the 1st defendant and with an intention to execution of the decree, the 1st defendant settled the property in favour of the 2nd defendant. Therefore, the 2nd defendant is also bound to pay the suit claim. But, the 2nd defendant submitted that to that effect, she relied the provision under Sections 127 and 128 of the Transfer of Property Act. The reply of the 2nd defendant's counsel that the 2nd defendant does not become the universal Donee and the same can be applied in cases where there are more than one of the creditors and if there is a lot of property settled in favour of another person to defraud the interest of the creditors. In the case in hand, the plaintiff is the only one creditor and there is only one property which is covered by the definition of Sections 127 and 128 of the Transfer of Property Act. The Trial Judge has observed that it is not a case of the plaintiff that there was so much debts due by the 1st defendant and the transaction between the plaintiff and the 1st defendant is a single one. Where there is no pack of properties to be settled in favour of the 2nd defendant and it is only an independent transfer. Hence, the plaintiff has not benefited by Sections 127 and 128 of the Transfer of Property Act and thereby held that the 2nd defendant cannot be deemed to be universal donee, eventually that the plaintiff cannot ask for personal decree against the 2nd defendant, but however, the Trial Judge also considered the evidence of PW3 - Bank Manger of HDFC Bank, who produced the Statement of Accounts of the 2nd defendant and deposed that Rs.12lakhs was transferred to the account of the 1st defendant on 20.05.2011. By relying the Statement, the Trial Judge also held that Rs.12 lakhs was transferred to the account of the 1st defendant from the 2nd defendant through which she has paid the amount to his brother, as such, it is acceptable and thereby she cannot be taken as a mere donee. Accordingly, the suit as framed for personal decree against the 2nd defendant is not maintainable.

9.However, the Trial Judge held that the 1st defendant remained *ex parte* and neither he has disputed the plaintiff's claim nor adduced any evidence contrary to the Plaint averments and thereby, the Court is empowered to draw adverse inference and the suit was decreed against the 1st defendant and dismissed against the 2nd defendant. Challenging the said findings, the plaintiff preferred this Appeal Suit.

10.Now, the point for consideration in the above Appeal Suit is whether there is any collusion between the 1st and the 2nd defendants and the said Settlement Deed was created in order to defraud the debt liability to the plaintiff by the 1st defendant?.

11.The learned counsel for the appellant/plaintiff argued that after the borrowal of the loan from the plaintiff, the 1st defendant executed a Gift Settlement Deed in respect of his property in favour of her sister with an intention to defraud his debt claim and both the defendants 1 and 2 are in the same roof and she is also aware of the loan transaction. The Trial Court failed to appreciate these aspects and erroneously dismissed the suit against the 2nd defendant as it is liable to the set aside.

12.By way of reply, the learned counsel for the 2nd respondent/2nd defendant argued that there was no such loan transaction between the plaintiff and the 1st defendant and for utilizing the death benefits of her husband Thangarasu, on the advise of her brother, she invested the money and purchased the property of the 1st defendant. To avoid Stamp Duty, on the advice of the Stamp Vendor, considering the blood relationship, a

Gifted Settlement Deed was executed instead of a Sale Deed and thereby Gift Deed was came into force. But, she paid a valid consideration of Rs.10 lakhs and to prove the same, the Bank Statement has been marked. Further, the evidence of the Bank Manager was considered by the Trial Court. Hence, this Appeal Suit filed by the plaintiff has no merits.

13.Heard the learned counsel for the appellant and the learned counsel for the 2nd respondent and perused the material available on record.

14.The fact reveals that the 1st defendant borrowed a sum of Rs.10 lakhs from the plaintiff and to discharge his liability, he issued a post dated cheque and also requested the plaintiff not to present the cheque for collection. But, the 1st defendant paid the interest to the plaintiff. Before presenting the cheque for collection, believing his words, the plaintiff has not presented cheque for collection. In the meanwhile, the 1st defendant has conveyed one property in favour of the 2nd defendant collusively created a Settlement Deed in favour of her sister who is the 2nd defendant. The 1st defendant remained *exparte* and not denied the Plaint averments.

Therefore, the Trial Court has rightly decreed the suit in favour of the plaintiff.

15.Admittedly, the defendants 1 and 2 are brother and sister. It is also undisputed fact that the husband of the 2nd defendant died and she resided at her brother's house. As per the contention of the 2nd respondent/2nd defendant, she was not aware of the said loan transaction. She paid the sale consideration to the 1st defendant and instead of execution of a Sale Deed, on the advise of the Stamp Vendor, a Settlement Deed was executed and among the blood relationship, Settlement Deed can be executed at the stamp value of Rs.10,000/-. Therefore, there is a possibility of suggestion given by the Stamp Vendor to execute the Settlement Deed instead of Sale Deed among the brother and sister. However, the 2nd defendant has contended that she paid a sum of Rs.10 lakhs to the 1st defendant and to prove the same, Statement of Account was marked through PW3 – Bank Manager which shows that nearly about 12 lakhs was transferred to the account of the 1st defendant on 20.05.2011. On perusal of Ex.A.3 - Gift Settlement Deed, the value of property as mentioned is Rs.10 lakhs. For a sale consideration, the 2nd defendant transferred the amount to the 1st defendant and the 2nd defendant has also established the same. Therefore, it is not sham and nominal document. Hence, the Trial Court has rightly held that the 2nd defendant is not a universal donee as contemplated under Sections 127 and 128 of the Transfer of Property Act. Sections 127 and 128 of the Transfer of Property Act are as follows:

> ***"127. Onerous gifts.***—*Where a gift is in the form of a single transfer to the same person of several things of which one is, and the others are not, burdened by an obligation, the donee can take nothing by the gift unless he accepts it fully.*
>
> *Where a gift is in the form of two or more separate and independent transfers to the same person of several things, the donee is at liberty to accept one of them and refuse the others, although the former may be beneficial and the latter onerous.*
>
> ***128. Universal donee.***—*Subject to the provisions of section 127, where a gift consists of the donor's whole property, the done is personally liable for all the debts due by 1[and liabilities of] the donor at the time of the gift to the extent of the property comprised therein."*

Therefore, the Trial Court has rightly held that there is no collusion between the 2nd defendant and the 1st defendant and the Gift Settlement

Deed was not executed to defraud the claim of the plaintiff. In the result, the point for consideration is answered against the appellant.

Therefore, the findings rendered by the Trail Court is sustainable and there is no interference. Accordingly, this Appeal Suit is dismissed as no merits. There shall be no order as to costs.

04.06.2025

Speaking / Non Speaking order
Neutral Citation : Yes/No
Index :Yes/No
mps

To

1.The Principal District Judge,
Erode.

2.The Section Officer,
VR Section,
Madras High Court.

T.V. THAMILSELVI, J,

mps

A.S.No.365 of 2018

04.06.2025