



S.A.No.259 of 2019 & C.M.P. No.3839 of 2019

WEB COPY IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	09.07.2025
<i>Pronounced on</i>	02.09.2025

Coram:

The Honourable Mrs.Justice K.GOVINDARAJAN THILAKAVADI

S.A.No.259 of 2019
&
C.M.P. No.3839 of 2019

1. State of Tamil Nadu
Represented by District Collector,
Vellore.
2. The Tahsildar,
Gudiyattam.
3. The Commissioner,
Pernambut Panchayat Union,
Pernambut.

.. Appellants

versus

1. B. Janardanan
2. B. Dillibai
3. B. Malika
4. B. Nandakumar

.. Respondents



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Prayer: Second Appeal is filed under Section 100 CPC, against the judgment and decree dated 22.11.2013 made in A.S.No.23 of 2011 on the file of the Sub-Court, Gudiyatham, Vellore District, confirming the judgment and decree dated 08.02.2010 made in O.S.No.608 of 1996 on the file of the District Munsif Court, Gudiyatham, Vellore District.

For Appellants : Ms. R. Anitha, Special Government Pleader
For Respondents : No appearance

JUDGMENT

In this Second Appeal, challenge is made to the judgment and decree dated 22.11.2013 made in A.S.No.23 of 2011 on the file of the Sub-Court, Gudiyatham, Vellore District, confirming the judgment and decree dated 08.02.2010 made in O.S.No.608 of 1996 on the file of the District Munsif Court, Gudiyatham, Vellore District.

2. The defendants in O.S. No.608 of 1996 are the appellants in the present appeal. The respondents, as plaintiffs, filed the above suit for declaring the gift deed dated 10.04.1985 as void *ab initio* and for permanent injunction.



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WEB COPY 3. For the sake of convenience, the parties herein after are referred to their nomenclature before the trial Court.

4. The case of the plaintiffs is that the 4th defendant is the father of the plaintiffs who acted as the kartha of the Hindu joint family, being the eldest male member, till date. The 1st item of the suit property was purchased by their great grand father, namely Mususamy Naidu, under two separate registered sale deeds (Ex.A1 and Ex.A2) dated 07.02.1919 and 20.04.1923 respectively and the 2nd item of the suit property was purchased under two other sale deeds (Ex.A3 and Ex.A4) dated 06.09.1939 and 02.05.1957 by the great grand father and grand father of the plaintiffs. The above sale deeds clearly show that the suit properties are ancestral and joint family properties. No partition was effected in the family and all the family members are living jointly as joint Hindu family till date and are paying necessary kists to the Government. While so, the 3rd defendant obtained a gift deed (Ex.A5) from the 4th defendant by undue influence, coercion and mis-representation. Though the gift deed was executed, it was not acted upon and the property was not delivered



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to the 3rd defendant. The possession is still with joint family. Moreover, the 4th defendant does not have any right to execute the gift deed in favour of the 3rd defendant and therefore, the alleged gift deed dated 10.04.1985 is a void document not binding upon the plaintiff. Since the 3rd defendant is attempting to take possession of the suit property and the defendant 1 and 2 are making arrangements to measure the same and trying to take possession forcibly from the plaintiffs with an ulterior motive, the plaintiffs are constrained to file the above suit to declare that the gift deed dated 10.04.1985 is a void document and for permanent injunction restraining the defendants from interfering with the plaintiffs' possession and enjoyment of the suit property.

4.1. The claim of the plaintiffs was resisted by the 3rd defendant. In the written statement filed by the 3rd defendant, it is submitted that the father of the plaintiffs, namely Bhoopathy Naidu had donated an extent of 10 cents of land through a registered gift deed dated 10.04.1985 in favour of the 3rd defendant and from then onwards, the 3rd defendant is in possession and enjoyment of the said land. Since there was no proper



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road facility to the Nalanganallur village from the main road, and, on the request made by the local public of the said village, the said Bhoopathy Naidu donated the disputed property for laying road. The said gift deed was executed voluntarily by the said Bhoopathy Naidu and the allegations made by the plaintiffs that the above property was gifted to the 3rd defendant by means of undue influence, coercion and misrepresentation is utter false. It is further submitted that once the settlement deed has been executed in favour of the 3rd defendant and further possession was also delivered by the donee on the same day, the property has become the absolute property of the Government of Tamil Nadu. Therefore, no individual person or legal heirs of Bhoopathy Naidu can claim any right over the same. Till the life time of said Bhoopathy Naidu, there was no objection either by the executor of the settlement deed or by the representative of the said Bhoopathy Naidu. Therefore, the 3rd defendant is making arrangements to lay a pucca road which leads from Guidiyatham-Pernambut main road to Nalanganallur village through the disputed 10 cents of land. Hence, every action taken by the defendants is accordance with law and in the interest of general public.



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Hence, the allegations made by the plaintiffs that the defendants are attempting to trespass over the suit property on 30.12.1996 is purely imaginary and absolutely false. Hence, prayed for dismissal of the suit.

4.2. The trial court, based on the oral and documentary evidence adduced on either side, dismissed the suit with regard to the relief of permanent injunction and decreed the declaratory relief declaring the gift deed dated 10.04.1985 as null and void and also directed the 3rd defendant to hand over the property to the plaintiffs within a period of three months. Aggrieved by this, the defendants preferred an appeal suit in A.S. No.23/2011 before the Sub-court, Gudiyatham, Vellore District. The first appellate court, based on the arguments putforth by the respective counsel for the parties, dismissed the appeal suit and confirmed the judgment and decree passed by the trial court.

4.3. Aggrieved by the judgment and decree passed by the first appellate court, the present second appeal has been preferred by the defendants.



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"1. Whether the findings of the trial court as well as the Appellate court that the fourth defendant has no power or right to execute a sale deed in favour of the third defendant is correct and sustainable in Law?

2. Whether the suit is barred by limitation?"

6. The learned counsel for the appellants/defendants submits that once the settlement deed has been executed in favour of the appellants/defendants and further possession was also delivered by the donee on the same day, the property has become the absolute property of the Government of Tamil Nadu. The courts below has erroneously held that the property gifted in favour of the 3rd defendant is a joint family property without sufficient evidence on record. She would further submit that the existence of joint family does not lead to presumption that the property hold by any member of a family is joint. The onus lies upon the person who claims that the subject property is joint family property.



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Her further contention is that the suit has been filed after a lapse of 11 years and therefore, the same is hopelessly barred by limitation. The suit ought to have been filed within a period of three years from the date of execution of the gift deed as per Article 59 of the Limitation Act. To support her contentions, she has relied upon the following judgments.

- 1. G. Mohandoss and others vs. G.Shanmugham and others reported in 2014 (2) MWN (Civil) 797.**
- 2. Murugan & others vs. Kesava Gounder (dead through Lrs and others) reported in 2019 INSC 259.**

7. Despite notice to the respondents, there is no representation on the side of the respondents.

8. According to the plaintiffs, the properties purchased under Ex.A1 to Ex.A4 are ancestral and joint family properties of the plaintiffs and there was no partition in the family and the plaintiffs alone are members of joint Hindu family. While so, the 4th defendant has no independent right to execute the gift deed in favour of the 3rd defendant.



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WEB COPY 9. The gift deed executed in favour of the 3rd defendant on 10.04.1985 was marked as Ex.A5. The relationship between the plaintiffs and the 4th defendant is not in dispute. Even according to the plaintiffs, the 4th defendant, being the eldest male member, was acting as the kartha of the family. Though it is contended on the side of the plaintiffs that the alleged Ex.A5 gift deed was obtained by the 3rd defendant by means of coercion, undue influence and mis-representation, there is absolutely no evidence on record to establish the same. The next point for consideration is that whether the 4th defendant has any right to execute the gift deed in favour of the 3rd defendant independently. Even assuming that the property covered under Ex.A5 gift deed is the ancestral property of the plaintiffs, as per Article 59 of the Limitation Act, 1963, the plaintiffs ought to have filed the suit within a period of three years for declaring the above gift deed as null and void. Admittedly, the gift deed was executed on 10.04.1985 and the suit was filed in the year 1996. Hence, as per Article 59 of the Limitation Act, 1963, the suit ought to have been filed within a period of three years from the date of execution of the gift deed. The Limitation Act contemplates that for a suit to set



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aside the transfer of property, the limitation is three years. Hence the above suit is hopelessly barred by limitation. The courts below have rightly rejected the relief of permanent injunction observing that the possession is not with the plaintiffs and a pucca road has been laid down by the defendants herein. However, the decree and judgment passed by the first appellate court as well as the trial court insofar as declaring the gift deed dated 10.04.1985 as null and void and directing the 3rd defendant to hand over the property to the plaintiffs within a period of three months is liable to be set aside. The substantial questions of law are answered accordingly.

10. In the result,

- 1) The Second Appeal is allowed. No costs. Consequently connected miscellaneous petition is closed.
- 2) The judgment and decree dated 22.11.2013 made in A.S.No.23 of 2011 on the file of the Sub-Court, Gudiyatham, Vellore District, confirming the judgment and decree dated 08.02.2010 made in O.S.No.608 of 1996 on the file of the District Munsif Court,



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Gudiyatham, Vellore District, is set aside insofar as declaring the gift deed dated 10.04.1985 as null and void and directing the 3rd defendant to hand over the property to the plaintiffs within a period of three months.

02.09.2025

Index: Yes/No
Internet: Yes/No
Speaking/Non-Speaking order
bga

To

1. The Subordinate Judge, Gudiyatham, Vellore District.
2. The District Munsif, Gudiyattam, Vellore District.
3. The Section Officer, VR Section, High Court, Madras.



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K.GOVINDARAJAN THILAKAVADI,J
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Predelivery Judgment in
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