

S.A.(MD)No.418 of 2015

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

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**Reserved On : 29.10.2024**

**Pronounced On: 08.05.2025**

**CORAM**

**THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN**

**S.A.(MD)No.418 of 2015**

1.M.Ponraj

2.P.Mariammal

... Appellants / Respondents /  
Plaintiffs

Vs.

Mahalakshmi

... Respondent / Appellant /  
Defendant

**Prayer :** Second Appeal filed under Section 100 of Civil Procedure Code, to set aside the Judgment and decree dated 17.07.2014 in A.S.No.9 of 2014 on the file of the II Additional District Judge, Tuticorin reversing the Judgment and decree in O.S.No.25 of 2011, dated 11.03.2013 on the file of the Sub Court, Tuticorin and allow this second appeal.

For Appellants : Mr.N.Dilipkumar

For Respondent : Mr.G.Aravindan



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## **JUDGMENT**

The plaintiffs in O.S.No.25 of 2011 on the file of the Sub Court, Thoothukudi are the appellants in this second appeal. The suit was for cancelling the gift deed dated 07.05.2007 (Document No. 438/2007) and for mandatory injunction to direct the defendant to hand over the title document to the plaintiffs. The suit was decreed by the trial Court vide Judgment and decree dated 11.03.2013. Challenging the same, the defendant filed A.S.No.9 of 2014 on the file of the second Additional District Judge, Thoothukudi. The first appellate Court allowed the appeal and reversed the decision of the trial Court and dismissed the suit. Aggrieved by the same, the second appeal came to be filed.

2. The second appeal was admitted on 07.08.2015 on the following substantial questions of law:-

“(a) Whether the possession of original title deeds by the respondent amounts to enjoyment of possession of the property when there is no constructive appreciation of evidence on both sides available regarding the acceptance of gift?



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(b) Whether the gift deed can be acted upon without delivery of property by the appellant when there is no natural love or affection conferred upon the execution of the gift deed and the deed of gift was found to be hit by Section 122 of Transfer of Property Act?

(c) Whether the donee is entitled to raise the plea of non-acceptance of possession of schedule mentioned property which is vitiated for the failure of lower Appellate Court to consider the important documents and material circumstances?”

On 17.10.2024, the following additional substantial question of law was formulated.

“Whether the doctrine of non est factum is applicable to the suit transaction ?”

3. The learned counsel for the appellants reiterated all the contentions set out in the grounds of appeal and relied on a catena of case laws. He submitted that the alleged gift deed was not executed voluntarily, out of love and affection, but only in lieu of consideration for the monetary support extended by the Respondent. The learned counsel contended that the alleged gift deed was vitiated by fraud and misrepresentation and was never acted upon. He called upon this Court to answer the substantial questions of law in favour of the appellants and restore the decision of the trial Court.

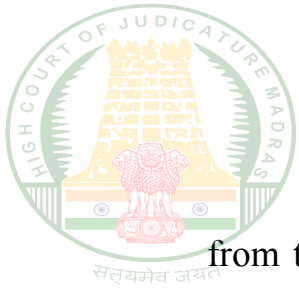


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4. Per contra, the learned counsel appearing for the defendant submitted that the impugned Judgment of the first appellate Court is well reasoned and that the suit was rightly dismissed and that interference is not warranted. He called upon this Court to dismiss the second appeal.

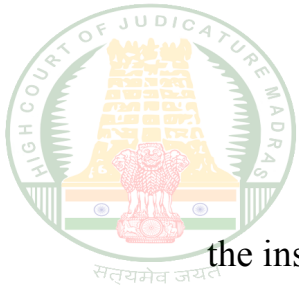
5. I carefully considered the rival contentions and went through the evidence on record. The case of the plaintiffs is as follows:-

Pon Raj / first plaintiff got married to one Chithraipoo through whom two daughters namely, Manimala and Mahalakshmi (defendant) were born. After Chithraipoo died, the first plaintiff married the second plaintiff and through the second plaintiff, two daughters were born. The plaintiffs purchased the suit schedule property from one Muthukumaran vide sale deed dated 20.12.1996 (Document No.1225 of 1996). The plaintiffs are residing in the suit house. The first daughter was given in marriage on 09.02.2000. The defendant / second daughter was given in marriage to one Paramasivam on 07.02.2002. The third daughter Marichitra was given in marriage on 27.05.2007. In connection with the third daughter's marriage, the plaintiffs borrowed a sum of Rs.2,10,000/-



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from the defendant on 01.05.2007. As security, the title document was also given to the defendant. The defendant wanted the plaintiffs to execute a mortgage deed and on 07.05.2007, the defendant took them to the Sub Registrar Office at Eral. Even though the plaintiffs were under the impression that they were executing a mortgage deed, actually the gift deed was obtained from them in respect of the suit properties. The plaintiffs are illiterate and the defendant took advantage of the same. The first plaintiff is a flower vendor, while the second plaintiff is only a home maker. The last daughter was given in marriage on 11.09.2008. The plaintiffs claim that they repaid the loan amount of Rs.2,10,000/- on 03.01.2011 and demanded the return of the title document and sought cancellation of the mortgage deed. It was only then the plaintiffs came to know that what was obtained from them was not a mortgage deed but a gift deed. Since the defendant did not come forward to cancel the document, the plaintiffs instituted the suit seeking for cancellation of the gift deed and for mandatory injunction for return of the title document. The defendant filed written statement and the plaint averments were denied. The defendant claimed that the suit properties were purchased out of the income earned by her and her sister Manimala and that only at



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the instance of the second plaintiff, the suit property was purchased in the name of the plaintiffs. The defendant extended financial assistance to the plaintiffs considering their economic condition. The defendant is residing in Karnataka with her husband and a girl child, and is running a sweet stall. The defendant gave Rs.2,10,000/- as gift at the time of marriage of Marichitra / her half-sister. She denied the allegation of fraud and misrepresentation. According to her, the plaintiffs voluntarily executed the gift deed in her favour considering the financial assistance extended by her. Since the defendant is living in Karnataka, she permitted the plaintiffs to reside in the suit property. It is only a permissive possession. The suit has been instituted at the instance of the second plaintiff who is the step-mother. The trial Court framed the necessary issues based on the rival pleadings. The first plaintiff examined himself as P.W.1. The other three daughters were examined as P.W.2, P.W.3 & P.W.4. The defendant and her husband examined themselves as D.W.1 & D.W.2. On the side of the plaintiffs, Ex.A1 to Ex.A11 were marked. On the side of the defendants, no documentary evidence was marked. After considering the evidence on record and arguments, the trial Court decreed the suit as prayed for vide Judgment



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and decree dated 11.03.2013. As already mentioned, the first appellate Court reversed the decision of the trial Court.

6. The specific stand of the plaintiffs is that in connection with the marriage of the third daughter namely Marichitra, they had to borrow a sum of Rs.2,10,000/- from the defendant who is the second daughter of the first plaintiff born through his first marriage. The defendant also admitted in the written statement that she gave a sum of Rs.2,10,000/- to the plaintiffs for the aforesaid reason. But she would deny that it was a loan. According to her, it was given more as a gift to meet the marriage expenses of the third daughter.

7.The Hon'ble Supreme Court in the decision reported in **1968 SCC OnLine SC 206 (vide Ningawwa vs Byrappa)** held as follows:

“5.The legal position will be different if there is a fraudulent misrepresentation not merely as to the contents of the document out as to its character. The authorities make a clear distinction between fraudulent misrepresentation as to the character of the document and fraudulent misrepresentation as to the contents Thereof. With reference to the former, it has



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been held that the Transaction is void,.while in the case of the latter, it is merely voidable.”

Therefore, the primary question that calls for consideration is whether there was a fraudulent misrepresentation as to the very character of the document executed by the plaintiffs thereby rendering the alleged gift deed void.

8. In its decision reported in **1990 Supp SCC 216** (vide ***Dularia Devi v. Janardan Singh***), the Hon'ble Supreme Court, considering the illiteracy of the plaintiff therein and a few attendant circumstances, held that the document executed by her was not the document she intended to sign and since there was fraudulent representation as to the very character of the document, it was void. The Hon'ble High Court of Orissa in ***Gurubari Bewa v. Jagadis Parida (1999 SCC OnLine Ori 269)*** set aside the gift deed by considering the suspicious circumstances related to the execution of the gift deed, including the illiteracy and old age of the donor. The relevant paragraph is as follows:

“12.Even there are certain suspicious circumstances relating to due execution of the deed of gift. **Dhadi was admittedly an illiterate person.** It is, of course, true that the scribe and the attesting



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witnesses have stated about the execution of the deed of gift on the basis of instruction of Dhadi and attestation thereof. **However, they have not stated anything about any independent advice being available to Dhadi.** Since Dhadi was admittedly an illiterate old man, the protection available to a Paradanasin lady was also available to him and the person relying upon transaction from such a person is required to prove that the document had been duly executed after independent advice was made available....That apart, **it appears that the entire homestead property of Dhadi Swain was sought to be gifted away along with certain other agricultural property.”**

The Hon'ble Division Bench of this Court in the decision reported in **1992 SCC OnLine Mad 154 (vide K. Varadhan vs Pattammal)** relied on Sections 101 and 102 of the Indian Evidence Act, 1872, and held that the onus is not on the plaintiff alleging fraud and misrepresentation, but on the defendant, in cases where plaintiff is illiterate. The relevant paras read as follows:

“8....One could easily, since the plaintiff alleged misrepresentation and fraud, ask her to prove the misrepresentation and fraud. **But not in a case where she being an illiterate and unaware of the contents signed the document. Unless fully and faithfully**



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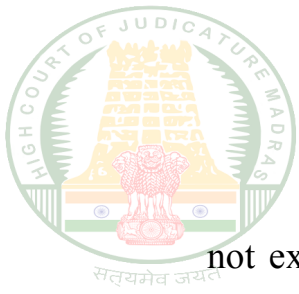


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**informed about the contents, she cannot be asked to bring evidence to prove her case.** Learned single Judge, in our opinion, is right in holding that the Court will not ask the plaintiff to prove the allegation, but demand from the defendant to disprove the allegation of misrepresentation and fraud. The learned single Judge, in our opinion, has taken the correct view of the law on the face that the 1st plaintiff is an illiterate woman who merely affixed her thumb impression. She is a woman who possibly could not act without help...

**10.** On the face of the above, we have no hesitation in holding that the **onus lay upon the defendant-appellant to show that the 1st plaintiff fully knew about the contents of the document of sale and that her story that she was made to believe that she was executing a deed of mortgage when she executed the document is not true.** The defendant-appellant has failed to discharge the onus in this behalf and the evidence as above positively proved that the sale is hit by the doctrine of *non est factum*."

9. It is not in dispute that the plaintiffs are not well educated. The first plaintiff is said to have studied only upto 5<sup>th</sup> standard. In the given circumstances, the onus lay on the defendant to show that the plaintiffs were aware of the nature of the document and the contents therein. Since the gift deed has to be attested by two persons, the document was attested by the husband of the defendant and one other person. The defendant has



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not examined the other attesting witness. Neither the person who typed the document nor the person who drafted the document were examined.

In other words, apart from the testimony of the defendant's husband, no other witness was examined by the defendant. On the other hand, her own elder sister Manimala spoke in support of the plaintiffs when she was examined as P.W.4. I am of the view that the defendant failed to discharge the onus cast on her to establish that the plaintiffs were aware of the nature of the document and the contents thereof. PW4 Manimala states in her deposition that the defendant was also not very financially well off. Thus the claim of the defendant that the amount of 2,10,000 rupees was given only as a gift does not sound probable.

10.The timing of the entire transaction is yet another suspicious circumstance that raises grave doubts as to the version projected by the defendant. The third daughter was given in marriage on 27.05.2007. The suit document was executed and registered on 07.05.2007 ie., 20 days earlier. If the defendant wanted to only help the plaintiffs without expecting anything in return, there was no need for her to obtain the gift deed from them. The fact that she collected the title document / parent



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deed reinforces the version of the plaintiffs that the defendant wanted some kind of security for the money given by her. The financial situation of the plaintiffs is yet another circumstance. It is not as if the plaintiffs are well-off. They were originally living in a thatched house. Later, the defendant would claim that under the aegis of the Government Housing Scheme, the present house was constructed. The defendant is residing in Hubli, Karnataka and is fairly well-off in comparison to the plaintiffs. She is running a sweet stall on her own along with her husband. The second plaintiff is the second wife of the first plaintiff. The Hon'ble Division Bench in **K. Varadhan vs Pattammal supra** endorsed the view of the Single Judge who had appreciated the fact that the property conveyed was the only house belonging to her and therefore she would not have thought it prudent to sell away that only house to deprive herself of even her right of residence. It is pertinent to note that even in the present case, the plaintiffs have no other property other than the suit property.

11.The defendant in her written statement claimed that her sister Manimala PW.4 and herself purchased the schedule property from their

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hard earned money. However PW4 herself states in evidence that it was the plaintiffs who purchased the suit schedule property from the funds acquired by sale of the then existing house property.

12. In these circumstances, it is improbable that the plaintiffs would have executed a gift deed out of love and affection for the defendant. It is true that an executant of the document is normally bound by the signature affixed to the document. But that would not be the case when the executants are illiterates as reiterated time and again by the Hon'ble Supreme Court. In the case on hand, the plaintiffs have specifically pleaded that they were taken to the Sub Registrar Office to execute the mortgage deed. But their signatures were taken in a gift deed. In other words, the plaintiffs have pleaded that there was a fraudulent misrepresentation as to the very character of the document. As noted above, the defendant did not discharge the onus cast on her to prove that the plaintiffs were aware of the character of the document executed by them.



13. As regards the essentials of a valid gift, the three Judges Bench of the Hon'ble Supreme Court in the decision reported in **(2021) 3 SCC 459 (Daulat Singh v. State of Rajasthan)**, held as follows:

22.A three-Judge Bench of this Court in *Naramadaben Maganlal Thakker v. Pranjivandas Maganlal Thakker* (1997) 2 SCC 255] had held that: (SCC p. 258, paras 6-7)

“6. Acceptance by or on behalf of the donee must be made during the lifetime of the donor and while he is still capable of giving.

*7.It would thus be clear that the execution of a registered gift deed, acceptance of the gift and delivery of the property, together make the gift complete. Thereafter, the donor is divested of his title and the donee becomes the absolute owner of the property.”*

24. At the outset, it ought to be noted that Section 122 of the Transfer of Property Act, 1882 neither defines acceptance, nor does it prescribe any particular mode for accepting the gift. The word “acceptance” is defined as “*is the receipt of a thing offered by another with an intention to retain it, as acceptance of a gift*”. (See Ramanatha P. Aiyar: *The Law Lexicon*, 2nd Edn., p. 19.)

25. The aforesaid fact can be ascertained from the surrounding circumstances such as taking into possession the property by the donee or by being in the possession of the gift deed itself. The only requirement stipulated here is that, the acceptance of the gift must be effectuated within the lifetime of the donor itself.



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26. Hence, being an act of receiving willingly, acceptance can be inferred by the implied conduct of the donee. The aforesaid position has been reiterated by this Court in *Asokan v. Lakshmikutty* [*Asokan v. Lakshmikutty*, (2007) 13 SCC 210] : (SCC pp. 215-16, para 14)

“14. Gifts do not contemplate payment of any consideration or compensation. It is, however, beyond any doubt or dispute that in order to constitute a valid gift acceptance thereof is essential. ***We must, however, notice that the Transfer of Property Act does not prescribe any particular mode of acceptance. It is the circumstances attending to the transaction which may be relevant for determining the question. There may be various means to prove acceptance of a gift. The document may be handed over to a donee, which in a given situation may also amount to a valid acceptance. The fact that possession had been given to the donee also raises a presumption of acceptance.***”

In civil proceedings, the standard of proof is one of preponderance of probability. It is improbable that the plaintiffs could have voluntarily and on their own volition and accord gifted the suit property to the defendant especially when they have no other property except the suit schedule property. As already noted, the suit document came to be executed on the eve of the marriage of the third daughter of the first plaintiff. The plaintiffs have continued to be in uninterrupted possession and enjoyment of the suit property ever since. Patta continued to remain in their name and they continued to pay electricity charges and kist. EB



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connection also stand in their name. There has been no mutation of the revenue records in favour of the defendant which is also a circumstance taken note of by the Hon'ble Supreme Court in ***Daulat Singh case***. Only when the plaintiffs demanded the return of the document, they came to know about the true character of the document executed by them. I am of the view that in these circumstances, there was no valid acceptance of the gift. Possession of the alleged gift deed alone will not amount to valid acceptance of the gift when the character of the document itself is disputed and is asserted to be a mortgage document.

14.The first appellate Court went more by the fact whether the physical delivery of the possession was necessary. After referring to few case laws, the first appellate Court rightly held that when the parties are closely related to each other, the physical handing over of the possession may not really be necessary. The proposition of law is beyond cavil. But that was not the real issue projected before the Court. The real issue was whether the doctrine of non est factum would come into play. The Hon'ble Supreme Court in the decision reported in **2023 SCC OnLine SC 1022** (vide **Ramathal v. K. Rajamani**) reiterated the test for a successful plea of *non est factum*. It reads as follows:



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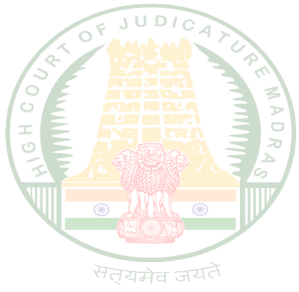
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“A. The person pleading *non est factum* must belong to “class of persons, who through no fault of their own, are unable to have any understanding of the purpose of the particular document because of blindness, illiteracy or some other disability”. The disability must be one requiring the reliance on others for advice as to what they are signing.

B. “The “signatory must have made a fundamental mistake as to the nature of the contents of the document being signed”, including its practical effects.

C. The document must have been radically different from one intended to be signed.”

15. After a careful consideration of the evidence on record and the circumstances surrounding the transaction, I am more than satisfied that all the criteria mentioned above have been pleaded and proved. The trial Court rightly came to the conclusion that the plaintiffs were misled into executing the deed of gift. The additional substantial question of law is answered in favour of the appellants. It is not necessary to answer the other substantial questions of law that were originally formulated.



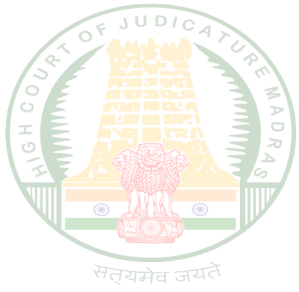
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16.The fact remains that the plaintiffs had borrowed a sum of Rs.2,10,000/- from the defendant. It is their admitted case. The claim of the first plaintiff that this money was returned is not backed by any proof. The plaintiffs on their own execute an affidavit before this Court that they would deposit a sum of Rs.5,00,000/- to the credit of O.S.No.25 of 2011 on the file of the Sub Court, Thoothukudi within a period of 12 weeks and that the same can be withdrawn by the defendant towards full and final satisfaction of all her claims.

17.In view of the undertaking affidavit submitted by the appellants, the second appeal is disposed of in the following terms:-

(I) The Judgment and decree passed by the first appellate Court is set aside. The decision of the trial Court is restored.

(II) The plaintiffs / appellants are directed to deposit a sum of Rs.5,00,000/- to the credit of O.S.No.25 of 2011 on the file of the Sub Court, Thoothukudi within a period of 12 weeks from the date of receipt of a copy of this order.



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(III) It is open to the defendant to withdraw the said amount towards full and final satisfaction of all her claims.

No costs.

**08.05.2025**

NCC : Yes/No  
Index : Yes / No  
Internet : Yes/ No  
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To:

1. The II Additional District Judge, Tuticorin.
2. The Sub Court, Tuticorin.

Copy to:

The Section Officer,  
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Madurai Bench of Madras High Court,  
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**G.R.SWAMINATHAN, J.**

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