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AS.No.327 of 2015

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 04.02.2022

PRONOUNCED ON : 14 .06.2022

CORAM

THE HONOURABLE MR.JUSTICE A.A.NAKKIRAN

AS.No.327 of 2015

(Through Video Conferencing)

S.Manjula

Appellant

Vs

1. G.Shoba
2. S.Devaki
3. S.Shilpa
4. Vajrammal

5. The Sub-Registrar, Veppanpalli
Krishnagiri

Respondents

Prayer:- This Appeal Suit has been filed, under Order 41 Rule 1 read with Section 96 of CPC, against the judgement and decree, dated 01.04.2015, made in OS.No.50 of 2014, by the Principal District Court, Krishnagiri.

For Appellant : Mr.G.Suryanarayanan

For Respondents : Mr.V.Raghavachari -RR1 to 4
: No appearance-R5

JUDGEMENT

1. This Appeal Suit has been filed, by the Plaintiff , against the judgement and decree, dated 01.04.2015, made in OS.No.50 of 2014, by the Principal District Court, Krishnagiri.
2. The case of the Plaintiff , as set out, in the plaint is that the 4th Defendant is the mother of the Plaintiff and the 1 to 3 Defendants. The suit property and



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other properties belonged to the 4th Defendant. The 4th Defendant had gifted the suit property, by a Registered Gift Deed dated, 13.06.2012, in favour of the Plaintiff and the Defendants 1 to 3 and since then, they have been in possession of the same and they became the absolute owners of the same. The gift deed is an irrevocable and unconditional one. The Plaintiff and the Defendants 1 to Defendants had sold 0.37 cents of land out of the Ac.2.37, by a sale deed, dated 19.09.2013 and paid the amount to the 4th Defendant for her needs. Even in the sale deed, dated 19.09.2013, the 4th Defendant is also an attesor. Thus, the remaining 2.00 acres is their absolute property. The Plaintiff and the Defendants 1 to 3 are each entitled to 1/4th share in the same. On 01.04.2014, the Plaintiff learnt that on 01.11.2013, the 4th Defendant executed a deed of cancellation of the gift deed, dated 13.06.2012, which cannot be sustained in law. According to GO.Ms.No.139, dated 25.07.2007 and the decision of this Court reported in (2012) 5 MLJ 169, the Sub-Registrars have been directed not to cancel any document without consent of other party. The 4th Defendant is making arrangements to alienate the suit property. Hence, the suit has been filed for declaration that the deed of cancellation of Gift deed, dated 01.11.2013 is null and void and not binding on the Plaintiff and 1 to 3 Defendants and for permanent injunction against the 4th Defendant and for partition to divide the suit property into 4 equal shares and to allot one such share to the Plaintiff and for costs.

3. The case of the Defendants 1 to 4, as set out in the written statement, filed by the 4th Defendant and adopted by the Defendants 1 to 3 is that the Plaintiff



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have no cause of action. The averments relating to the alleged gift deed and that the Plaintiff and the Defendants 1 to 3 had obtained possession of the suit land are totally denied. The original document is still retained by the 4th Defendant with the consent and concurrence of the Plaintiff and the Defendants 1 to 3 on 01.11.2013. This Defendant totally refutes the fact that the Plaintiff and the Defendant 1 to 3 have become absolute owners and the 4th Defendant had lost her right by virtue of the gift deed executed in favour of the Plaintiff and Defendants 1 to 3. The alleged gift deed was not executed in favour of the Plaintiff and the Defendant s 1 to 3 out of her own volition. In fact, the Plaintiff had persuaded her and compelled her to execute the settlement deed in favour of the Plaintiff and the Defendants 1 to 3, by giving false assurance to take care of her. The Plaintiff's actions were adverse to the interest of the Defendants 1 to 3. The revenue records and assessment still stands in the name of the 4th Defendant. The settlement deed, dated 13.06.2002 is a sham and nominal document. The alleged sale deed, dated 19.09.2013 will not bind the 4th Defendant. It is totally false to state that the Plaintiff and the Defendant s 1 to 3 had paid the amount to this Defendant. The Plaintiff approached the Defendants 1 to 4 and requested for money to settle the loan amount to the creditors and then sell the suit property, ad-measuring 0.37 cents out of 2.37 acres to one Krishnan by a registered sale deed. The Plaintiff alone took the entire sale consideration of Rs.13 lakhs for her personal needs. She had executed the cancellation deed dated 01.11.2013 with the consent and concurrence of the Plaintiff and the



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Defendants 1 to 3. The 4th Defendant executed the gift deed in favour of the Plaintiff and Defendants 1 to 3 on 13.06.2012 by compulsion of the Plaintiff.

As on the date of execution of the gift deed, the Defendants 1 to 3 have not accepted. The 4th Defendant is in possession and enjoyment of the suit property. Hence, the suit is liable to be dismissed.

4. The 5th Defendant, by filing a separate written statement, has contended that the 5th Defendant undertakes to abide by the order of this Court order and that the Plaintiff has no cause of action against the 5th Defendant. The Court fee paid as also the valuation made, are improper. The description of the suit property is not accurate. The Plaintiff is not entitled to any relief whatsoever against the 5th Defendant. Hence, the suit is liable to be dismissed.

5. On the pleadings of the parties, the following issues were framed by the Trial Court:-

1. Whether the Plaintiff is entitled for declaration that the deed of cancellation of the gift deed, dated 01.11.2013 is not valid?
 2. Whether the Plaintiff is entitled for permanent injunction as prayed for?
 3. Whether the Plaintiff is entitled to 1/4th share in the suit property?
 4. Whether the 4th Defendant is in possession of the suit property?
 5. To what other reliefs?
6. Before the Trial Court, on the side of the Plaintiff, Ex.A1 to Ex.A5 were marked and PW.1 to PW.4 were examined. On the side of the Defendants, DW.1 was examined. The Trial Court had dismissed the suit. Aggrieved against the same, this Appeal Suit has been filed by the Plaintiff .
7. This Court heard the submissions of the learned counsel on either side.



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8. The learned counsel for the Appellant has submitted that the Appellant has filed the suit for declaration of cancellation of the gift deed as null and void and for partition of the suit property. Her mother executed an irrevocable gift deed in favour of the Plaintiff and the Respondents 1 to 3. Later on, she cancelled the gift deed without her knowledge. She sold the certain portion of the suit property and the sale amount was not given to this Appellant and this Appellant acted upon only the welfare of the 4th Respondent. To prove the gift deed, she examined PW.2 and PW.3 as attesting witnesses and also marked five documents. The 4th Respondent examined herself. To prove her contention, no document has been marked. In the document itself, it is clearly mentioned that the possession was handed over on the date of the execution of the gift deed. Ex.A1 is a registered gift deed and therefore, she cannot revoke the settlement deed unilaterally. The question of cancellation does not arise. In the gift deed itself, it is clearly mentioned that it is an irrevocable gift deed. Before revoking it, no notice has been sent. The gift deed is acted upon. Hence, he prays for allowing this appeal.

9. The learned counsel for the Respondents 1 to 4 would submit that the 4th Respondent is the mother of the Appellant and the Respondents 2 to 4 are her daughters. She executed a sale deed in favour of her daughters. 37 cents has been sold and the gift deed was not acted upon and the possession was with the 4th Respondent only and the Respondents 1 to 3 consented to cancel the gift deed. The Defendants 1 to 3 admits that the settlement deed was not acted upon.



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10.This Court considered the submissions of the learned counsel on either side and also perused the materials available on record.

11.PW.1 has deposed that she and the other Defendants 1 to 3 are the daughters of the 4th Defendant. The suit property belonged to her mother. The total extent of the property is 2.37 acres. On 13.3.2012 her mother executed an unconditional gift deed in favour of the daughters. She also wrote that this gift deed is an irrevocable one. From that day onwards, they became the absolute owners and the 4th Defendant had lost her right over the property. She has further deposed that as per the request of her mother, she sold the property to Krishnan on 19.9.2013 and handed over the sale consideration to her mother. After that, she demanded partition of 1/4th share in her favour. On 1.4.2014, she once again demanded for partition. At that time, she came to know that it was cancelled by her mother. That cancellation is not legally valid. She has no right to cancel the gift deed. The Sub Registrar should not have registered it. The 4th Defendant and the 5th Defendant acted illegally. So, the cancellation is not binding on her.

12.DW.1 has deposed that she denied that she has executed a gift deed and handed over possession of the suit property to the Plaintiff and the Defendants 1 to 3. The original documents are with her. Patta, chitta and other revenue records are standing in her name only. She has not settled any property and they are also not accepted. She has further deposed that out of 2.3 acres, she sold 37 cents of lands to one Krishnan. The entire sale consideration was taken away by the Plaintiff. The Plaintiff pretends that she



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got right through the gift deed. Then only she came to know the gift deed and that she was cheated and the gift deed was obtained in favour of her daughters. Then she cancelled the gift deed. They are acting against her welfare. The suit property belongs to her. The Plaintiff and the Respondents 1 to 3 cannot claim any right or share in that property. The cancellation of the gift deed is valid.

13.A perusal of Ex.A1 reveals that it was executed by Vajrammal to her daughters and the Plaintiff and the Defendants 1 to 3. In the deed, it is mentioned that possession was handed over and in Ex.A1 it is mentioned as follows:-

“vf;fhuzj;ijf;bfhz;Lk; ehd; ,e;j jhdbrl;oy;bkz;l; Mtzj;ij uj;J bra;ag;nghtjpy;iy vd;Wk; vd; kd rk;kjpapy; vGjpbfhLj;j jhd brl;oy;bkz;l; Mtzk; rhp/”

14.The Plaintiff's contention is that having executed the gift deed in their favour and when the possession was also handed over on the same day and the gift deed is an unconditional and irrevocable one, the 4th Defendant cannot cancel the gift deed unilaterally without giving notice and it is illegal and unsustainable in law.

15.The contention of the Defendants is that she has never executed any settlement deed in favour of the Plaintiff and the Defendants 1 to 3 and handed over possession to them. The Plaintiff cheated her and created the gift deed. She came to know that she cancelled the gift deed. Possession was with her and the Plaintiff cannot claim any right over the suit property based on the gift deed. Cancellation of the gift deed is valid and the gift deed is not acted upon.



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16.PW.1 in her cross has deposed that “vd; jhahh; mtuhf gphpag;gl;L jhdbrl;oy;bkz;L Mjhuk; vGjp itj;jhh;/ vd; jhahnu gphpag;gl;L mij uj;Jk; bra;Jtpl;lhh;///// jhdgj;jpuk; vGjp th';fpa brhj;jpy; ehd; tptrhak; bra;at[k; ,y;iy mij ehd; mDgtpf;ft[k; ,y;iy//////// 2 Vf;fh; 37 brz;l;oy; 37 brz;l; epyj;ij vd;jhahUf;fhf tpw;W vd; jhahUf;F bfhLj;njd; vd;W tHf;Fiuapy; brhy;yp ,Uf;fpnwd; vd;why; rhpjhd;/ jhdbrl;oy;bkz;L brhj;jpd; kPJ vd; mk;khtpw;F chpik cs;sJ vd;why; rhpjhd;/ vd; mk;khtpw;F nkw;go brhj;jpy; chpik ,Ug;gjhy; jhd; 37 brz;l; epyj;ij tpw;w gzj;ij vd; mk;khtplk; bfhLj;jjhf TWfpnwd;/ ,d;Wk; 2 Vf;fh; brhj;ij vd; mk;khjhd; mDgtpj;J tUfpwhh;”

17.Reliance is placed on 2014 9 SCC 445 (Renikuntla Rajamma Vs. K.Sarwanamma) by the Plaintiff and in the said decision, it was held thus:-

“20. In the case at hand as already noticed by us, the execution of the registered gift deed and its attestation by two witnesses is not in dispute. It has also been concurrently held by all the three courts below that the donee had accepted the gift. The recitals in the gift deed also prove transfer of absolute title in the gifted property from the donor to the donee. What is retained is only the right to use the property during the life time of the donor which does not in any way affect the transfer of ownership in favour of the donee by the donor.”

18.In this case, the 1st Defendant has relied upon 2013 9 CTC 318 (Kali Naicker and others Vs. V.Jaganathan and others) wherein it was held as follows:-

“14. The above said ratios laid down by the various judgements referred to supra would leave no doubt that to establish a valid gift, there has to be acceptance supported by relevant materials. As discussed above, admittedly there is no material to support the contentions of the Plaintiffs that the gift deed executed in their favour by their grand father has been acted upon.”

19.The above said decision is squarely applicable to the contentions of the 1st



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Defendant that the possession was not handed over and it was not acted upon. The court below, after perusal of the documentary and oral evidence, came to the proper conclusion and no interference is warranted. Hence, this appeal is liable to be dismissed.

20. In fine, this Appeal Suit is dismissed. No costs.

14.06.2022

Index:Yes/No
Web:Yes/No
Speaking/Non Speaking
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To

1. The Principal District Court, Krishnagiri
2. The Record Keeper, VR Section, Madras High Court



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A.A.NAKKIRAN, J.

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Pre-Delivery Judgement in
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