

IN THE COURT OF THE MUNSIFF PUNALUR

Present: - Sri. Rajeev.V, B.Sc, LLB, Munsiff

Wednesday 19th day of February, 2020/ 30th day of Magha, 1941.**OS.172/2015****Between**

Plaintiff : Podiyan, aged 59, S/o Krishnan, Maruthivila veedu, Karavalur muri, Karavalur village, Punalur Taluk. Represented through next friend Seetha, aged 57, D/o Kalyani, Maruthivila Puthen veedu, Karavalur muri, Karavalur village, Punalur Taluk. **(By Adv. A.Kunjukrishnan).**

Defendant : Radhamani, aged 34, D/o Bhavani, Maruthivila Veedu, Karavalur muri, Karavalur Village, Punalur Taluk from Vengavila veedu, Nellippalli kara, Valacodu Village, Pathanapuram Taluk. **(By Adv. G.Harikrishnan).**
(Exparte)

This Suit is coming on for hearing before me on 19.02.2020 and on the same day the Court passed the following.

JUDGMENT

1. Suit for declaration and setting aside gift deed.
2. The plaint averments, in brief, is as follows:- The plaintiff is deaf and dumb and is of unsound mind. The suit is filed by the plaintiff through his next friend. Plaint schedule property belongs to the plaintiff by virtue of settlement deed No. 3530/1988. The plaint schedule property is in

the absolute ownership and possession of the plaintiff after the death of his mother. The defendant is the grand daughter of sister of mother of the plaintiff. As the plaintiff is deaf, dumb and is of unsound mind the defendant used to reside along with the plaintiff in order to assist him and to nurse him. While so, it was learnt that the defendant who knows that the plaintiff is deaf, dumb and is of unsound mind, had executed a gift deed as 1860/09. The plaintiff got knowledge about the same when the defendant attempted to dispose of the property. The said gift deed is void abinitio and is liable to be set aside for the following reasons:-

- a) The plaintiff who is deaf, dumb and of unsound mind is not legally entitled to execute the said deed and no permission was obtained by the Hon'ble district Court in this regard.
- b) plaintiff has not surrendered the possession of plaintiff schedule property to the defendant. It is the plaintiff who has produced the gift deed and received back

the same from the SRO. That itself shows that the gift deed has not come into effect.

3. Deed No 1860/09 does not confer any right or possession to the defendant. The defendant attempts to alienate the property and to evict the plaintiff forcibly from the plaint schedule property. Hence the suit is filed praying for declaring that the gift deed No. 1860/09 is void abinitio and to declare that the plaintiff has title and possession over the plaint schedule property. It is also prayed to restrain the defendant from forcibly evicting the plaintiff from the plaint schedule property, from creating any document with respect to the plaint schedule property, from causing any obstructions to the possession and residence of the plaintiff in the plaint schedule property and also from committing any waste in the plaint schedule property. The plaintiff also prays for a mandatory injunction directing the defendant to vacate from the plaint schedule property.
4. Along with the suit, the next friend of the plaintiff has

filed IA 908/15 to appoint her to institute the suit as the next friend of the plaintiff. On 31/3/2019, the plaintiff was present with the proposed next friend and my learned predecessor has allowed the I.A and appointed Smt. Seetha as the next friend of the plaintiff.

5. The defendant entered appearance and has filed written statement.
6. On the basis of the above pleadings, my learned predecessor has framed issues and thereafter the suit was amended and the defendant has also filed additional written statement. Thereafter, I have recast the issues on 16/10/2019 and the case was posted for pre-trial steps. On 20/11/2019 both sides were represented and I have ordered to include the case in the special list on 3/2/2020. On 3/2/2020, the next friend of the plaintiff has filed an affidavit in lieu of examination in chief and documents Exts. A1 to A4 and C1 to C1(b) were marked. Ext. C1 is the certified copy of deed No. 2250/88. Ext. A2 is the certified copy of deed No 1860/09. Ext. A3 is the

disability certificate dated 3/7/2001 and Ext. A4 is the pass book issued by the government of Kerala bearing No. KL KLM HI 253. The report, mahazar and rough sketch which are prepared by the advocate commissioner are marked as Exts. C1, C1(a) and C1(b). As there was no representation for the defendant on 3/2/2020, she was set exparte.

7. Heard the counsel for the plaintiff on 7/2/2020. Counsel for the petitioner has argued that the plaintiff is deaf, dumb and is of unsound mind and that he has no legal ability to execute deed No. 1860/09. Further he points out that possession of the plaint schedule property is still with the plaintiff and therefore the gift deed has not come into effect. He also contends that no examination as per the registration rules is seen made by the Sub Registrar before executing the deed.
8. Rule 71 of Registration Rules (Kerala) states that a document executed by a person who is unable to read shall be read out and if necessary explained to him and

that when a party to be examined is deaf, dumb or blind recourse must be had to the means by which he make himself understood. Exts. A3 and A4 are documents produced from the side of the plaintiff to show that he is deaf, dumb and of unsound mind. There is nothing in Ext. A2 to the effect that the procedure as laid down in Rule 71 of the Registration Rules (Kerala) is complied with. On considering the above circumstances and also considering the unchallenged affidavit in lieu of examination in chief filed by the next friend of the plaintiff and the documents marked, I am satisfied that the case of the plaintiff stands proved.

9. In the result the suit is decreed as follows:-

- 1) It is declared that the gift deed No. 1860/09 of SRO Punalur is void abinitio.
- 2) It is declared that the title and possession of the plaint schedule property is with the plaintiff.
- 3) The defendant is restrained by a permanent prohibitory injunction from causing any obstructions to the possession and residence of the plaintiff in

the plaint schedule property, from creating any documents with respect to the plaint schedule property, from forcibly evicting the plaintiff from the plaint schedule property and also from committing any waste in the plaint schedule property.

- 4) The defendant is directed by a mandatory injunction to vacate from the plaint schedule property within a period of 3 months from today.

Pronounced by me in open court on 19th day of February, 2020.

Sd/-
Munsiff

Appendix:

Witness for the plaintiff

PW1 03.02.2020 Seetha.

Exhibits for the plaintiff.

A1 01.11.88 Certified copy of Settlement deed No.3530/88

A2 04.06.09 Certified copy of deed No. 1860/09.

A3 03.07.01 Disability Certificate.

A4 01.10.01 Pass Book No. KL KLM H1 253

Court Exhibits

C1	01.04.15	Report Submitted by the Commission Adv. R.Sajilal.
C1(a)	01.04.15	Mahazar prepared by the Commission Adv.R.Sajilal.
C1(b)	01.04.15	Rough Sketch prepared by the Commission. Adv.R.Sajilal.

Id/-
Munsiff.

//True copy//

Typed by : Shiham. A
Compd.by:

MUNSIFF