

IN THE COURT OF THE MUNSIFF, PUNALUR
 PRESENT :-Smt. Reshma.R.S, Munsiff.
 Friday the 30th day of June 2023/ 9th day of Ashada, 1945.

OS. 172/2015

Between

Plaintiff : Podiyan, Aged 59, S/o Krishnan, Maruthivila Veedu,
 Karavaloor muri, Karavaloor Village, Punalur Taluk.
 Represented through next friend Seetha, aged 57,
 D/o Kalyani, Maruthivila Puthen Veedu,
 Karavaloor muri, Karavaloor Village, Punalur Taluk.
(By Adv.S.R. Amrit & Adv. A. Kunju Krishnan)

And

Defendant : Radhamani, aged 34, D/o Bhavani,
 Maruthivila Veedu, Karavaloor muri,
 Karavaloor Village, Punalur Taluk,
 From Vengavila Veedu, Nellipalli kara,
 Valacodu Village, Pathanapuram Taluk.
(By Adv.G. Harikrishnan)

This suit is coming on for final hearing before me on
 29.06.2023 stood over for consideration to 30.06.2023 and on the
 same day court delivered the following.

JUDGMENT

Suit for declaration and permanent prohibitory injunction.

2. **The plaint averments, in brief, are as follows:-** The
 plaintiff is deaf and dumb and mentally retarded. His next friend
 represents him. The plaint schedule property devolved on the
 plaintiff by virtue of a settlement deed number 3530 of 1988.
 After the death of the plaintiff's mother, he is exercising his
 absolute rights over the plaint schedule property and is residing

on the house situated therein. The defendant is plaintiff's cousin. The defendant is also residing along with the plaintiff so as to look after him. The defendant utilising the situations, caused the plaintiff to execute a gift deed number 1860 of 2009 of Punalur SRO. The gift deed does not confer any right on the defendant. Now, the defendant tries to alienate the plaint schedule property and evict the plaintiff from the house situated therein. Hence, this suit.

3. The defendant filed the written statement contending as follows:- According to the defendants, the suit is not maintainable either in law or on facts. The plaintiff is a sound person. Plaintiff is able to represent his interest. The plaintiff only has partial speaking difficulty. In spite of that, he is able to communicate with his familiar people. Plaintiff does not need any other person to represent his interest. He has bank account and post office savings bank account. He withdraws his pension from the bank account by himself. His name is there in the voters list and he exercises his franchise every time. The plaintiff was able to manage his property and also to create deeds in respect of the same. He goes to work every day. Plaintiff is the uncle of the defendant, and the defendant resides along with the plaintiff and

his family since his childhood. Even after her divorce, she resided with the plaintiff and his family. It is the defendant who took care of the plaintiff's mother and his sister during their last times. Because of the love and affection towards the defendant, plaintiff's mother always wanted the plaintiff to give the plaint schedule property to the defendant. The person claiming to be the next friend was residing near the plaint schedule property. But she never looked after the plaintiff or his family. There were even boundary disputes between the plaintiff's family with the present next friend's family. After the death of the plaintiff's mother, the present next friend and her family threatened the plaintiff to transfer the plaint schedule property in their name. Hence, the plaintiff handed over the title deed of the property to Thomas. Even the present next friend and her family attempted to kill the plaintiff by poisoning. At the request of the plaintiff, the defendant and her two daughters shifted to the plaint schedule property and started to reside there along with the plaintiff. Out of natural love and affection towards the defendant, the plaintiff gifted the plaint schedule properties to the defendant as per gift deed no. 1860/2009. The plaintiff executed the said deed after consulting with his other relatives. Before the registration of the

deed, the Sub Registrar inquired with the plaintiff regarding his consent to execute the deed, and after understanding his intention, the gift deed was registered. The plaintiff retained his life interest in the plaint schedule properties. Thereafter, the plaintiff handed over the gift deed and the prior deeds to the defendant. In pursuance, the defendant effected mutation in her name and is paying land tax for the same. The present next friend had no right to institute a suit in the name of the plaintiff. The suit is liable to be dismissed with costs.

4. From the rival contentions, the following issues were raised for consideration:-

- 1) Whether the suit is barred by law of limitation?
- 2) Whether the prayers of the plaintiff to declare deed no. 1860/2009 as void ab initio is allowable?
- 3) Whether the prayers of the plaintiff for declaration of title and possession over plaint schedule property is allowable?
- 4) Whether the plaintiff is entitled for a permanent prohibitory injunction as sought for?
- 5) Whether the plaintiff is entitled to a mandatory injunction as prayed for?
- 6) Reliefs and costs?

5. Heard both sides and perused all the available records.
6. From the side of plaintiff PW1 to PW3 were examined and Exts. A1 to A4 were marked. From the defendant's side, DW1 to DW3 were examined and Exts. B1 and B2 were marked.
7. **Issues Nos.1 to 5:-** To avoid repetition of facts and for convenience all these points are considered together. The plaintiff is represented by his next friend. According to the plaintiff, the gift deed no. 1860/2009 is void ab initio, as it was not executed by the plaintiff voluntarily. The plaintiff is a deaf and dumb and a mentally ill person and hence he is not aware of the consequences of his act. Per contra, the learned counsel for the defendant submitted that the plaintiff is a sound person and has only partial speaking difficulties. He is aware of all the facts and consequences of his acts. The learned counsel for the plaintiff, relied on the decision of this court in IA 908/2015, wherein it was found by this court that "plaintiff could not speak and hear. He appears to be not in fit state of mental condition." According to the counsel, the defendant does not challenge this finding by invoking any of the ways available to him. Hence, this finding has

become final and now the defendant is precluded from taking a different stand. It was submitted that only after due enquiry court has appointed a next friend, as the plaintiff was unable to protect his interests. According to the learned counsel for the plaintiff, the defendant herself admitted the fact of the condition of the plaintiff during her cross-examination. During her cross-examination, the defendant admitted the fact that the plaintiff is deaf and dumb by birth. Hence, the deed alleged to be registered by the plaintiff is void ab initio. The learned counsel for the plaintiff relied on the Registration Rules to substantiate his contention.

8. Rule 71 of the Registration Rules (Kerala) provides that “A document executed by a Person who is unable to read shall be read out and, if necessary, explained to him. A document written in a language not understood by the executing party shall, in the like manner, be interpreted to him. When a party to be examined is deaf, dumb or blind recourse must be had to the means by which he makes himself understood.” The learned counsel for the plaintiff relied on the above rule and submitted that the deed alleged to be executed by the plaintiff in favour of the defendant is not valid, as it does not fulfill the legal mandate under the

Registration Rules. It is an admitted fact that the plaintiff is a deaf and dumb person by birth. In such parlance, when such a person executed a document, the mandate under the Rules must have been complied with. A perusal of the Ext. A2, makes it clear that no such formalities seen complied with. Ext. A3, the disability certificate produced from the side of the plaintiff makes it clear that he has bilateral profound hearing loss. But nothing is there in the Ext.A2, to prove that the plaintiff is a deaf and dumb person and that the procedural mandate under Rule 71 have been complied with. The learned counsel for the plaintiff also submitted that the certificate of the interpreter is also necessary. That also is not seen complied with. Hence, according to the plaintiff, the registration is illegal and the document so executed cannot confer any right or title through it. It was further submitted that as the document itself is void ab initio, the law of limitation is not applicable in such a case. But the contention of the learned counsel for the defendant was that if the plaintiff could understand the language of an interpreter, then there is no need of a next friend and the plaintiff could very well protect his interest. According to him, the defendant is able to understand things and hence, the non-compliance of Rule 71 is not fatal.

9. The learned counsel for the defendant argued that the institution of the suit is barred by the law of limitation. According to him, the next friend already had the knowledge of the transaction and she approached the court after the period of limitation. During her cross-examination, PW1 deposed to the effect that she had knowledge of the transaction in 2011 itself and there was boundary dispute between the defendant and Reji George, one neighbour and they approached the Kottatakara Court in 2011 itself. PW1 deposed that incident occurred after the property was given to the defendant. Thus, the evidence given by the PW1 makes it clear that she had knowledge of the transaction in 2011 itself. But she approached the court only in 2015. According to the learned counsel for the defendant, Article 58 of the Limitation Act has application, and the suit must have been filed within 3 years. The learned counsel for the plaintiff contended that as the document itself is void, no question of limitation would arise. In the decision in **Belcita Vincent Gomez v. Vincent Gomez and Others**, reported in **2013 (4) KHC 748**, it was held that article 58 of the Limitation Act applies only to cases where declaration simpliciter is sought for without any

further relief. In light of this decision when this case is considered, it can be seen that, along with declaration, other consequential reliefs are also sought, hence Ar. 58 of the Limitation Act will not apply. Thus, issue no.1 is answered accordingly.

10. The learned counsel for the plaintiff stressed on the point that the plaintiff was not mentally fit. To substantiate his version, he relied on the decision, **Mary v. Leelamma and Another**, reported in **2020 (3) KLJ 677**, in which it was held that *“Cognitive skills are used to comprehend, process, remember, and apply incoming information to create an external reaction. The cognitive skills are the core skills a person's brain uses to think, read, learn, remember, reason, and even pay attention. The cognitive functions enable us to orient ourselves in the world, making us aware of the various dangers and rewards, assimilate the main sources of pleasure and pain, and are also the means by which we receive information from others. An infirmity in the cognitive faculty which impairs the skills of perception, discernment, comprehension and thought, will necessarily have an impact on the mind. A hearing impaired person becomes dumb on account of the impairment of his skills*

of perception, discernment, comprehension thought and response. Living as a deaf and dumb person, has a debilitating effect on the mental faculties of comprehension, thought, communication and even response. These faculties when affected will have an effect on the person's capacity to protect his civil rights. In the matter of communicating his views about his civil rights, a deaf and dumb person will be weak. If the impairment of hearing is to such an extent that it is almost difficult to communicate with that person, or even comprehend any reply given by him, except by understanding the signs by which one communicates with him, then there arises a weakness of the mind. This weakness, akin to an infirmity, makes it almost impossible for any person, other than those intimately acquainted with that person or a trained interpreter, either to reach his mind or to interpret it. When the infirmity of hearing is to such an extent that no one, other than those closely associated with that person or an interpreter alone is able to communicate and reach that person's mind, then, that infirmity could be regarded as a mental infirmity for the purpose of O.32 R.15 of the C.P.C. Such a person though not mentally unsound, is, for the purpose of O.32 R.15 of the Code of Civil Procedure, 1908,

a person who is mentally infirm.

11. In light of the above decision, when the facts of this case are considered, it can be seen that the plaintiff in this case is a person with bilateral profound hearing loss and he is diagnosed with above 70% of disability. Thus, he can be considered as a mentally infirm. The learned counsel for the plaintiff argued that in such a case, the procedure under the Registration Rules (Kerala) needs to be complied with. But a perusal of the records will make it clear that the procedural formalities are not complied with.

12. Also, nowhere in the Ext.A2 document, it is provided that the executant is a deaf and dumb person. In **Mary** (supra) it was further held that *"In this context, reference to S.34 of the Indian Registration Act, 1908 and the Rules made thereunder may be apposite. Under S.34(3) of the Indian Registration Act, Registering Officer is bound to enquire whether the document was executed by the person whom it purports to have been executed and also satisfy himself as to the identity of the persons appearing before him and also as to whether they have executed the document. Under R.71 of Registration Rules (Kerala), it is provided that "A document executed by a Person who is unable to read shall be*

read out and, if necessary, explained to him. A document written in a language not understood by the executing party shall, in like manner, be interpreted to him. When a party to be examined is deaf, dumb or blind recourse must be had to the means by which he makes himself understood." Nowhere in Ext.A1 or Ext.A2 has it been mentioned that one of the parties to the document is deaf and dumb. Had it been so mentioned, the Sub-Registrar would have read out and explained the contents of the document to such party. This Court finds that the failure to inform the Sub-Registrar about the deafness and dumbness of one of the parties to the document was a deft method in playing fraud." In light of this decision, it can only be concluded that there was an attempt of fraud in the execution of the Ext. A2 deed and hence it cannot be considered as a validly executed one. Also, a perusal of the Ext. B1 document would make it clear that the photograph pasted on it, as that of the defendant is a newly pasted one. This court is of the view that the photograph of the defendant is a newly affixed one, as there is no seal on its left end corner of the photograph. It is a usual practice that the seal of the Sub Registrar will be affixed on the photograph and the deed. Here, in Ext. B1 it is clear that the photograph of the defendant is a newly

affixed one as the seal is missing. It does not seem to be a mechanical omission as the photograph of plaintiff seems to be genuine. In that aspect also, this court is of the view that there is an element of fraud in the execution of the deed. Thus, issue no. 2 is answered accordingly.

13. The learned counsel for the defendant argued that since being a party to the document, the plaintiff must have approached the court for cancellation and not for a declaration. But the counsel for the plaintiff submitted that as the document is void ab initio, there is no need to ask for a cancellation. He placed his reliance on the decision in **Chelathukandy Meenakshi Amma v. Parappurathu Unni Nair and Other**, reported in **2017 (2) KLJ 247**, it was held that, "It is true that in case a document suffers from voidability, the party who want to challenge the said document, has to seek the cancellation of such document or a relief to get such document set aside. When a document is per se illegal, in the sense that it is void ab initio, a party need not seek for the cancellation of such a document." As the present document is void ab initio, the plaintiff have approached the court for a declaration.

14. According to the defendant, the plaintiff is not a mentally infirm person. He can understand things and he can also write. Also, the plaintiff go for work and he manages his own bank account. He is only a partially deaf and dumb person only. The counsel placed his reliance on the Ext.A3 document and submitted that the plaintiff only has hearing loss and no other infirmities. Also, the plaintiff purposefully evaded from the examination by doctor. Another contention of the defendant was that the plaintiff himself applied for the certified copies of the Ext. A1 and A2 documents and that itself shows that he is a capable person. A specific question was put in this regard to PW1 to which she did not answer.

15. The learned counsel for the defendant argued that even though, the defendant did not challenge the order in IA 908/2015, the case of the defendant from the very beginning was that the plaintiff is a sound person. To substantiate his claim, the plaintiff placed her reliance on the decision in 1987 KHC 426. It was held that it is necessary to raise a preliminary issue on the point and decide that. In this case, court did not raise such an issue, because it was not necessary. Hence, there was no need of an

interpreter at the time of the registration. According to the defendant, the registration of Ext. A2 deed is a valid one. Hence, the defendant has mutated that property and is paying land tax for the same. Ext. B2, the land tax receipt was also produced.

16. The case of the defendant from the very beginning is that the plaintiff is a sound person and has only partial speaking difficulty. It is the plaintiff who applied for pension and he himself withdraws the amount from the bank accounts. PW1 deposed that plaintiff has exercised his franchise also. But there is no evidence on record to substantiate all these things.

17. After analysing the rival contentions and evidence on record, it can be concluded that the plaintiff is a deaf and dumb person. Ext. A4, the disability certificate proves that he has bilateral profound hearing loss above 70%. Hence, going by the decision in **Mary** (supra), it can be considered that the plaintiff is a mentally infirm person. Also, it is to be noted that the defendant has not challenged the order of this court in IA 908/2015, by which court found the person to be mentally infirm. Also, the procedural mandate under Rule 71 of the Registration Rules(Kerala) is also

not complied with. Even if the plaintiff is a person capable to protect his interest, his actual disabilities should have been clearly provided in the Ext. A2 deed. In the present case, the plaintiff is a deaf and dumb person and that fact is not provided in the deed, nor the procedures under the Registration Rules (Kerala) is complied with. In such parlance, it can only be concluded that the registration of Ext.A2 document is illegal, going by the decision in **Mary** (supra) and hence, it is void ab initio. It cannot confer any right. From the evidence, it is clear that the plaintiff is still in possession of the property. As the plaintiff successfully proved that the execution of the gift deed is illegal and void, he is also entitled to other consequential reliefs sought. Hence, it can be concluded that the plaintiff succeeded in proving all the issues in his favour. All issues are answered accordingly, in favour of the plaintiff.

18. **Issue No. 6:-** General rules is that “costs shall follow event.”

I do not find any reason to deviate from this rule. Hence, the plaintiff is entitled to realise the costs of entire proceedings from the defendant.

In the result; the suit is decreed as follows:-

- I. It is declared that the gift deed No. 1860/09 of SRO Punalur is void abintio.
- II. It is declared that the title and possession of the plaint schedule property is with the plaintiff.
- III. 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 deeds 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.
- IV. The defendant is directed by a mandatory injunction to vacate from the plaint schedule property within a period of 6 months from today.

(Dictated to the Confidential Assistant, transcribed and typed by her, corrected and pronounced by me in open court on this the 30th day of June, 2023.)

Sd/-
Munsiff

Appendix

Witness for the Plaintiff

PW1	21.11.2022	Seetha
PW2	26.11.2022	Adv. Saji Lal (Commission Advocate)

DW1	06.01.2023	Radhamany
DW2	16.01.2023	Mohanakumar
DW3	23.01.2023	Vijayan

A1	10.11.1988	Certified copy of settlement deed No. 3530/1988 issued by S.R.O, Punalur.
A2	04.06.2009	Certified copy of gift deed No. 1860/2009 issued by S.R.O, Punalur.
A3	03.07.2020	Disability Certificate No. 1414/01 issued by District Hospital Kollam.
A4	03.07.2001	Identity card No. KL.KLM H1 253 issued by A.A. Rahim Memorial District Hospital, Kollam.

B1	04.06.2009	Gift deed No.1860/2009 Issued by S.R.O, Punalur.
B2	16.12.2020	Land tax receipt Village Office Karavallur.

//True Copy//

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