



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 05.08.2016

CORAM:

WEB COPY

THE HONOURABLE MR.JUSTICE **S.S.SUNDAR**

W.P(MD)No.10493 and 10535 of 2013

and

M.P.(MD)No.1 of 2013

W.P.(MD)No.10493 of 2013

Santha Suresh

.. Petitioner

Vs.

1.The Sub Registrar,
Kodaikanal Sub Registrar Office,
Kodaikanal,
Dindigul District.

2.S.Saraswathi

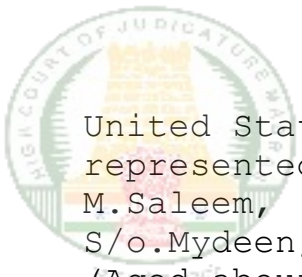
.. Respondents

PRAYER : Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus calling for the records pertaining to the Registration of Document No.2499/2011, dated 12.12.2011 before the 1st Respondent herein and quash the same and the consequently direct the 1st Respondent herein to delete the entry of Settlement cancellation deed in Document No. 2499/2011, dated 12.12.2011 from the Encumbrance Certificate.

For Petitioner	: Mr.S.Gokul Raj
For Respondent 1	: Mr.Aayiram K. Selva Kumar Government Advocate
For Respondent 2	: No appearance

W.P.(MD)No.10535 of 2013

A.Jaffar Hameed,
S/o. Abdul Kather Jilani,
(Aged about 27 years),
Residing at
No.3275, Napa Drive,
Sanjose, California - 95148,



United States of America,
represented by his Power of Attorney Agent,
M.Saleem,
S/o.Mydeen,
(Aged about 46 years),
Door No.14,
M.K.S.Nagar,
Vathalakundu Road,
Begampur Post,
Dindigul - 624 002.

.. Petitioner

Vs.

1.The District Registrar,
Madurai.

2.The Joint Sub Registrar No.1,
Sub Registrar's Office,
Madurai South,
Madurai.

3.A.Sidiq Fatima

.. Respondents

PRAYER : Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus calling for the records relating to the registration of the impugned gift settlement cancellation deed dated 19.04.2010 bearing document No.3171 of 2010 on the file of the second respondent and quash the same and consequentially directing the second respondent to delete the said entry from his file.

For Petitioner	: Mr.J.Barathan
For Respondent R1 & R2	: Mr.Aayiram K. Selva Kumar Government Advocate
For Respondent 3	: No appearance

O R D E R

Heard the learned counsel for the petitioners and the learned Government Advocate for the official respondents. Though names of the private respondents are printed after verifying that the service of notice on them are completed in both the matters, none appears for the private respondents.

2.In both the writ petitions what is impugned is the unilateral cancellation of settlement deeds executed by the executant of the settlement deeds. In W.P.(MD)No.10493 of 2013, the second respondent executed a settlement deed in favour of the petitioner on 25.09.2009 which is registered as document No.3432/2009. Subsequently the second respondent in the Writ



Petitioner registered a deed of cancellation dated 12.12.2011. Similarly in W.P.(MD) No.10535 of 2013, the third respondent has executed a gift settlement deed in favour of the petitioner on 29.03.2010. The third respondent has subsequently unilaterally executed a registered gift settlement cancellation deed on 19.04.2010 which is registered as Document No.3171 of 2010.

3. In both the cases, the prayer is for issuing a writ of Certiorari to quash the registration of the impugned deed of cancellation namely the unilateral cancellation of settlement deeds and to direct the Registrar to delete the entry pertaining to the registration of the cancellation deeds. The only issue arises in these two cases is whether unilateral cancellation of registered documents involving transfer of interest in immovable properties is legal and whether registration of such document is permissible in law.

4. The issue in these writ petitions is no more *res integra* in view of the categorical pronouncement of Full Bench of this Court, the Hon'ble Division Bench of this Court and the law laid down by the Hon'ble Supreme Court in a catena of judgments which are as follows:

4.1. In ***M/s. Latif Estate Line India Ltd., v. Mrs. Hadeeja Ammal and others*** reported in ***AIR 2011 MADRAS 66***, the Full Bench of this Court has decided as follows:

"59. After giving our anxious consideration on the questions raised in the instant case, we come to the following conclusion:-

(i) A deed of cancellation of a sale unilaterally executed by the transferor does not create, assign, limit or extinguish any right, title or interest in the property and is of no effect. Such a document does not create any encumbrance in the property already transferred. Hence such a deed of cancellation cannot be accepted for registration.

(ii) Once title to the property is vested in the transferee by the sale of the property, it cannot be divested unto the transferor by execution and registration of a deed of cancellation even with the consent of the parties. The proper course would be to re-convey the property by a deed of conveyance by the transferee in favour of the transferor.

(iii) Where a transfer is effected by way of sale with the condition that the title will pass on payment of consideration, and such intention is clear from the recital in the deed, then such instrument or sale can be cancelled by a deed of cancellation with the consent of both the parties on the ground of non-payment of consideration. The reason is that in such

as stated, admittedly, the title remained with the transferor.



(iv) In other cases, a complete and absolute sale can be cancelled at the instance of the transferor only by taking recourse to the Civil Court by obtaining a decree of cancellation of sale deed on the ground inter alia of fraud or any other valid reasons.

4.2. The above Full Bench decision has been followed in the following cases:

(i) ***E.R.Jothieswari vs. Sarojini and others*** reported in [CDJ 2012 MHC 1517].

(ii) ***D.Mohan vs. Sub Registrar*** reported in (2012) 5 MLJ 169.

(iii) ***Mrs.Jothi vs. The Joint Sub Registrar, District Registrar Office, Chidambaram and another*** reported in CDJ 2013 MHC 4132.

4.3. In ***D.V.Loganathan vs. The Sub Registrar, Office of the Sub Registrar, Pallavaram, Chennai - 600 044 and another*** reported in 2014 (1) CWC 814, a learned Single Judge of this Court has held that registration of unilateral cancellation of settlement deed is against public policy and the deed of cancellation is ordered to be quashed.

4.4. Similar writ petition was allowed by this Court following the earlier judgements in ***B.Velthiyagarajan vs. The Joint Sub Registrar, Madurai South Office of the Sub Registrar Madurai and another*** reported in CDJ 2015 MHC 6635 and ***Nambikkai Mary vs. The Sub Registrar-II, Sub Registrar Office, Pattukkottai, Thanjavur District and another*** reported in 2015 (6) CTC 824.

4.5. In ***S.Lingeshwaran vs. The Sub Registrar, Purasawalkam, Chennai and others*** reported in CDJ 2015 MHC 5406, following the earlier judgment of this Court, the impugned cancellation of settlement deed and the consequential registration thereof are held to be invalid and the writ petition to quash the cancellation deed cancelling the previous settlement deed and to direct the concerned Sub Registrar to register the order of quashing the deeds is allowed.

4.6. In ***C.R.Gandhi and others vs. The Inspector General of Registration and others*** reported in CDJ 2014 MHC 2664, it has been observed by this Court as follows:

"15. The dictum laid down in the above judgements are squarely applicable to the facts of this case. Though the learned counsel for the respondents submitted that as per Section 127 of the Transfer of Property Act, a gift deed can be revoked by way of a cancellation deed,



if it falls within the exception under Section 126 of the Transfer Property Act, in my considered opinion, whether it falls within the exception under Section 126 of the Transfer of the Property Act or not is purely a matter of evidence. The same has to be adjudicated only before the Civil Court. The Registrar is not a competent persons to register the unilateral cancellation deed by deciding the question whether it falls within the exception under Section 126 of the Transfer of Property Act, since he is not the competent authority to decide the disputed question of facts. Further, in my considered opinion, by executing a registered settlement deed in favour of first petitioner / settlee, the settlor / 4th respondent herein had lost her right in the property. Unless the said right is restored by setting aside the settlement deed executed by the settlor in favour of the settlee by a competent Court, the Sub Registrar is not competent to register the unilateral cancellation of settlement deed."

4.7. In a decision of this Court in **Samiappan and others vs. Rajamani** reported in **CDJ 2014 MHC 5730** it has been observed in paragraph 5 as under:

"5. In the case on hand, there is no dispute that the gift was executed by way of a settlement deed no out of love and affection but on payment of consideration and value. It is also not in dispute that after execution of the settlement deed dated 15.12.2000, the ownership of the land in question was transferred in favour of the writ petitioner, which, she has been enjoying continuously. The relationship between the parties is not relevant when the father and the son transferred the ownership of the land in favour of the daughter or sister for consideration and value. Thus, the learned single Judge has rightly held that the settlement deed so executed and acted upon cannot be set at naught unilaterally by one party. The only course open to a party is to approach the civil Court for appropriate relief. We do not find any inconsistency or irregularity or illegality in the order dated 03.07.2014 passed by the learned single Judge in W.P.No.34452 of 2012, which is sought to be impugned in this intra Court appeal."

5. In view of the law settled by this Court in the above judgements, the Writ Petitions are allowed and the impugned deeds, namely, Settlement cancellation deed in Document No. 2499/2011, dated 12.12.2011 and Gift settlement cancellation deed dated 19.04.2010 bearing document No.3171 of 2010, are quashed and the ~~Services Registry~~ in the respective writ petitions are directed to delete the entry relating to the registration of the unilateral



cancellation deeds which are quashed in this order. However, there is no order as to costs. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (T&P)

/True copy/

Sub Assistant Registrar

To

1.The District Registrar,
Madurai.

2.The Joint Sub Registrar No.1,
Sub Registrar's Office,
Madurai South,
Madurai.

3.The Sub Registrar,
Kodaikanal Sub Registrar Office,
Kodaikanal,
Dindigul District.

+1 cc to M/s.S.Gokulraj, Advocate in SR.No.42471

+1 cc to M/s.T.R.Jeyapalam, Advocate in SR.No.42483

SRM

CSL/GSV-PM/15.09.2016 :6P/6C

W.P. (MD) No.10493 and 10535 of 2013

05.08.2016