



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED 26.04.2016

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THE HONOURABLE MR.JUSTICE B.RAJENDRAN

W.P (MD) No.18380 OF 2013

Balasubramanyan

.. Petitioner

Versus

1.The Inspector General of Registration
Santhome
Chennai-600 602.

2.The Sub- Registrar,
Subramaniyapuram,
Aranthangi Taluk,
Pudukottai District.

3.Chinthamani

4.Kalyani

.. Respondents

Petition filed under Article 226 of the Constitution of India praying this Court to issue a Writ of declaration to declare that the registration of the Deed of Revocation of the Gift Deed dated 23.07.2013 registered as Doc.No.363 of 2013 on the file of the second respondent in respect of the property bearing S.No.106/11H3 with an extent of 3270 square foot of land, equivalent to 7 1/2 cents on West, out of total extent of 15 cents at Kalakudy Revenue Village, Aranthangi Taluk, Pudukottai District is illegal and against the provisions of the Registration Act and quash the same and pass further orders as this Court may deem fit and proper.

For Petitioner : Mr. N. Balakrishnan

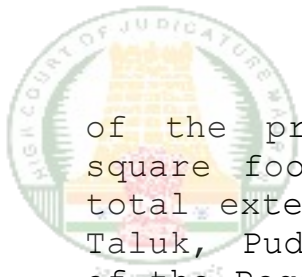
For Respondents : Mr.N.S.Karthikeyan
Addl.Govt.Pleader for R1 & R2.

: Mr. R.P. Ramachanthiran for R3

: Mr. D.P. Sundararaj for R4

ORDER

The petitioner has filed this Writ Petition seeking to issue a Writ of declaration to declare that the registration of the Deed of Revocation of the Gift Deed dated 23.07.2013 registered as Doc.No.363 of 2013 on the file of the second respondent in respect



of the property bearing S.No.106/11H3 with an extent of 3270 square foot of land, equivalent to 7 1/2 cents on West, out of total extent of 15 cents at Kalakudy Revenue Village, Aranthangi Taluk, Pudukottai District is illegal and against the provisions of the Registration Act.

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2. According to the petitioner, originally, the property in question belongs to the third respondent, she had two sons namely, Lakshmanan and Marimuthu. By virtue of a registered gift deed, dated 18.11.2010, the third respondent had bequeathed western 7 1/2 cents to her son Lakshmanan under Document No.728 of 2010 and the eastern 7 1/2 cents was bequeathed to other son Marimuthu under two separate gift deeds, namely, Inam settlement deeds, and handed over possession of the respective lands to her sons. By virtue of such settlement, both the sons of the third respondent were in possession and enjoyment of the lands settled in their favour. Subsequently, Lakshmanan, one of the sons of the third respondent, agreed to sell western 7 1/2 cents which was settled in his favour. Accordingly, he has executed a registered sale agreement dated 05.05.2011 in favour of the petitioner and received advance sale amount. After receipt of such amount, according to the petitioner, Lakshmanan postponed the execution of the sale deed in his favour and therefore he has issued a notice dated 11.01.2013 calling upon him to perform his part of the contract, but the notice has not been received by Lakshmanan and he refused to receive it. At this stage, Lakshmanan died *intestate* leaving behind him his wife and mother, namely R4 and R3 respectively. Therefore, the petitioner has issued a notice dated 25.04.2013 calling upon the fourth respondent to honour the commitment made by the Lakshmanan under the registered agreement dated 05.05.2011. After deliberations, the fourth respondent executed a sale deed in pursuance to the agreement of sale executed by Lakshmanan in his favour. When the petitioner approached the second respondent on 19.08.2013 to get the sale deed executed by the fourth respondent in his favour, the second respondent declined registration on the ground that the third respondent has revoked the gift deed dated 05.05.2010 by a revocation deed dated 23.07.2013. Challenging the same, the petitioner has come forward with this writ petition.

3. The learned counsel for the petitioner would contend that by virtue of the registered gift deed executed by the third respondent in favour of her son, the property in question absolutely devolved on him. The gift deed was also given effect to and acted upon by Lakshmanan, the son of third respondent. The third respondent was also aware of the agreement of sale executed by the said Lakshmanan, son of the third respondent, in favour of the petitioner. While so, without any notice to the petitioner or the fourth respondent, who devolved right over the property on the death of her husband, the petitioner is not entitled to cancel the gift deed dated 05.05.2010. According to the counsel for the



petitioner, such an unilateral cancellation without any notice is void and it is legally not sustainable. As per the settled proposition of law, a settlement deed cannot be revoked unilaterally, as has been held by this Court in the case of (**Velu Versus Rajathi and others**) reported in **2015 (2) CTC 484**.

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4. The learned Additional Government Pleader appearing for the respondents 1 and 2 would contend that there is no provision under the Registration Act to refuse registration of a Deed of Cancellation when it was properly presented by the third respondent. In such circumstances, the registration of the Cancellation Deed by the registering authority is proper and valid.

5. The learned counsel for the third respondent would contend that the cancellation deed was duly executed by means of a registered instrument. When the gift deed was revoked, the fourth respondent cannot have any saleable right to execute the sale deed in favour of the petitioner. By reason of the registered revocation of deed, the subject matter of the property stood reverted back to the third respondent and the fourth respondent has no alienating right in the above mentioned property. Even otherwise, the son of the third respondent Lakshmanan, in whose favour the settlement deed was executed by the third respondent, died and therefore, on his death, the third respondent has got half share over the property settled in favour of Lakshmanan inasmuch as Lakshmanan died *intestate*. Therefore, when the third respondent has got half share in the property property, the execution of the revocation deed is valid and proper.

6. The learned counsel for the fourth respondent would only contend that even though the fourth respondent was ready and willing to execute the sale deed in favour of the petitioner, by virtue of the Deed of Cancellation, an encumbrance has been created over the property in question inasmuch as the gift deed was revoked by the third respondent executed in favour of her husband.

7. I heard the learned counsel on either side and perused the materials placed on record. The third respondent has executed a Gift Deed in favour of the husband of the fourth respondent herein namely Lakshmanan on 18.11.2010. Admittedly, the gift deed has been acted upon and the donee was in possession and enjoyment of the property settled in his favour. On 05.05.2011, Lakshmanan executed an agreement of sale to sell the property covered under the settlement deed dated 18.11.2010 and also received advance sale consideration. However, before executing the sale deed, Lakshmanan died and therefore, the property devolved on the fourth respondent herein. When the fourth respondent executed a sale deed dated 19.08.2013 and it was presented to the second



respondent for registration, it came to light that the third respondent has cancelled the gift deed dated 18.11.2010 by executing a Deed of Cancellation dated 23.07.2013. Thus, according to the petitioner, the Deed of Cancellation dated 23.07.2013 has been executed unilaterally without notice either to the petitioner or the fourth respondent and therefore it is not valid.

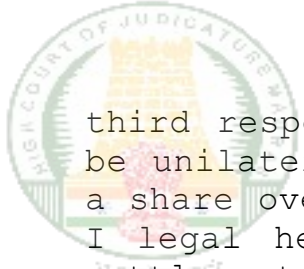
8. In this context, it is useful to refer to my order in the case of (**Velu and Rajathi and others**) reported in (2015) 2 CTC 484 wherein by referring to the decision of the Full Bench of this Court reported in (**G.D. Subramanian vs. Sub-Registrar, Office of Konur Sub-Registrar, Chennai**) (2009) (2) MLJ 644, I held that if an unilateral cancellation is allowed to be registered, without the knowledge and consent of the other party to the earlier contract, such registration would cause violence to the principles of natural justice and lead to unnecessary litigations emanating therefrom. The ratio laid down in the above decision squarely applies to the facts of this case.

9. In yet another decision render by this Court in the case of (**L. Siddharthan Vs. The Sub-Registrar, Theagarayanagar, chennai-600 017 and others**) reported in 2014 (4) TLNJ 113 (Civil) this Court held that when the settlement deed is unconditional and revocable, if at all, the party who has executed the document is aggrieved over some act after executing the Settlement Deed, he has to approach the civil Court to set aside it, but certainly, cannot, unilaterally cancel it by registering a Deed of Cancellation with the Sub-Registrar. As against the same, the matter was taken up before the Honourable Division Bench of this Court and the Honourable Division Bench has also confirmed by this Court, following the dictum of the Full Bench judgment.

10. In (**A.S. Elangode vs. A. Palanichamy and others**) reported in (2009) 8 MLJ 371, the Division Bench of this Court held that "a deed of cancellation which amounts to rescission of contract is valid only if it is made bilaterally. In other words, an unilateral cancellation is legally impermissible.

11. Recently, the Honourable Supreme Court in the judgment in the case of (**Renikuntla Rajamma (D) by Lrs -V- K.Sarwanamma**) reported in 2014 (4) CTC 572 held that when a Gift Deed is executed duly signed by the donor, making it a valid Gift, it cannot be cancelled and mere retention of right to use the property during the life time of the donor, does not in any way affect the transfer of ownership in favour of donee.

12. Applying the ratio laid down by this Court as well as the Honourable Supreme Court in the aforesaid decisions, I am of the view that the settlement deed dated 18.11.2010 executed by the



third respondent in favour of her deceased son Lakshmanan, cannot be unilaterally cancelled. Even if the third respondent has half a share over the property settled in favour of her son, as a class I legal heir, that will not be a ground for her to cancel the settlement deed unilaterally. If that being so, the wife has got right to execute the sale deed in respect of half a share over the property covered under the settlement deed dated 18.11.2010. Therefore, in view of the death of the husband of the fourth respondent, since the third respondent being a Class-I legal heir, she can at best assert a right over half of the property settled in favour of her son Lakshmanan. In such circumstances, the fourth respondent can execute the sale deed in respect of her share in favour of the petitioner. In any event, the cancellation deed dated 23.07.2013 executed by the third respondent and registered on the file of the second respondent is not valid. Therefore, the cancellation deed dated 23.07.2013 is hereby set aside. The writ petition is disposed of. No costs.

Sd/
Assistant Registrar(T&P)

/True copy/

Sub Assistant Registrar

To

1.The Inspector General of Registration,
Santhome, Chennai-600 602.

2.The Sub- Registrar,
Subramaniamapuram,
Aranthangi Taluk, Pudukottai District.

+1CC to M/s.N.Balakrishnan, Advocate in SR.No.24520
+1cc to Special Government Pleader in SR.No.24186

SDR/ARK-PV/12.07.2016/5P/5C

WP (MD) No. 18380 of 2013
26.04.2016