

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.04.2017

CORAM

The Honourable MR. JUSTICE M.DURAI SWAMY

W.P.No.7173 of 2017 &

W.M.P.No.9917 of 2017

V.M.M.S.Madhava Mohan

... Petitioner

v.

1 The Inspector General of Registration
Santhome, Chennai

2 The Sub Registrar
Periamedu, Chennai

3 M.Ananthi

... Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of Certiorari to call for the records relating to the impugned registered Cancellation Deed dated 21.04.2015 in Document No.1089 of 2015 on the file of the Sub-Registrar's office at Periamedu, Chennai executed by the 3rd respondent unilaterally, contra to the earlier registered Settlement Deed dated 28.05.2007 in Document No.1233 of 2007 on the file of the

Sub Registrar Office at Periyamedu, Chennai and quash the same and further direct the 1st and 2nd respondents to remove the entires made in the Registration book in pursuance of the registered unilateral Cancellation Deed dated 21.04.2015 in Document No.1089 of 2015 on the file of the Sub Registrar's Office at Periyamedu.

For Petitioner : Mr.K.M.Vijayan, Sr. Counsel
for Ms.R.T.Shyamala

For Respondents : Mr.A.N.Thambidurai
Spl. Govt. Pleader - for R1 & R2

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Mr.P.Ayyasamy - for R3

ORDER

The petitioner has filed the above writ petition to issue a Writ of Certiorari to call for the records relating to the impugned registered Cancellation Deed dated 21.04.2015 in Document No.1089 of 2015 on the file of the Sub-Registrar's office, Periyamedu, Chennai, executed by the 3rd respondent unilaterally, contrary to the earlier registered Settlement Deed dated 28.05.2007 in Document No.1233 of 2007 on the file of the Sub Registrar's Office at Periyamedu, Chennai and to quash the same and further direct the respondents 1 and 2 to remove the entires made in the Registration book in pursuance of the

registered unilateral Cancellation Deed dated 21.04.2015 in Document No.1089 of 2015, on the file of the Sub Registrar's Office, Periyamedu.

2. It is the case of the petitioner that the 3rd respondent is his wife and that she executed a registered Settlement Deed dated 28.05.2007 in Document No.1233 of 2007 before the 2nd respondent's office in respect of the house property situated at Door No.101, Athithanar Salai, Puthupettai, Chennai. Since there was no cordial relationship between the petitioner and the 3rd respondent, she filed H.M.O.P.No.1227 of 2016 on the file of I Additional Family Court, Chennai for divorce on the ground of cruelty and desertion and the same is pending. During the pendency of the Original Petition, the 3rd respondent executed a Cancellation Deed dated 21.04.2015 registered as Document No.1089 of 2015 on the file of the 2nd respondent. Thereafter, the petitioner filed a suit in O.S.No.38 of 2017 on the file of I Additional Family Court, Chennai for the following reliefs:-

- a) Declaring the Cancellation Deed dated 21.04.2015 in Document No.1089 of 2015 on the file of the Sub Registrar's Office at Periyamedu, Chennai as null and void;

b) For permanent injunction restraining the defendant, her men, servants and agents from interfering with the peaceful possession and enjoyment of the suit schedule property;

c) For costs and

d) Such other reliefs as this court think deem fit and proper in the circumstances of the case.

3. In paragraph No.8 of the affidavit filed in support of the writ petition, the petitioner has also mentioned about the filing of the suit in O.S.No.38 of 2017. However, in paragraph No.10, the petitioner has stated that since he is having no other alternative, speedy or efficacious remedy except to invoke the writ jurisdiction under Article 226 of the Constitution of India, the present writ petition has been filed.

4. Mr.K.M.Vijayan, learned Senior Counsel appearing for the petitioner submitted that the suit has been filed only as against the 3rd respondent and therefore, the relief sought for in the writ petition as

against the respondents 1 and 2 can be granted under Article 226 of the Constitution of India. In support of his contention, the learned Senior Counsel, relied upon the following judgments:-

(i) **2011 (2) CTC 1 [Latif Estate Line India Ltd. v. Hadeeja Ammal and others]** wherein, the Full Bench of this court held that the unilateral cancellation of a registered document is not valid.

(ii) *An unreported judgment of this court made in **W.P. No.21825 of 2014 [S.Lingeshwaran v.The Sub-Registrar, Purasawalkam, Chennai and others]**, dated 20.02.2015 wherein, this court held as follows:-*

"12. This Court in the judgment reported in 2012 (5) MLJ 169 (D.Mohan and another vs. Sub Registrar, Chennai and others) has held that in the case of gift, the donor after executing the gift deed when it is accepted by the donee, is left with no interest in the property, therefore, it was not open to the respondent to get the cancellation deed registered, as she could have challenged it by filing civil suit and proving the allegations of fraud. Further, a gift deed

could not be revoked by way of cancellation deed, once the case did not fall within the exception, under Section 126 of the transfer of Property act and a person having no right in the property cannot get it cancelled by getting it registered"

(iii) *An unreported judgment of this court made in **W.P.No.12035 of 2015 [S.Renuka v. The Sub-Registrar, Ambattur Sub-Registrar's Office, Ram Nagar, Ambattur, Chennai-600 053.and another** , dated 17.03.2016 wherein, this court held as follows:-*

" 6(ii) Further, in the judgment reported in **2014 (3) CTC 113 (D.V.Loganathan Vs. The Sub Registrar, Chennai and another)** has held that the registration of cancellation of the settlement deed is against the public policy as it was not open to the Sub Registrar to register the cancellation of the deed, when the settlement deed is unconditional and irrevocable. If at all the party who has executed the document is aggrieved by the settlement deed he could have very well approached the Civil Court to set it aside, but certainly not unilaterally cancel it by getting the deed of cancellation registered with the Sub Registrar. The cancellation deed and its

registration, therefore, being without jurisdiction is liable to be set aside."

(iv) **2015 SCC OnLine Mad 5938 [B.Velthiyagarajan v. The Joint Sub-Registrar, Madurai South Office of the Sub-Registrar Madurai and another]** wherein this court held as follows:-

"10. On consideration, I find that this Writ Petition deserves to succeed, as per Section 156 of Transfer of Property Act, except for the condition stipulated therein, the Gift deed is irrevocable. It is not disputed that the none of the condition entitled revoking of Gift Deed exists in this case, as the Gift Deed was irrevocable and unconditional, it was not open to respondent No.2 to register the cancellation deed being opposed to the public policy. The impugned order of registration, therefore, cannot be sustained in law, in view of the decision of the Hon'ble Full Bench of this Court and decision of the Hon'ble Kerala High Court in *Latif Estate Line India Limited V. Hadeeja Ammal*."

5. On a reading of the judgments relied upon by the learned Senior Counsel appearing for the petitioner it could be seen that

absolutely there is no dispute with regard to the ratios laid down in those judgments. In those cases, the petitioners did not choose the alternative remedy by way of filing a suit and hence, this court held that registration of the document by the Sub Registrar is invalid.

6. In the case on hand, the petitioner had opted to file a civil suit in O.S.No.38 of 2017 before the I Additional Family Court, Chennai for for the very same relief sought for in the present writ petition.

7. When the petitioner had approached to file a suit for cancellation of the revocation deed dated 21.04.2015, the writ petition filed by the petitioner cannot be entertained. In such view of he matter, I do not find any reason to entertain the writ petition, since the petitioner had opted for the alternative remedy by way of a civil suit.

8. In these circumstances, the writ petition fails and the same is liable to be dismissed. Accordingly the writ petition is dismissed. However, I make it clear that the order passed in this writ petition shall not put against the petitioner in the other proceedings, since I

have not gone into the merits of the matter. No costs. Consequently, connected miscellaneous petition is closed.

13.04.2017

Index: Yes/No

Rj

To

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Santhome, Chennai
- 2 The Sub Registrar
Periamedu, Chennai

M.DURAISWAMY,J.

Rj

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