

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

DATED: 30.08.2017

CORAM:

THE HONOURABLE MR.JUSTICE M.M.SUNDRESH
AND
THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

W.A. (MD) No.831 of 2017
and
C.M.P. (MD) No.8076 of 2017

Chinthamani : Appellant/Respondent-3
Vs.

1. The Inspector General of Registration,
Santhome,
Chennai-600 062.
2. The Sub-Registrar,
Subramaniyapuram
Aranthangi Taluk,
Pudukkottai District. ... Respondents 1&2/Respondents 1&2
- 3.Kalyani ...3rd Respondent/4th Respondent
- 4.Balasubramanyan ...4th Respondent/Writ petitioner
- 5.Marimuthu ...5th Respondent

(R5 impeaded vide Court order dated 30.08.2017
in C.M.P. (MD) .No.8077 of 2017)

PRAYER:Writ Appeal filed under Clause 15 of Letters Patent against the order of this Court in W.P.(MD).No.18380 of 2013 dated 26.04.2016.

Prayer in WP(MD) . 18380/ 2013 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a writ of Declaration declaring that the registration of the deed of revocation of the gift deed dated 23.7.2013 registered as Doc.No.363 of 2013 on the file of 2nd 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 15cents at Kalakudy Revenue Village, Aranthangi Taluk, Pudukkottai District is illegal and against the provisions of the Registration Act and quash the same.



For Appellant : Mr.A.Prasanna Rajadurai
For R1 and R2 : Mr.V.R.Shanmuganathan
Special Government Pleader
For R3 and R4 : Mr.N.Balakrishnan
For R5 : Mr.P.Santhanakrishnan

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JUDGMENT

[Judgment of the Court was made by **M.M.SUNDRESH, J.**]

This Writ Appeal is directed against the order of the learned Single Judge, while setting aside the cancellation of the gift deed, to protect the interest of the appellant by treating her as co-owner, in pursuant to the death of her son being a class I heir along with the 4th respondent in the writ petition.

2.Admittedly, the property belongs to the appellant. The appellant executed two gift deeds, one in favour of the appellant's deceased son and another one in favour of the impleaded respondent, who is also her another son. Accordingly, the properties have been given in favour of two sons by the appellant. These two sons entered into a sale agreement with the writ petitioner/4th respondent herein, in the year 2011. These are the registered agreements. Thereafter, one of the appellant's son died, who is the husband of the 4th respondent in the writ petition.

3.According to the appellant, there was a family arrangement between the appellant and the impleaded respondent on 17.04.2013, which has not been registered. Pursuant to which, a decision was made to cancel both the gift deeds and thereafter, to clear the dues of the deceased son. It was signed by the 4th respondent in the writ petition, thereafter, cancelled both the gift deeds executed by the appellant on 23.07.2013.

4.In pursuant to the agreement dated 05.05.2011, executed by the deceased son of the appellant, the 4th respondent in the writ petition executed a registered sale agreement on 26.08.2013, after the execution, the writ petition filed seeking cancellation of the said gift deed executed by the appellant on 23.07.2013.

5.The learned Single Judge, considering the materials available on record was pleased to allow the writ petition, while protecting the interest of the appellant by treating her class I heir of their deceased son. Challenging the same, the present Writ Appeal is filed.

<https://hcservices.courts.gov.in/hcservices/> Counsel appearing for the appellant submitted that the facts are suppressed and the factum of family arrangement on 17.04.2013, was not brought to the knowledge of this Court. The

fact of the cancellation is that the gift deed was cancelled even with respect to the gift deed executed in favour of the impleaded respondent and there is a suit filed in O.S.No.337 of 2013, pending before the Sub-Court, Pudukottai, which is also brought to the knowledge of this Court. Therefore, the writ appeal will be allowed.

7.The learned counsel appearing for the impleaded respondent would submit that in pursuant to the order of the learned Single Judge, the cancellation of the gift deed given to this respondent also get set aside and therefore, the writ appeal will not be allowed.

8.The learned counsel appearing for the fourth respondent/writ petitioner would submit that there is a collusion between the impleaded respondent and the appellant and there is no denial that the two agreements have been executed by the two sons of the appellant. The situation has changed, in pursuant to the death of one son. The appellant has not raised the plea of family arrangement before the learned single Judge. In any case, the same cannot be looked into being unregistered. There is also a subsequent suit filed in O.S.No.41 of 2017 against the appellant for specific performance before the District Munsif Court, Aranthangi. The appellant has also sold the property to the third respondent, who is also defendant in the said suit. Hence, there is no interference required.

9.Considering the above facts, we do not find any reason to interfere with the order of the learned Single Judge. There is no dispute about the two agreements, which are executed in favour of the 4th respondent/writ petitioner. These are the registered documents. Unfortunately, after the execution of the agreement, the husband of the 4th respondent in the writ petition died. The family arrangement dated 17.04.2017 has not been brought before the learned Single Judge, by the appellant. In any case, this is an unregistered document, which cannot be taken note of, though this Court cannot act like a Civil Court. It is strange that the appellant has sought to cancel both the gift deeds executed separately in favour of her two sons by one deed, that too, a unilateral deed. On the same footing, it is strange that for the first time, the impleaded respondent has come forward to implead himself, on the ground of protecting the unilateral cancellation, so far his share is concerned. To put it differently the impleaded respondent has come forward to justify the cancellation made against the gift deed executed in his favour. It is for the appellant to contest and not for the impleaded respondent. The plea raised for the same is to nullify in favour of the writ petitioner. Now, a suit has been filed by the respondent in O.S.No.337 of 2013 against the impleaded respondent before the Sub-Court, Pudukottai. It may also be the reason for him to come before this Court at this stage. It is not known as to how he came to know about the pendency of the appeals and as to why he has not



gone before the learned Single Judge. Similarly, another suit has been filed in O.S.No.41 of 2017 by the 4th respondent/writ petitioner against the appellant, impleading the subsequent purchaser also.

10. In the light of the above, we do not find any error in the order passed by the learned single Judge. Accordingly, the writ appeal stands dismissed. No costs. Consequently, the connected miscellaneous petition is closed. However, the learned District Munsif, Aranthangi is directed to dispose of the respective suits without being influenced by the order passed by this Court, inasmuch as, the sale deed said to have been executed by the appellant. It is made clear that this Court has not expressed anything on the title of the appellant being the class I heir, in pursuant to the death of her son, as rightly observed by the learned Single Judge. It is left open to the respondent/writ petitioner to establish his rights in the pending suits.

Sd/-

Assistant Registrar (CS-II)

/True Copy/

Sub Assistant Registrar

To

1. The District Munsif,
Aranthangi.
2. The Inspector General of Registration,
Santhome,
Chennai-600 062.
3. The Sub-Registrar,
Subramaniyapuram
Aranthangi Taluk,
Pudukkottai District.

+1cc to M/S. A.PRASANA RAJADURAI, Advocate, SR.No.75692.

+1cc to M/S. N.BALAKRISHNAN, Advocate, SR.No.75538.

JUDGMENT MADE IN
W.A. (MD) No.831 of 2017

and
C.M.P. (MD) No.8076 of 2017
30.08.2017