



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 11.10.2018

CORAM:

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THE HONOURABLE MRS.JUSTICE PUSHPA SATHYANARAYANA
AND
THE HONOURABLE MRS.JUSTICE T.KRISHNAVALLI

Writ Appeal (MD)No.1099 of 2017
and
C.M.P (MD)No.7556 of 2017

A.Sidiq Fatima
Rep. by his Power Agent M.Saleem ... Appellant

Vs .

1. A.Jaffar Hameed
2. The District Registrar,
Madurai.
3. The Joint Sub Registrar No.I,
Sub Registrar's Office,
Madurai South,
Madurai. ... Respondents

Writ Appeal filed under clause 15 of the Letters Patent against the order dated 05.08.2016 in W.P(MD)No.10535 of 2013.

Prayer in WP(MD)No.10535 of 2013 :

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 number 3171 of 2010 on the file of the second respondent and quash the same and consequently directing the second respondent to delete the said entry from his file.

For Appellant	:	Mr.G.Prabhu Rajadurai for Mr.S.M.A.Jinnah
For Respondents 2&3	:	Mr.M.Murugan, Government Advocate.
For 1 st Respondent	:	Mr.J.Bharathan

JUDGMENT

PUSHPA SATHYANARAYANA, J

<https://hcservices.ecourts.gov.in/hcservices/>

Challenge in this writ appeal is to the order of the



learned single Judge of this Court in W.P.(MD) No.10535 of 2013 dated 05.08.2016, wherein, the learned Single Judge quashed the cancellation deed executed by the appellant and directed the third respondent to delete the entry relating to the registration of the unilateral cancellation deed.

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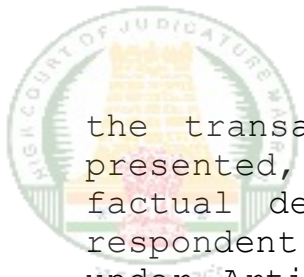
2.The facts in nutshell are as follows:-

The appellant is the mother of the third respondent. According to her, she acquired property bearing Old Door No.38, New Door No.38-C, Munichalai Road, Madurai Town by way of partition between her, her father, mother and brothers and sisters through a partition deed dated 27.12.1971. She has also acquired the property bearing Old Door No.38, New Door No.38-D, Munichalai Road, Madurai Town through a registered settlement deed dated 11.07.1979 executed by her sister viz., Sharathu Samadhani. Out of love and affection, the appellant has executed a gift settlement deed dated 29.03.2010 in favour of the first respondent and his brother A.Moideen. The said deed has been registered as Document No.2695 of 2010 before the third respondent. Subsequently, the gift settlement deed dated 29.03.2010 has been cancelled by way of a cancellation deed dated 19.04.2010 which has been registered as Document No.3171 of 2010 before the third respondent. Aggrieved over the same, the first respondent has filed a writ petition through his Power of Attorney Agent inter alia contending that the registration of unilateral gift settlement cancellation deed executed by the appellant is void and nullity in the eye of law.

3.After elaborate discussions, the writ petition was allowed by the learned single Judge quashing the cancellation deed executed by the appellant and directed the third respondent to delete the entry relating to the registration of the unilateral cancellation deed. Aggrieved by the same, the present appeal is preferred by the appellant.

4.The only question that arises for consideration is whether the registration of the cancellation of settlement deed dated 19.04.2010 is legal.

5.Learned counsel for the appellant would contend that the provisions of the Registration Act, 1908 are procedural in nature which cannot be allowed to override the provisions of the personal law applicable to the parties. It is further contended that though a document when reduced to writing requires registration and the law governing the parties have to be applied in all force. According to the learned counsel for the appellant, to constitute a valid right under Mohammedan law, the conditions require to be complied with. There should be an offer and there should be an acceptance. The third ingredient would be that the possession has to be given to the Donee or the Settlee. In the case on hand, the Settlor had retained possession with herself. Therefore, it was contended that the gift was not acted upon and



the transaction was not complete. While the document is being presented, it is not incumbent upon the Registrar to look into the factual details. Similarly, by raising these issues, the first respondent is only trying to convert this Court exercising powers under Article 226 of the Constitution of India that of a Civil Court.

6. Per contra, learned counsel for the first respondent would contend that despite service of notice in the writ petition, the appellant herein did not choose to appear either in person or through the counsel to raise any objection. She had also not raised any of these submissions before the appellate Court by filing counter. It is further contended that once the registration of settlement is done, the Registrar has no power to cancel it and unilateral cancellation of a document is not valid in view of the settled proposition of law.

7. The cancellation deed per se will not create, assign, limit or extinguish any right, title or interest of the property and it has got no effect. The registration of cancellation deed will not create any encumbrance in the property which has already been settled or sold in favour of somebody. Therefore, a document which does not create any right cannot even alter the right which a person has. Hence, the cancellation of any deed unilaterally need not be accepted for registration. Once the settlement deed is executed, the title passes on to the Settlee. If at all, the same has to be recovered, it can only be done by a reconveyance of the property. It is not the case of the appellant that she executed the settlement deed dated 29.03.2010 by force, coercion or undue influence. It is also never whispered anywhere even in the cancellation document. Therefore, in the absence of fraud, coercion or undue influence, any cancellation of a document on any other ground also can be done only through a Court of law by pleading and proving the same.

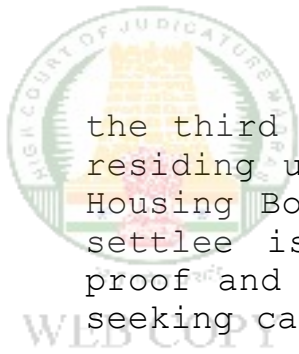
8. The learned single Judge had relied on the Full Bench decision of this Court in **M/s. Latif Estate Line India Ltd., Vs. Mrs. Hadeeja Ammal and other** reported in **AIR 2011 Madras 66** which has been followed in the following decisions:-

(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.

9. Though it is not relevant to go into the contents of the document, a cursory look at the cancellation deed would go to show that the Settlor namely, the appellant, A. Sidiq Fatima and



the third respondent/Setlee M.Saleem and his brother A.Moideen are residing under the same roof namely, at Plot No.2440, Tamil Nadu Housing Board Colony, Villapuram, Madurai. Even assuming that the settlee is residing in a different address, it is a matter of proof and prima facie, we are of the opinion that the Settlor is seeking cancellation of the document without any valid reasons.

10.As stated earlier, the cancellation deed cannot annul the registered document which was duly executed earlier and such an act is opposed to public policy. Therefore, in our considered opinion, the learned single Judge, considering the entire facts has rightly come to the conclusion that the cancellation deed is void and has rightly quashed the same. We have no hesitation in confirming the said order as it does not suffer from any illegality. It is open to the appellant to work out her remedy in the manner known to law, if she is so advised.

11.In the result, the writ appeal is dismissed. No costs. Consequently, C.M.P(MD)No.7556 of 2017 is closed.

Sd/-
Assistant Registrar (Writs)

/True Copy/

Sub Assistant Registrar (CS-I)

To

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

+ 1 CC TO Mr.S.M.A.JINNAH, ADVOCATE IN SR No. 90351
+ 1 CC TO Mr.T.R.JAYAPALAM, ADVOCATE IN SR No. 90384
+ 1 CC TO SPECIAL GOVERNMENT PLEADER IN SR No. 90422

SMS

TE/PM/SAR-1 : 30/10/2018 : 4P/6C

Judgment made in
Writ Appeal (MD)No.1099 of 2017 and
C.M.P(MD)No.7556 of 2017
11.10.2018