



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 17.02.2020

CORAM:

THE HONOURABLE MR.JUSTICE S.S. SUNDAR

W.P. (MD) .No.3095 of 2020

S.Jeyalakshmi

.. Petitioner

Vs.

1.The Sub Registrar,
Woraiyur Sub Registration District,
Marudanthakuruchi,
Tiruchirappalli.

2.S.Thiagarajan

3.S.Subramanian

4.S.Swaminathan

5.S.Padmavathi

.. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, for the issuance of Writ of Declaration, declaring the deed of cancellation of the registered gift settlement deed, registered as document No.6755/2010 in office of the 1st respondent as null and void and consequently direct the 1st respondent to delete the entry relating to the deed of cancellation, dated 23.09.2010 registered as Document No.6755/2010 in their registrar.

For Petitioner : Mr.S.K.Mani

For Respondents : Mr.V.Anand for R1
Government Advocate

ORDER

This writ petition is filed to declare the deed of cancellation of the registered gift settlement deed, registered as document No.6755/2010 in office of the 1st respondent as null and void and consequently direct the 1st respondent to delete the entry relating to the deed of cancellation, dated 23.09.2010, registered as Document No.6755/2010 in their register.



2.Mr.V.Anand, learned Government Advocate, takes notice for first respondent. Notice to respondents 2 to 4 is dispensed with. Heard both sides. Considering the facts and circumstances of this case, this writ petition is taken up for final disposal at the admission stage itself.

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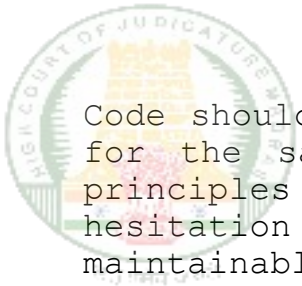
3.The petitioner states that the petitioner's mother Rajamaniammal purchased the house site by registered sale deed, dated 29.12.1975 from her father. It is stated that the petitioner's mother constructed a building with ground floor and first floor and that the petitioner's mother and petitioner are living in the ground floor. It is stated by the petitioner that the fourth respondent who is the brother of petitioner was permitted to reside in the first floor of the building. It is the case of the petitioner that the petitioner's mother executed a registered gift deed in her favour on 21.06.2006 and that the said settlement deed was executed by her. It is also the case of the petitioner, that mutation was effected in revenue records. While so, the third respondent who is also one of the brother of the petitioner filed a civil suit and that at the instance of third respondent, the petitioner realize that the petitioner's mother had unilaterally cancelled the registered gift/settlement deed by a document, dated 23.09.2010. Challenging the unilateral cancellation of the settlement deed, the petitioner himself has filed a suit in O.S.No.378/2017, on the file of District Munsif Court, Tiruchirappalli. The main prayer in the suit as per plaint reads as follows:

"a)declaring that the Registered Deed of Cancellation dated 23.09.2010 registered as Document No.6755/2010 cancelling the Registered Gift Settlement, dated 21.06.2006 registered as Document No.2598/2006 executed by the defendant in favour of the plaintiff is without jurisdiction, null and void, non est and it is ultravires the power of the defendant;

consequently for passing a decree of permanent injunction restraining the defendant, her agents from in any way alienating or encumbering the suit property to any third party in any manner whatsoever."

4.Despite filing the suit for declaration of the cancellation of settlement deed was void, the petitioner has filed the present writ petition for identical relief.

5.Though the petitioner has not given any special reason for seeking a parallel remedy by filing the present writ petition, the learned counsel for the petitioner submitted that the civil suit will not be taken up as there is no Presiding Officer. He has other reasons and grounds to file a writ petition than a suit. Having filed the suit for the same cause of action, the petitioner cannot file the present writ petition. Order 2 Rule 2 of Civil Procedure



Code should also be applied when parallel proceedings are initiated for the same cause of action. Hence, this Court applying the principles of Order 2 Rule 2 of Civil Procedure Code, has no hesitation to hold that the present writ petition is not maintainable.

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6.The learned counsel appearing for the petitioner submitted this Court in several judgments has given such declaration as prayed for in several cases. It is true that a Division Bench of this Court has granted the relief in a similar case holding that cancellation deed executed by the donar is void and further directed the Sub Registrar to delete the entry relating to the registration of the unilateral cancellation deed. As stated by this Court, this Court is not dealing with the petitioner's prayer on merits. This Court has considered the issue regarding the maintainability of the writ petition in view of the pendency of the suit filed by the petitioner earlier for similar relief.

7.Hence, the writ petition is dismissed. However, it is open to the petitioner to pursue the suit and seek further relief, which is also appropriate and consequential to the relief of declaration. No costs.

8.The learned counsel has further grievance regarding the pendency of suit for a long time by stating that no Presiding Officer is appointed and that the position is vacant for long time. The petitioner can approach this Court by filing a Civil Revision Petition under Article 227 of the Constitution of India either to transfer the suit to another Court or to expedite the trial for early disposal.

Sd/-

Assistant Registrar (CO)

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/ /2020

Sub Assistant Registrar(CS)

TM

To
The Sub Registrar,
Woraiyur Sub Registration District,
Marudanthakuruchi, Tiruchirappalli.

+2 CC to M/s.S.K.MANI, Advocate (SR-6875[F] dated 18/02/2020)
+1 CC to M/s.SPL.GP (SR-6779[F] dated 18/02/2020)

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