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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19-08-2021

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THE HONOURABLE MR.JUSTICE S.S.SUNDAR

W.P.No.25234 of 2011

1.K.P.Kumarasamy
2.K.Senthilkumar

...Petitioners

-vs-

1. The Sub-Registrar,
Office of the District Registrar,
Karunagalpalayam,
Erode District.

2. K.Santhi

...Respondents

Petition under Article 226 of the Constitution of India, praying for issuance of a writ of Certiorari, to call for the records of the impugned deed of cancellation, dated 16.12.2009, executed by the second respondent, and presented and registered by the first respondent as document No.6329/2009 cancelling the release deed, dated 23.08.2007, and quash the same.

For Petitioner : Mr.I.C.Vasudevan

For Respondent 1 : Mr.B.Kannan,
Government Advocate.

For Respondent 2 : Mr.R.Sivaraman

ORDER

This Writ Petition is filed, praying for issuance of a writ of Certiorari, to call for the records in relation to the impugned deed of cancellation, dated 16.12.2009, executed by the second respondent, cancelling the release deed, dated 23.08.2007, and registered by the first respondent in Document No.6329 of 2009, and quash the same.

2. The second petitioner is the first petitioner's son. The second respondent is the first petitioner's daughter. The



second petitioner and the second respondent are brother and sister.

3. The case of the petitioners is that they along with the second respondent were allotted some properties measuring an extent of 27,267 sq.ft. as per the final decree, dated 06.12.2000, passed in I.A.No.500 of 1998 in O.S.No.668 of 1992 on the file of Principal Sub-Court, Erode. It is the further case of the petitioners that the second respondent, who got 1/3 share in the property, executed a registered release deed in favour of the petitioners by a document, dated 23.08.2007, after receiving a consideration of Rs.5,00,000/-, and relinquished all her rights, title and interest over her 1/3 share in the said properties. It is stated by the petitioners that possession of the properties was also handed over to them. Since the second respondent has already released her right over the properties in favour of the petitioners by the document, dated 23.08.2007, the petitioners state that they have amicably partitioned the properties by a document, dated 30.09.2009, and the revenue records were also mutated. However, the petitioners came to know that the second respondent unilaterally cancelled the release deed executed by her on 23.08.2007. The cancellation deed, dated 16.12.2009, and registration of the same by the first respondent are put to challenge in this Writ Petition.

4. The petitioners state that the first respondent has no jurisdiction to register the cancellation deed without their knowledge. Stating that the action of the first respondent in registering the cancellation deed, dated 16.12.2009, is without jurisdiction and against the principles of natural justice, this Writ Petition is filed.

5. It is not in dispute that the release deed, dated 23.08.2007, was executed by the second respondent and the same was registered as Document No.4246/2007 by the first respondent. Stating that the release deed was a document of conveyance, it is further contended that the document of release deed should be treated as a sale and that the first respondent ought to have rejected and refused to register the deed of cancellation, unilaterally executed by the second respondent.

6. The second respondent filed a counter affidavit, raising the following points :

(1) The petitioners obtained the release deed by misrepresentation without paying any money to the second respondent and they have not chosen to come forward to fulfil their promise, on the basis of which release deed was executed.

(2) The release deed, dated 23.08.2007, is vitiated by fraud, coercion and undue influence.



(3) The document of release, executed by the second respondent, is not bilateral and, therefore, she is entitled to cancel the same unilaterally.

(4) When there is a dispute regarding facts, the petitioners can only approach a Civil Court for any remedy and the writ proceedings, invoking extraordinary jurisdiction under Article 226 of the Constitution of India, is not maintainable.

7. The first respondent also filed a counter affidavit, supporting the stand of the second respondent. The first respondent has stated in his counter that no provision in the Registration Act, 1908, requires the first respondent to issue a notice to anyone before registration of the deed of cancellation. It also stated in the counter that the document of cancellation has been presented with contents to the effect that the second respondent was forced to execute the release deed under the pretext that the petitioners requested the second respondent to execute a deed of General Power of Attorney and that the consideration for the release deed has not been paid by the petitioners and hence the second respondent is entitled to present the document for cancellation of registration.

8. Learned counsel for the petitioners relied upon a Full Bench decision of this Court in the case of *Latif Estate Line India Limited, rep. By its Managing Director v. Habeeja Ammal and Others*, reported in 2011 (2) CTC 1. In the said decision, after considering several precedents, the Hon'ble Full Bench has ruled as under :

'59. After giving our anxious consideration on the questions raised in the instant case, we come to the following conclusion: -

(i) A deed of cancellation of a sale unilaterally executed by the transferor does not create, assign, limit or extinguish any right, title or interest in the property and is of no effect. Such a document does not create any encumbrance in the property already transferred. Hence such a deed of cancellation cannot be accepted for registration.

(ii) Once title to the property is vested in the transferee by the sale of the property, it cannot be divested unto the transferor by execution and registration of a deed of cancellation even with the consent of the parties. The proper course would be to re-convey the property by a deed of conveyance by the transferee in favour of the transferor.



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(iii) Where a transfer is effected by way of sale with the condition that title will pass on payment of consideration, and such intention is clear from the recital in the deed, then such instrument or sale can be cancelled by a deed of cancellation with the consent of both the parties on the ground of non-payment of consideration. The reason is that in such a sale deed, admittedly, the title remained with the transferor.

(iv) In other cases, a complete and absolute sale can be cancelled at the instance of the transferor only by taking recourse to the Civil Court by obtaining a decree of cancellation of sale deed on the ground inter alia of fraud or any other valid reasons.''

9. A learned single Judge of this Court, in G.D.Subramaniam v. The Sub Registrar and Others, reported in 2009 (1) CTC 709, held that a writ petition is maintainable under Article 226 of the Constitution of India, challenging the registration of a unilaterally executed deed of cancellation of a sale deed. The learned Judge observed that when alternative remedy is neither efficacious nor can be secured without undue hardship and delay, the self-imposed restriction cannot be an impediment to the Writ Court to exercise its jurisdiction under Article 226 of the Constitution in order to render substantial justice.

10. Learned counsel for the respondents relied upon a decision of this Court in S.M.Syed Mohammed Buhari v. The Sub-Registrar (Deputy Registrar cadre), 2012 (4) CTC 138, wherein, it is held that cancellation of a settlement deed governed by Muslim Personal Law cannot be treated as a document of sale and that this Court cannot exercise its power under Article 226 of the Constitution of India. It is to be noted that the gift deed, which was the subject matter of that Writ Petition, was a gift, governed by Mohammedan Law. Therefore, the learned single Judge, after referring to Sections 2, 9 and 129 of the Transfer of Property Act, and the provisions under the Mohammedan Law, held that the provisions of the Transfer of Property Act, 1882, have no application to the conditions of a valid gift deed, governed by Mohammedan Law. The said decision will not have any application to a sale deed or release deed, which is a conveyance and recognised as a document, transferring right in respect of an immovable property.

11. Learned counsel for the respondents relied upon a decision of this Court in the case of K.Vimal Chand Bora v.



Inspector General of Registration, 2012 (2) CWC 866, wherein, a learned single Judge of this Court held that a Writ Petition for quashing unilateral cancellation of a Settlement Deed is not maintainable, as the petition, involving disputed questions of fact with regard to interpretation of Power of Attorney, genuineness of Settlement Deed, executed between family members on one hand and claim of third parties on other hand, cannot be decided in writ.

12. Earlier, a learned single Judge of this Court had an occasion to deal with a similar issue in relation to a document, cancelling the Settlement Deed, executed by the same person. In W.P.No.17400 of 2011, in the case of N.Muthu Gangai Anandhi, rep.by Power Agent V.Pushpavathi v. The Sub-Registrar, Nallur, dated 01.12.2011, the learned single Judge, after going through the factual issues, found that serious disputed facts were involved in the Writ Petition. It was contended therein that the executant of the Settlement Deed is also empowered to revoke the Settlement Deed under the provisions of Chapter VII of Transfer of Property Act, 1882. It was, in the peculiar facts with regard to the Settlement Deed, the learned single Judge has held that a Writ Petition is not maintainable and that the parties should approach a Civil Court for appropriate relief. However, with reference to Settlement Deed, a learned single Judge of this Court, in W.P.No.17983 of 2011, in the case of E.R.Jothieswari v. Sarojini and Others, had an occasion to deal with the issue with reference to Section 126 of the Transfer of Property Act. It was held that a Gift Deed cannot be revoked by way of a cancellation deed, once the case did not fall within the exceptions under Section 126 of the Transfer of Property Act. It was further held that a person, having no right in the property, cannot get it cancelled by getting it registered.

13. Section 126 of the Transfer of Property Act reads as follows :

'126. When gift may be suspended or revoked.
-The donor and donee may agree that on the happening of any specified event which does not depend on the will of the donor a gift shall be suspended or revoked; but a gift which the parties agree shall be revocable wholly or in part, at the mere will of the donor, is void wholly or in part, as the case may be. A gift may also be revoked in any of the cases (save want or failure of consideration) in which, if it were a contract, it might be rescinded. Save as aforesaid, a gift cannot be revoked. Nothing contained in this section shall be deemed to affect the rights of transferees for consideration without notice.'



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14. Therefore, there is a statutory right in favour of the donor in respect of a specific gift or settlement deed when the parties can agree that on happening of any specified event, which does not depend on the will of the donor, it can be suspended or revoked. However, a gift, which is not a gift covered under Section 126 of the Transfer of Property Act, cannot be revoked. "Gift" is defined under Section 122 of the Act. A gift can be valid only if it is accepted by or on behalf of the donee. If a document recites acceptance, it is, prima facie, valid and the donor cannot plead a case contrary to the recitals of the document. When a gift deed is registered as contemplated under Section 123 of the Act, it cannot be cancelled by another deed of cancellation. Having regard to the provisions of the Transfer of Property Act relating to a gift of an immovable property, situation may be different from the cases relating to a sale deed or release deed.

15. Sale is defined under Section 54 of the Transfer of Property Act as a transfer of ownership in exchange for a price paid or promised or part-paid or part-promised. Release Deed is also a conveyance of property and, therefore, it comes within the definition of sale. In such circumstances, the judgment of the Full Bench of this Court, which is held applicable to a case of sale, equally applies to a deed of release as well.

16. As it has been held by the Hon'ble Full Bench of this Court in the case of *Latif Estate Line India Limited*, cited supra, a Deed of Cancellation of Sale or Release, unilaterally executed by the transferor, does not create, assign, limit or extinguish any right, title or interest in the property and is of no effect. Such a document does not create any encumbrance on the property already transferred. Therefore, a Deed of Cancellation of Sale or Release cannot be accepted for registration. When a document of Release is registered, it conveys absolute title and interest in favour of the transferee. It cannot be divested to the transferor by execution and registration of a Deed of Cancellation, as held by the Full Bench. Even with the consent of parties for cancellation, the transferee also should be a party.

17. A Writ Petition for appropriate relief to render the Cancellation Deed ineffective is maintainable and, therefore, this Court, on the basis of precedents, has no other option but to hold that the impugned Cancellation Deed cannot be accepted for registration, as it is not only null and void, but also opposed to public policy.

18. It is to be noted that there is no specific provision under the Registration Act, 1908, to deal with a document. The power of Sub-Registrar to refuse to register is



also not absolute. The Registrar can refuse to register a document for the reasons, which are enumerated under Rule 162 of the Tamil Nadu Registration Rules, as approved by the State Government under Section 69 of the Registration Act. Though Rule 162A has also been introduced by G.O.Ms.No.691, dated 16.07.1980, and it reads that no Registration Officer shall accept for registration any document or transaction constituting an offence under any law or is opposed to public policy or morality, this Court is unable to rest the judgment, relying upon Rule 162A, as this Court had earlier struck down Section 22A of the Registration Act, as it stood originally, which enabled the Registering Officer to refuse to register such documents, which are opposed to public policy.

19. The power under Article 226 of the Constitution of India should be exercised in a case like this, as cancellation of a registered instrument, if permitted, would defeat the very purpose and object of the Registration Act. It is to be noted that there is a public interest element. The provisions of the Registration Act are carefully designed to prevent forgeries, procurement of conveyance or mortgages and fraud. Hence, they are necessary. In certain cases, it may be possible to hold that Registrar should not be given such an authority to decide certain complicated issues. For instance, under Section 5 of the Tamil Nadu Patta Pass Book Act, no document relating to transfer of any land by sale, gift, mortgage, exchange, settlement or otherwise, shall be registered by the registering authority, unless the Patta Pass Book, relating to such land, is produced before such registering authority. Similarly, it is also the obligation of anyone, who is liable to pay registration fee, to pay to the authority such fee, as may be prescribed for making necessary entries relating to such transfer in the Tamil Nadu Patta Pass Book Act. On receipt of a report from the registering authority, the Tahsildar is required to make necessary entries in the Register of Patta Pass Book maintained by him and shall cause necessary changes to be carried out in the Patta Pass Book, already issued under Section 3 of the Act. Hence, the Registering Officer, who is expected to verify whether a person holds patta before the person professes to convey the property as the owner, should also be capable of refusing to register the cancellation of a registered instrument without the consent of the transferee. Till such time there is a clarification by a valid statute, this Court has to assume jurisdiction and exercise its power to render such cancellations void, by entertaining writ petitions to avoid dragging the affected person to approach a Civil Court and wait for years or decades in Court corridors to get justice.



20. In the light of the views expressed by this Court as above, this Writ Petition is allowed and the impugned order is quashed. No costs. Consequently, the connected M.P.No.1 of 2011 is closed.

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Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

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To

The Sub-Registrar,
Office of the District Registrar,
Karunagapalayam,
Erode District.

+1cc to M/s.I.C.Vasudevan, Advocate Sr No.41552

W.P.No.25234 of 2011

PL (CO)
PR (14/09/2021)