

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.02.2021

CORAM

THE HONOURABLE Mr. JUSTICE S.S.SUNDAR

W.P. No. 26713 of 2011

Raziya

...Petitioner

Vs

1.Sub Registrar,
Registration Dept,
Thyagaraya Nagar,
Chennai.

2.Abdul Rahim

... Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Declaration, declaring the registration of the Cancellation Deed dated 25.08.2009 as Doc. No.1590/09 in Book I, on the file of the 1st Respondent, as null and void.

For Petitioner : Mr. P.P.Purushothaman
For Respondent -1 : Mr. V.Kathirvel
Special Government Pleader
2 : No appearance

O R D E R

This Writ Petition has been filed for issuance of Writ of Declaration, declaring the registration of the Cancellation Deed dated 25.08.2009 as Doc. No.1590/09 in Book I, on the file of the 1st Respondent, as null and void. A unilateral cancellation of registered settlement deed is the subject matter of this Writ Petition. This Court has granted prayer in favour of the petitioner seeking similar prayer in similar circumstances.

2. By a deed of settlement executed by the second respondent in favour of the petitioner, the petitioner claim that she got absolute title and enjoyment of the property. The deed of settlement dated 03.01.2005 is registered as document No.3 of 2005. By a subsequent document described as deed of cancellation, the second respondent has cancelled the earlier settlement in favour of the petitioner. The deed of cancellation does not refer to any fact which falls within the purview of Section 126 of Transfer of Property Act, 1988. Due to various personal reasons, it is stated that the second respondent intend to revoke and cancel the earlier deed of

settlement executed in favour of the petitioner. This is not permissible in law. In the counter affidavit, the second respondent pleads that the settlement deed is void as the same was obtained by threat, force, fraud and under influence. It is open to the petitioner to seek cancellation of instrument by moving Civil Court.

3. A Full Bench of this Court in the case of Latif Estate Line India Ltd., & others Vs. Hadeeja Ammal & others reported in 2011 (2) CTC 1, has held as follows:

"...

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.

(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."

4. Though Section 126 of the Transfer of Property Act deals with suspension or revocation of a gift deed, the reason stated by the second respondent for cancellation or revocation of settlement deed does not fall under Section 126 of the Transfer of Property Act. The settlement deed is not subject to any condition. Hence, the unilateral cancellation in the

present case makes the deed vulnerable and therefore, it has to be declared that the impugned unilateral cancellation of gift deed is void. Having regard to settled position that such unilateral cancellation is void and this Court has granted relief in favour of the original transferee, this Court is also inclined to allow this Writ Petition.

Accordingly, the Writ Petition is allowed. No costs.

Sd/-
Assistant Registrar (CS VI)

//True copy//

Sub Assistant Registrar

bkn

To

1. The Sub Registrar,
Registration Dept,
Thyagara Nagar,
Chennai.

+1cc to Mr. Rajavel, Advocate SR.No.5465
+1cc to Government Pleader SR.No.5742

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MG (CO)

KKV/04/03/2021



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