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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.10.2021

CORAM:

THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

W.P.No.28738 of 2013

and

M.P.No.1 of 2013

R.Periyasamy

... Petitioner

Vs

1. The Sub Registrar,
Office of the Sub Registrar of
Registration Department,
Aval Poondurai,
Erode District.

2. Ponnammal @ Thangamani

... Respondents

Prayer : Writ Petition has been filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari to call for the records of the cancellation deed dated 01.08.2013 executed by the second respondent vide Document No.4145/2013 on the file of the first respondent cancelling the settlement deed dated 16.09.2009 bearing Document No.4658/2009 with regard to 0.11.0 Hectares in R.S.No.981/3 of Elumathur Village, Erode Taluk and quash the same.

For Petitioner : Mr.I.C.Vasudevan

For Respondent 1 : Mr.M.R.Gokul Krishnan,
Government Advocate

For Respondent 2 : M/s.D.Sathya

O R D E R

This writ petition has been filed to issue a Writ of Certiorari to call for the records of the cancellation deed dated 01.08.2013 executed by the second respondent vide Document No.4145/2013 on the file of the first respondent cancelling the settlement deed dated 16.09.2009 bearing Document No.4658/2009



with regard to 0.11.0 Hectares in R.S.No.981/3 of Elumathur Village, Erode Taluk and quash the same.

2. The case of the petitioner is that he is the elder son of the second respondent. The second respondent inherited the agricultural land comprised in R.S.No.981/3 situated at Elumathur Village, Erode Taluk to an extent of 0.11.0 Hectares as per the family partition deed dated 03.02.1993 registered vide Document No.684 of 1993 on the file of the first respondent.

3. While being so, out of love and affection the second respondent executed a gift settlement deed dated 16.09.2009 in favour of the petitioner registered vide Document No.4658 of 2009 on the file of the first respondent in respect of the entire property comprised in R.S.No.981/3 (old S.F.No.441) to an extent of 0.11.0 Hectares situated at Elamathur Village, Erode Taluk.

4. From the date of settlement deed the petitioner has become the absolute owner and he is in possession and enjoyment of the same. Accordingly, the entire Revenue records and the electricity service connection in the said land are transferred in his name. Therefore, he also constructed a residential house by availing loan and the said house is also assessed the property tax.

5. While being so, the second respondent unilaterally without notice to the petitioner submitted a deed of cancellation before the first respondent and registered as Document No.4145 of 2013 dated 01.08.2013. Admittedly, the first respondent without any notice to the petitioner and without knowledge of the first respondent the deed of cancellation was unilaterally cancelled the settlement deed executed in favour of the petitioner dated 16.09.2009.

6. However, the first respondent has no power or authority to cancel the settlement deed unilaterally without the knowledge of the petitioner and without notice to the petitioner herein. The issues involved in the writ petition has already been settled by the Hon'ble Full Bench of this Court reported in 2011 (2) CTC 1, in the case of Latif Estate Line India Ltd Vs. Hadeeja Ammal, which was subsequently followed by the Division Bench of this Court in W.A.No.108 of 2020 dated 24.01.2020, wherein it is held as follows:

"5. We have considered the submissions raised and we find that the Full Bench has dealt with the aforesaid issues in detail holding that the writ petition would be maintainable, and on merits also held that a deed of cancellation of a sale



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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. The sum and substance, therefore, is that the writ petition filed by the respondents could be entertained, and in our opinion has been rightly allowed, following the dictum of the Full Bench in the case of *Latif Estate Line India Ltd vs Hadeeja Ammal* reported in 2011 (2) CTC 1 cited supra.

6. Learned counsel for the appellants then contends that the issuance of a Writ by this Court should not amount to extinguishing of any of the claims that the appellants can set up, questioning the very execution of the settlement deed dated 25.02.2008.

7. It is the submission of the learned counsel for the W.A.No.108 of 2020 appellants that the appellants' right to a settlement deed dated 25.02.2008 cannot be usurped by any legal provision and more so, the writ petition could not have been entertained after such a long passage of time.

8. We may clarify that an otherwise void document, as held by the Full Bench, cannot rejuvenate or survive any lapse of time and would not improve the situation any further, in as much as the document is non-existent in the eyes of law. The order of the learned Single Judge dated 10.08.2018 is simply a declaration to that effect, taking into account the law propounded by the Full Bench, which in no way defeats the rights of the appellants to contest the original settlement deed dated 25.02.2008. We say this for the reason that the learned counsel for the appellants is right in his submission that the declaration granted by the High Court cannot extinguish the rights of the appellants to contest their position before the appropriate forum and even otherwise, the appellants must have been under the belief that the cancellation deed had fulfilled the said purpose. This may also be coupled with the issue of limitation, if any action is proposed by the



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appellants and we therefore, make it clear that from that point of view, W.A.No.108 of 2020 the filing of the writ petition and the grant of declaration on 10.08.2018 shall not be a disadvantage in that regard."

7. In view of the settled law, this Court has no hesitation to allow the writ petition and the registration of cancellation of settlement deed in Document No.4145 of 2013 dated 01.08.2013 is hereby quashed. It is also made clear that the cancellation of the said registration will not be a bar for the second respondent herein to agitate her right before the competent civil court challenging the settlement deed which was originally executed by her in favour of the petitioner.

8. Accordingly, this writ petition is allowed. The second respondent is at liberty to file a Civil Suit. No order as to costs. Consequently, the connected M.P.No.1 of 2013 is closed.

Sd/-
Assistant Registrar (CS-IV)

//True Copy//

Sub Assistant Registrar

rna

To

The Sub Registrar,
Office of the Sub Registrar of Registration Department,
Aval Poondurai, Erode District.

+1cc to Mr.I.C.Vasudevan, Advocate, S.R.No.56059

+1cc to Mrs.Zeenath Begum, Advocate, S.R.No.55300

W.P.No.28738 of 2013
and M.P.No.1 of 2013

EV (CO)
SU (17/11/2021)