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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.09.2021

CORAM

THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

W.P.No.19411 of 2021
and W.M.P.No.20922 of 2021

P.Arumugam

... Petitioner

Vs.

1.The Sub Registrar,
Pennadam,
Tittagudi Taluk,
Cuddalore District - 606 105.

2.Mrs.Mookayi

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorari, by calling records of the Sub Registrar, Pennadam pertaining to the impugned cancellation deed vide in Doc.No.1886/2010 dated 16.09.2010 which was executed unilaterally by Smt.Mookayi W/o Veeramuthu cancelling the gift deed vide in 947/2010 dated 18.05.2010 in respect of the property bearing S.No.179/1C to the extent of 0.69 cents, S.No.179/3B to the extent of 0.29 cents and S.No.161/5B to the extent of 2454 Sq. ft., Melur Village, Tittagudi Taluk, Cuddalore District to quash the impugned cancellation deed dated 16.09.2010 vide in Doc. No.1886/2010 which is arbitrary, contrary to principles of natural justice, opposed to public policy.

For Petitioner : Mr.K.Jayabalan

For Respondents: Mr.Yogesh Kannadasan for R1
Government Advocate

ORDER

This writ petition has been filed for a Certiorari to quash the impugned Cancellation Deed vide Document No.1886/2010 dated 16.09.2010 which was executed unilaterally by Smt.Mookayi cancelling the Gift Deed vide in 947/2010 dated 18.05.2010 in respect of the property bearing S.No.179/1C to the extent of 0.69 cents, S.No.179/3B to the extent of 0.29 cents and S.No.161/5B to the extent of 2454 Sq.ft., Melur Village,



Tittagudi Taluk, Cuddalore District which is arbitrary, contrary to principles of natural justice, opposed to public policy.

2.The case of the petitioner is that he was resided at New Colony, Melur Village, Tittagudi Taluk, Cuddalore District - 606 111 along with his aunty Smt.Mookayi who executed Gift Deed in his favour on 18.05.2010 in S.No.179/1C to the extent of 0.69 cents, S.No.179/3B to the extent of 0.29 cents and S.No.161/5B to the extent of 2454 Sq. ft., which was registered before the Sub Registrar Office, Pennadam as Document No.947/2010 Page No.2 of the Document.

3.The petitioner submits that the said document was also duly attested by the three independent witnesses viz., Murugan, Muthusamy and one more witness from T Agaram Village, the said Gift Deed in Page No.5, Smt Mookayi W/o Veeramuthu voluntarily stated that under any of the circumstances the said Gift Deed cannot be revoked and even if she revoked the Gift Deed cannot be sustained.

4.The petitioner further submits that after accepting the Gift Deed, he was in possession of the said property by paying all the Revenue Taxes and also obtained Patta and Chitta from the concerned Head Quarters Deputy Tahsildar, Tittagudi Taluk, Cuddalore District and the Village Administrative Officer, Melur Village, Tittagudi Taluk, Cuddalore District.

5.According to the petitioner, Smt. Mookayi revoked the Gift Deed No.947/2010 dated 18.05.2010 by Document No.1886/2010 dated 16.09.2010 which was registered by the Sub Registrar, Pennadam, Tittagudi Taluk, Cuddalore District without issuing the notice to him is bad in law and cannot be sustained and the Sub Registrar, Pennadam has no power to revoke the Gift Deed No.947/2010 dated 18.05.2010 and the Gift Deed can be cancelled only by resorting to legal remedies in a competent Court of law, therefore, the revocation of Gift Deed No.1886/2010 dated 16.09.2010 cannot be sustained.

6.The petitioner submits that he made a representation on 15.07.2021 to the Sub Registrar, Pennadam and also the Inspector General of Registration, Chennai which was received by the Sub Registrar, Pennadam and the Inspector General of Registration, Chennai respectively, but no action has been taken on his representation till date.

7.The petitioner further submits that he came to know that the part of the above said property was sold by Smt. Mookayi to Shri Suresh Rao Cuddalore by executing Sale Deed vide Document No.1989/2013 in S.No.179/3B to the extent of 0.11 cent out of 0.28 cents dated 14.08.2013 and also executed a Will in favour



of Samikannu vide Document No.23/2010 in S.No.179/1C to the extent of 0.28 cents out of 0.69 cents dated 16.09.2010, he was unable to take possession of the property as per the Gift Deed vide Document No.947/2010 dated 18.05.2010.

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8. According to the petitioner, the registration of cancellation of Gift Deed is against the public policy, and it was not open to the Sub Registrar, Pennadam to register the cancellation of deed, when the gift deed is unconditional and irrecoverable. If at all the party who has executed the documents is aggrieved by the Gift Deed, he could have very well approach the Civil Court to set it aside, and therefore the cancellation deed and its registration being without jurisdiction and is liable to be set aside.

9. The learned counsel for the petitioner, in support of his contention has relied upon the order of this Court in the case of K.Sudhakaran vs. The Sub Registrar, Madurai in W.P. (MD) No.1816 of 2014 dated 13.03.2015.

10. The petitioner has no other alternative remedy except to approach this Court under Article 226 of the Constitution of India. Hence, the writ petition filed.

11. Heard, learned counsel for the petitioner and the learned Government Advocate for the first respondent and perused the materials available on record.

12. It is to be noted that this Court in the case of D.V.Loganathan Vs. the Sub-Registrar, Office of the Sub-Registrar, Pallavaram, Chennai and another reported in 2014(3) CTC 113 it is observed that the Unilateral cancellation of settlement deed is without jurisdiction and liable to be set aside. Further, in the case of Samiappan and Others Vs. Rajamani reported in CDJ 2014 MHC 5730, the Hon'ble Division Bench of this Court held that the 'settlement deed cannot be set at naught unilaterally by one party'. The party, who settled the property in favour of the petitioner is none other than his father, who had executed the settlement deed dated 28.09.1999 and the petitioner was put in possession. It is also brought to the notice of this Court by the petitioner that in the settlement deed, no power of cancellation was reserved by the father of the petitioner and however, the father chose to cancel the documents during the year 2001.

13. It is pertinent to point out that the Sub Registrar, who registered the cancellation deed, ought to have issued notice to the parties under the settlement deed, viz., the petitioner and concerned parties and without doing so, has unilaterally registered the documents ignoring the fact that the settlement



deed was acted upon and the Cancellation Deed was presented for registration after nearly 4 months after the date of settlement. This being contrary to the legal position, the same requires to be interfered with.

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14. Moreover, the Hon'ble Full Bench of this Court in the case of *Latif Estate Line India Ltd., Vs. Hadeeja Ammal* reported in 2011 (2) CTC 1 has held that unilateral cancellation of a registered Sale Deed through a Deed of Cancellation is of no effect in law. The conclusion drawn by the Full Bench as recorded in paragraph Nos. 58 and 59 are extracted hereunder:

"58. It can also not be overlooked or ignored that a unilateral cancellation of a sale deed by registered instrument at the instance of the vendor only encourages fraud and is against public policy. But there are circumstances where a deed of cancellation presented by both the vendor and the purchaser for registration has to be accepted by the Registrar if other mandatory requirements are complied with. Hence, the vendor by the unilateral execution of the cancellation deed cannot annul a registered document duly executed by him as such an act of the vendor is opposed to public policy.

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 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."

15. In the light of the above, the present Writ Petition is allowed and the unilateral cancellation of the Settlement Deed registered as Document No.1886/2010 dated 16.09.2010 is set aside and the first respondent is directed to remove the entries pertaining to the same in the register. It is needless for this Court to make a mention that this order will not prevent the second respondent from approaching the civil court to establish his right over the property, if done so, the Civil court, shall decide the matter uninfluenced by any of the observation in this order, as this petition is decided only on the cancellation of settlement deed on the ground that it is an unilateral cancellation. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

The Sub Registrar,
Pennadam,
Tittagudi Taluk,
Cuddalore District - 606 105.

+1cc to M/s.K.Jayabalan, Advocate, S.R.No.47956
+1cc to the Government Pleader, S.R.No.47877

W.P.No.19411 of 2021

PL(CO)
SB(13/12/2021)