



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.02.2021

CORAM

THE HONOURABLE Mr. JUSTICE S.S.SUNDAR

W.P. No.4033 of 2017
and W.M.P. No.25244 of 2018

E.Punitha

... Petitioner

Versus

1. The District Registrar,
District Registrar Office,
No.12, Chairman Chidambaram Street,
West Shanmugapuram Colony,
Villupuram - 605 602.

2. The Joint Sub-Registrar No.II,
Registration Office,
No.72, Thiru.Vi.Ka. Street,
Villupuram - 605 602.

3.Vasanthha

4.E.Venugopal

5.E.Narayanan

6.E.Senthilkumar

7.Shanthi

.. Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus calling for the records pertaining to the Registration of the impugned cancellation of the gift settlement deed, bearing Registration No.624/2016 dated 16.02.2016 and the impugned Gift Settlement Deed bearing Registration Document No.719 of 2016 dated 19.02.2016, and the impugned Cancellation of the Gift Settlement Deed bearing Registration No.1776/2016 dated 15.04.2016 and the impugned Gift Settlement Deed bearing Registration Document No.1777 of 2016 dated 18.04.2016, registered in the office of the 2nd Respondent Quash the same and consequently direct the 2nd Respondent to delete the entries of the impugned Cancellation of the Gift Settlement Deed bearing Registration No.624/2016 dated 16.02.2016 and the impugned Gift Settlement Deed, bearing Registration Document No.719 of 2016 dated 19.02.2016 and the impugned cancellation of the Gift Settlement Deed, bearing Registration No.1776/2016 dated 15.04.2016 and the impugned Gift Settlement Deed, bearing Registration Document No.1777 of 2016 dated 18.04.2016 from the



WEB COPY

Encumbrance Certificate, within the stipulated time.

For Petitioner : Mr. J.Agni Selvaraju

For Respondents 1&2 : Mr. P.P.Purushothaman
Government Advocate

3 : Ms. Anu Bharathi

4-7 : No appearance

O R D E R

This Writ Petition is filed to quash the Registration of the impugned cancellation of the gift settlement deeds registered in the office of the 2nd Respondent and to direct the 2nd Respondent to delete the entries of the impugned Cancellation of the Gift Settlement Deed from the encumbrance certificate.

2. The case of the petitioner as pleaded in the affidavit filed in support of this Writ Petition are as follows. The third respondent in the Writ Petition is the mother of the petitioner. The third respondent who is acknowledged as the owner of the property, executed a settlement deed in favour of the petitioner by a deed of gift settlement dated 03.12.2015. It is stated that the original parent document was handed over to the petitioner and that the gift deed was accepted by the petitioner. After the execution of the settlement deed, the third respondent cancelled the settlement deed executed in favour of the petitioner by a document titled as cancellation of gift settlement. This document was executed on 16.02.2016 and the same was also registered by the second respondent. There were subsequent transactions by which the property was dealt with by the third respondent and others. The third respondent filed an affidavit stating that she has no objection to set aside the impugned cancellation of the gift settlement deed dated 16.02.2016 and all the other subsequent deeds which were also duly registered by the second respondent.

3. Similar issue was considered by this Court in several precedents and this Court followed the judgment of a Full Bench of this Court in the case of Latif Estate Line India Vs. Hadeeja Ammal reported in 2011 (2) CTC 1, wherein it was held that the unilateral cancellation of settlement deed by a subsequent document is not valid and non-est in the eye of law. The status of such unilateral cancellation of settlement deed or gift deed has been pronounced by this Court in several judgments. A Division Bench of this Court in the case of Revathi Vs. The Inspector General of Registration and others, in W.P. No.6694 of 2020 (dated 16.03.2020), has held as follows:

"...



WEB COPY

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-est 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 appellants and we therefore, make it clear that from that point of view, the filing of the Writ Petition and the grant of declaration on 10.08.2018 shall not be a disadvantage in that regard.

9. It is clear from the above judgment that a writ petition of this nature is maintainable and a deed of cancellation which was executed unilaterally will have no effect. Such a document ought not to have been accepted for registration more particularly in a case where the property had already vested absolutely in favour of the petitioner."

4. Another Division Bench of this Court, in the case of Kannian and others Vs. Saranya and others in W.A. No.108 of 2020 (dated 24.01.2020) has held as follows:

"...

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-est 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



WEB COPY

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 appellants and we therefore, make it clear that from the point of view, the filing of the writ petition and the grant of declaration on 10.08.2018 shall not be a disadvantage in that regard."

5. When the situation as prescribed under Section 126 of the Transfer of Property Act is not disclosed in the document cancelling the settlement or gift deed, this Court has to declare the unilateral cancellation of registered deed, which was accepted and acted upon, is a void document and that there is no scope for upholding the validity even though it is registered. Once the executant of a settlement deed conveys title and the transfer in relation to the immovable property is complete by registration and acceptance, it is not open to the executant to revoke the settlement. After conferring right in favour of the settle, the settler does not have any right to deal with the property. In the present case the reason for cancellation is that the settlement deed was not acted upon. The recitals in the settlement deed disclose that the settlement deed was acted upon by handing over the parent documents. In such circumstances, this Court is of the view that the petitioner is entitled to relief as prayed for.

6. Accordingly, this Writ Petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

bkn

To

1. The District Registrar,
District Registrar Office,
No.12, Chairman Chidambaram Street,
West Shanmugapuram Colony,
Villupuram - 605 602.



2. The Joint Sub-Registrar No.II,
Registration Office,
No.72, Thiru.Vi.Ka. Street,
Villupuram - 605 602.

WEB COPY

+1cc to Mr. J.Agni Selvaraju, Advocate, S.R.No.7752
+1cc to Mr.Eswararao, Advocate, S.R.No.7753
+1cc to the Government Pleader, S.R.No.8268

W.P. No.4033 of 2017

JPL(CO)
CT 10/03/2022