



WP.No.17125/2015

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON **31.03.2021**

DELIVERED ON **20.10.2022**

CORAM

THE HONOURABLE Mr. JUSTICE S.S.SUNDAR

WP.No.17125/2015

P.Raja Mohamed

.. Petitioner

Versus

1.The Sub Registrar
Pammal, Chennai 600 075.

2.Alima Beevi
3.P.Mohamed Ali Jinna
4.P.Abdul Khader

.. Respondents

****RR3&4 impleaded vide order dated 12.12.2016
in MP.Nos.1&2/2015 in WP.No.17125/2015**

Prayer:-Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of certiorari calling for the records of the 1st respondent dated 23.05.2014 in registering the cancellation of Settlement Deed executed and presented by the 2nd respondent as Doc.No.3667/2014 and quash the registration of the same.



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For Petitioner	: Mr.P.Arumugarajan
For R1	: Mr.B.Kannan
For R2	: Mr.K.Doraisamy, Senior counsel for Mr.N.Ishtiaq Ahmed
For R3	: Mr.R.Govindarajan for M/s.APR Associates
For r4	: Mr.V.N.Mohan Raj

ORDER

- (1) The above writ petition is filed for issuance of a writ of certiorari to call for the records of the 1st respondent dated 23.05.2014 in registering the cancellation of the Settlement Deed executed and presented by the 2nd respondent as Doc.No.3667 of 2014 and to quash the same.
- (2) There is no dispute with regard to the facts and the petitioner got his property, namely, an Industrial Plot in Pammal Village, Tambaram Taluk, Kancheepuram District, by virtue of a registered Settlement Deed dated 23.07.2009 from his mother, namely, the 2nd respondent herein. However, the 2nd respondent, probably due to the strained relationship with the petitioner, executed an unilateral Cancellation Deed cancelling the Settlement Deed executed in favour of the petitioner and registered the said



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document on 23.05.2014 as Doc.No.3667/2014 on the file of the Sub Registrar, Pammal. Stating that the unilateral cancellation of Settlement Deed is void and such unilateral cancellation of a valid document of conveyance cannot be permitted, the above writ petition is filed by the petitioner herein. The writ petition is opposed on the ground of maintainability.

- (3) Though there were a few conflicting judgments on the issue, pursuant to the judgment of the Hon'ble Supreme Court in ***Satya Pal Anand V. State of Madhya Pradesh and Others*** reported in ***2016 [10] SCC 767***, a Full Bench of this Court, vide judgment dated 02.09.2022 in a batch of writ petitions in WP.[MD] Nos.6889, 8330, 13297/2020 & 11674/2015 & WA[MD] No.800/2022 [Sasikala and Others Vs. The Revenue Divisional Officer and Another], has answered the reference in the following lines:-

"42.Section 126 of the Transfer of Property Act recognizes the power of revocation where the



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donor reserves a right to suspend or revoke the gift on happening of any specified event. However, the illustrations clarifies that the revocation should be with the assent of the donee and it shall not be at the will of donor as a gift revocable at the mere Will of the donor is void. The Sub~registrar cannot decide whether there was consent for revocation outside the document. If the donor by himself reserves a right to revoke the gift at his Will without the assent by donee, the gift itself is void. Since we are dealing with unilateral cancellation, the power of registration of cancellation or revocation of gift deed cannot be left to the discretion or wisdom of registering authority on facts which are not available or discernible from the deed of gift. When the power of revocation is reserved under the document, it is permissible to the registering officer to accept the document revoking the gift for registration only in cases where the following conditions are satisfied;

(a) There must be an agreement between the donor and donee that on the happening of a specified event which does not depend on the Will of the donor the gift shall be suspended or revoked by the donor.



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(b)Such agreement shall be mutual and expressive and seen from the document of gift.

(c)Cases which do not fall under Section 126 of Transfer of Property Act, unless the cancellation of Gift or Settlement is mutual, the registering authority shall not rely upon the self serving statements or recitals in the cancellation deed. For example questioning whether the gift deed was accepted or acted upon cannot be decided by the registering authority for the purpose of cancelling the registration of gift or settlement deed.

43.The donor must specifically reserves such right to suspend or revoke the gift deed with the consent of donee to attract Section 126 of the Transfer of Property Act. Unless the agreement is mutual, expressed in the recitals, the Registering Authority cannot accept the document for registration. However, the factual allegations with regard to the acceptance of gift or the issue where the gift was acted upon or not do not come under the purview of the Registering Officer. Hence, the Registering Officer is not excepted to accept the document unilaterally cancelling the gift deed,



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merely on the basis of the statement of the donor or the recitals in the document for cancellation.

44.From the discussions and conclusions we have reached above with reference to various provisions of Statutes and precedents, we reiterate the dictum of Hon-ble Supreme Court in Thota Ganga Laxmi and Ors.~vs~Government of Andhra Pradesh & Ors., reported in (2010) 15 SCC 207 and the Full Bench of this Court in Latif Estate Line India Ltd., case, reported in AIR 2011(Mad) 66 and inclined to follow the judgment of three member Bench of Hon-ble Supreme Court in Veena Singh-s case reported in (2022) 7 SCC 1 and the judgment of two member Bench of Hon-ble Supreme Court in Asset Reconstruction Company (India) Ltd., case, reported in 2022 SCC On~line SC 544 for the following propositions:

(a)A sale deed or a deed of conveyance other than testamentary dispositions which is executed and registered cannot be unilaterally cancelled.

(b)Such unilateral cancellation of sale deed or a deed of conveyance is wholly void and non est and does not operate to execute, assign, limit or



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extinguish any right, title or interest in the property.

(c)Such unilateral cancellation of sale deed or deed of conveyance cannot be accepted for registration.

(d)The transferee or any one claiming under him or her need not approach the civil Court and a Writ Petition is maintainable to challenge or nullify the registration.

(e)However, an absolute deed of sale or deed of conveyance which is duly executed by the transferor may be cancelled by the Civil Court at the instance of transferor as contemplated under Section 31 of Specific Relief Act.

(f)As regards gift or settlement deed, a deed of revocation or cancellation is permissible only in a case which fall under Section 126 of Transfer of Property Act, and the Registering Authority can accept the deed of cancellation of gift for registration subject to the conditions specified in para 42 of this judgment.

(g)The legal principles above stated by us cannot be applied to cancellation of Wills or power of Attorney deed which are revocable and not coupled with interest.



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45.As a result of our forgoing conclusions, we answer the reference by holding that the Registrar has no power to accept the deed of cancellation to nullify the deed of conveyance made earlier, when the deed of conveyance has already been acted upon by the transferee. Since anyone may try to mislead or misinterpret our judgment by referring to the question of reference we insist that our answer to the reference should be understood in the light of our conclusions summarised in the previous paragraph."

- (4) In view of the position explained by the Full Bench of this Court, this Court is inclined to allow this writ petition.
- (5) Accordingly, the writ petition stands **allowed** and the cancellation of Settlement Deed executed and presented by the 2nd respondent as Doc.No.3667/2014 and registration of such document are held to be invalid, incapable of conveying any right on the 2nd respondent. No costs.

20.10.2022

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Internet : Yes



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To

The Sub Registrar
Pammal, Chennai 600 075.

S.S.SUNDAR, J.,

AP



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