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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.10.2022

CORAM:

THE HONOURABLE MR. JUSTICE M.DHANDAPANI

W.P.No.2432 of 2015
and W.M.P.No.1 of 2015

Dr.D.Kamaleshwari

... Petitioner

VS.

1.Joint Registrar,
Office of District Registrar,
Gobichettypalayam,
Erode District.

2.G.D.Andadurai

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorari, calling for the records pertaining to registration of cancellation of settlement deed executed by the 2nd respondent dated 08.08.2013 as being registered in Doc.No.2503 of 2013 in Vol.1 on the file of the 1st respondent dated 08.08.2013 and to quash the same.

For Petitioner : Ms.Sivapriya
for Mr.V.Ayyadurai

For Respondents : Mr.G.Krishna Raja for R1
Additional Government Pleader

: Mr.K.P.Chandrasekaran for R2



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ORDER

This Writ Petition has been filed challenging the records pertaining to registration of cancellation of settlement deed executed by the 2nd respondent dated 08.08.2013 as being registered in Doc.No.2503 of 2013 in Vol.1 on the file of the 1st respondent dated 08.08.2013.

2.The case of the petitioner is that, 2nd respondent is the brother of the petitioner, who executed a irrevocable Settlement Deed dated 15.02.2008 with respect of the house site comprised in Door No.12 and 12A in Old Ward No.50 (New Ward No.24), Modachur Road, Gobichettypalayam measuring to an extent of 624 Sq. ft., along with right of passage and registered as Doc.No.427 of 2008 on the file of the 1st respondent. The petitioner thus having the absolute title and ownership of the property constructed superstructure over the same after obtaining planning permission from the local authorities. While so, the son of the 2nd respondent developed ill will against the petitioner and in view of the existing misunderstanding, the 2nd respondent issued a notice dated 12.04.2011, under threat of revocation of the Settlement Deed and the petitioner submitted a protest petition on



23.06.2011 to the 1st respondent. Even then the 2nd respondent cancelled the Settlement Deed vide Doc.No.2503 of 2013 dated 08.08.2013 in violation of the mandatory provisions contained in the Registration Act. Challenging the cancellation of the said Settlement Deed, the present Writ Petition has been filed.

3.Ms.Shivapriya, learned counsel appearing for the petitioner submitted that the issue in the present case is no longer res integra. The Hon'ble Full Bench of Madurai Bench of Madras High Court in ***W.P. (MD) Nos.6889/2020, etc. Batch, dated 2.9.2022*** had categorically held that the irrevocable settlement deed cannot be cancelled unilaterally. Accordingly, she prayed for allowing the Writ Petition.

4.Heard the learned counsel appearing for the petitioner and the learned Additional Government Pleader appearing for the 1st respondent and the learned counsel appearing for the 2nd respondent.

5.The issue arises in the petition is that, admittedly, the petitioner's brother is 2nd respondent. Earlier the 2nd respondent executed a irrevocable



Settlement Deed in favour of the petitioner vide Doc.No.427 of 2008 dated 15.02.2008. While so, due to the ill will against the petitioner, the 2nd respondent issued a notice dated 12.04.2011 and the petitioner submitted a protest petition on 23.06.2011 to the 1st respondent. Even then the 2nd respondent cancelled the Settlement Deed vide Doc.No.2503 of 2013 dated 08.08.2013 in violation of the mandatory provisions contained in the Registration Act.

6.As rightly submitted by the learned counsel for the petitioner, the issue in the present Writ Petition is already settled by the Full Bench constituted for considering identical issue, viz., the legality of the cancellation deed unilaterally executed, had rendered a decision in the case of ***Sasikala – Vs – The Revenue Divisional Officer & Anr. (W.P. (MD) Nos.6889/2020, etc. Batch – Dated 2.9.2022)***, by answering a reference made by a learned single Judge with regard to conflicting decisions in the matter of legality of registration of cancellation deed, by holding as under :-

*“41. **Regarding gift or settlement:** With regard to unilateral cancellation of gift deed, which is not revokable and does not come under the purview of Section 126 of the Transfer of Property Act, the Registrar has no power to accept the deed of cancellation to nullify the registered settlement deed.*



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Section 126 of the Transfer of Property Act, reads as follows:

“126. When gift may be suspended or revoked.—The donor and donee may agree that on the happening of any specified event which does not depend on the will of the donor a gift shall be suspended or revoked; but a gift which the parties agree shall be revocable wholly or in part, at the mere will of the donor, is void wholly or in part, as the case may be. A gift may also be revoked in any of the cases (save want or failure of consideration) in which, if it were a contract, it might be rescinded. Save as aforesaid, a gift cannot be revoked. Nothing contained in this section shall be deemed to affect the rights of transferees for consideration without notice.

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



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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.

(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, merely on the basis of the



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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 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



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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.

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.”

7. In view of the fact that the reference has been answered 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, the present case falls squarely within the four corners of the said decision, as the settlor, viz., the 2nd respondent herein, had unilaterally cancelled the settlement deed in the year 2013, which was entered into in the year 2008.

8. In view of the above decision, this Writ Petition is allowed, impugned order with regard to the registration of cancellation of settlement deed executed by the 2nd respondent dated 08.08.2013, being registered as Doc.No.2503 of 2013 in Vol.1 on the file of the 1st respondent is set aside. However, liberty is granted to the 2nd respondent to workout his remedy before the Competent Civil Court in respect of the earlier Settlement Deed.

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

18.10.2022

Index : Yes/No
Speaking Order : Yes/No
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To

Joint Registrar,
Office of District Registrar,
Gobichettypalayam,
Erode District.

M.DHANDAPANI,J.

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