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W.P.No.25527 of 2015

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 13.10.2022

Coram

The Honourable Mr.Justice M.DHANDAPANI

**W.P.No.25527 of 2015
and M.P.No.1 of 2015**

H.Diya (Minor) D/o.G.Harikrishnan,
Rep. by her mother and natural Guardian,
S.Durga Devi W/o.G.Harikrishnan,
No.11/44, Jagan Street,
Manali Pudhu Nagar,
Chennai – 600 103.

...Petitioner

Versus

1.The Inspector General of Registration,
100, Santhome High Road,
Pattinapakkam,
Chennai – 600 028.

2.The Sub-Registrar,
Thiruvattiyur, Chennai.

3.G.Santha

...Respondents

Writ Petition filed under Article 226 of the Constitution of India
praying for issuance of a writ of certiorarified mandamus calling for the
records pertaining to the deed of cancellation of the settlement deed in



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Document No.4236/2015 dated 01.06.2015 on the office of the second respondent herein and to quash the same and consequently, direct the second respondent to cancel the entries in the Encumbrance Certificate.

For Petitioner : Mr.S.Manivannan

For Respondents – 1 & 2: Mr.G.Krishnaraja,
Additional Government Pleader

For Respondent – 3 : Mr.P.K.Ilavarasan

ORDER

The relief sought in this writ petition is to call for the records pertaining to the deed of cancellation of the settlement deed in Document No.4236/2015 dated 01.06.2015 on the office of the second respondent herein and to quash the same and consequently, direct the second respondent to cancel the entries in the Encumbrance Certificate.

2. The original petitioner is a 5 years old minor girl. She is under the care of her parents. The third respondent is her grandmother. On 14.05.2015, the third respondent had settled her self acquired property comprised in Survey Nos.14A & 15 measuring to an extent of 2,420 Sq.ft



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situated at Vichoor Village, Jagan Nagar, Ponneri Taluk, Tiruvallur District in favour of her granddaughter/petitioner by way of Settlement Deed dated 14.05.2015 which was registered as Document No.3766/2015 on the file of second respondent. The third respondent appointed the petitioner's mother viz., S.Durga Devi as Manager for the above mentioned property of petitioner with a condition to handover the possession of the said property to the petitioner as soon as the petitioner attains the age of majority. On the date of execution of said Settlement Deed, third respondent had tendered all the original documents pertaining to the subject property to petitioner's mother. The said Settlement Deed was accepted and acted upon by the petitioner's mother on behalf of the petitioner. After the execution of Settlement Deed, the petitioner's mother had paid the land taxes of the subject property in the name of petitioner and also, mutated the electricity connection of the subject property in petitioner's name. While so, the third respondent sent a letter dated 01.06.2015 to the petitioner stating that she has revoked the aforesaid Settlement Deed vide Cancellation of Gift Settlement Deed dated 01.06.2015 which was registered as Document No.4236 of 2015 dated 01.06.2015 on the file of second respondent. In the said letter, the third respondent has stated that she has cancelled the said



Settlement Deed for the reason that the petitioner's father who is none other than the son of third respondent has not taken care of his father (third respondent's husband) and not provided any medical treatment to his father who suffered from cancer disease. Aggrieved over the cancellation of Settlement Deed, the petitioner's mother has filed the present writ petition on behalf of her daughter/petitioner.

3. The learned counsel appearing for the petitioner submitted that the third respondent has unilaterally cancelled the Settlement Deed dated 14.05.2015 without the consent of petitioner's parents. He further submitted that in the Settlement Deed, the third respondent herself has stated that she has executed this settlement deed only in consideration of love and affection towards her granddaughter/petitioner and she will not cancel this Settlement Deed in any event. The third respondent has revoked the Settlement Deed only at the instigation of her daughter Subatra Devi. The second respondent ought not to have permitted the third respondent to cancel the settlement deed. Without application of mind, the second respondent has registered the Cancellation Deed dated 01.06.2015, which is in violation of principles of natural justice. He also submitted that when the Full Bench of this Court



has dealt with a case of similar nature in ***W.P.(MD).Nos.6889 of 2020 & etc., batch (Sasikala Vs. The Revenue Divisional Officer-cum-Sub Collector, Devakottai, Sivagangai District & Anr.) dated 02.09.2022***, it has held that the unilateral cancellation of deed is impermissible. Therefore, the learned counsel prayed this Court to quash the Cancellation Deed dated 01.06.2015 which was executed by the third respondent and registered by the second respondent.

4. Admittedly, the third respondent has settled her self acquired property in favour of her granddaughter/petitioner vide Settlement Deed dated 14.05.2015, but, subsequently, she has unilaterally cancelled the said Settlement Deed. Hence, this writ petition.

5. At this juncture, this Court is of the opinion that the ratio laid down by the Full Bench of this Court in ***W.P.(MD).Nos.6889 of 2020 & etc., batch (Sasikala Vs. The Revenue Divisional Officer-cum-Sub Collector, Devakottai, Sivagangai District & Anr.) dated 02.09.2022*** is squarely applicable to the case on hand. The relevant paragraphs of the order passed in the said case are as follows:



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*“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. 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 clarify 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 Subregistrar cannot decide whether there was consent for revocation outside the document. If the donor by himself reserves



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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.

(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,



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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 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.-vsGovernment 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.



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(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.

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.

The decision on individual cases:



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46. *The writ petition in W.P(MD)No.6889 of 2020 is filed by the daughter of the second respondent to quash the order passed by the first respondent under Section 23 of the Maintenance and Welfare of Parents and Senior Citizens Act 2007. The gift deed executed by the second respondent in favour of the writ petitioner was unilaterally cancelled by the second respondent father. The settlement deed stated to have been executed by the second respondent, dated 06.03.2015 is irrevocable and it is a deed of settlement out of love and affection. The second respondent has specifically stated that he has no right to revoke the settlement deed. From the recitals, the settlement does not attract Section 126 of Tamil Nadu Property Act. It is seen that the settlor viz., the second respondent, has not put any condition. In other words, the gift deed is not subject to any condition or terms that the transferor shall provide the basic amenities and basic physical needs to the second respondent. In such circumstances, this Court is of the view that there is no scope for invoking the power provided to the second respondent under Section 23 of the Tamil Nadu Maintenance and Welfare of Parents and Senior Citizens Act, 2007. Therefore, the order impugned is liable to be quashed. Even though we agree that the writ petition can be allowed, this Court is unable to decide the writ petition in this batch where question referred to us is different. Hence, the writ petition in W.P(MD)No.6889 of 2020 is de-linked and the Registry is directed to list the matter before the appropriate Bench.”*



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6. In view of the categorical finding of the Full Bench of this Court in the decision cited *supra*, this Court is inclined to allow this writ petition.

7. Accordingly, this writ petition is allowed and the Cancellation of Settlement Deed dated 14.05.2015 registered as Document No.4236 of 2015 dated 01.06.2015 on the file of second respondent is declared as null and void. It is needless to state that the Revenue Officials shall mutate the Revenue Records in favour of the petitioner, as expeditiously as possible. No costs. Consequently, connected miscellaneous petition is closed.

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mrr

Index : Yes/No

Speaking Order (or) Non-Speaking Order

Copy to

1.The Inspector General of Registration,
100, Santhome High Road,
Pattinapakkam,
Chennai – 600 028.

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2.The Sub-Registrar,
Thiruvattiyur, Chennai.

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M.DHANDAPANI, J.

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