IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 28.10.2022

Coram

The Honourable Mr.Justice M.DHANDAPANI

W.P.No.33301 of 2015
and M.P.Nos.1 & 2 of 2015

Ashok Kumar

...Petitioner

Versus

1.The Inspector General of Registration,
No.100, Santhome High Road,
Chennai – 600 028.

2.The Sub-Registrar,
Arakkonam Joint I,
Gandhi Road,
Arakkonam.

3.Smt.Lalitha

4.Mr.Jaganathan

...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 of the second respondent culminated in the Cancellation Deed dated 13.04.2015 registered as Deed of Cancellation dated 13.04.2015, which has been registered as Document No.2166 of 2015 Book 1 in office of the Sub-

Registrar, Joint I Arakkonam and quash the same and consequentially, direct the second respondent to remove the entry made as Deed of Cancellation dated 13.04.2015, which has been registered as Document No.2166 of 2015 Book 1 in office of the Sub-Registrar, Joint I Arakkonam.

For Petitioner	:	Mr.R.Palaniandavan
For Respondents – 1 & 2	:	Mr.C.Kathiravan, Special Govt. Pleader
For Respondents – 3 & 4	:	No Appearance

ORDER

The relief sought by the petitioner in this writ petition is to call for the records of the second respondent culminated in the Cancellation Deed dated 13.04.2015 registered as Deed of Cancellation dated 13.04.2015 which has been registered as Document No.2166 of 2015 Book 1 on the file of second respondent and quash the same and consequentially, direct the second respondent to remove the entry made regarding the said Deed of Cancellation.

2. The case of the petitioner is that he is the owner of the property comprised in Survey Nos.162/2, 162/3, 167/6, 167/7, 176/2, 177/1, 177/2 & 177/4 measuring to an extent of Acre 3.40 Cents, out of the property

comprised in Survey No.67 measuring to an extent of Acre 5.10 Cents at Anvarthikanpet Village, Arakonam Taluk, Vellore District situated within the Registration Sub District of Joint-I, Arakonam and Registration District Arakkonam. The said property was owned by petitioner's wife viz., Mrs.A.Devaki who died on 26.03.2013. After her demise, respondents 3 & 4 (daughter & son of the petitioner) settled the schedule mentioned property in petitioner's favour by way of Settlement Deed dated 17.05.2013. The said Settlement Deed was registered as Document No.4295 of 2013 on the file of second respondent. After the execution of Settlement Deed, the petitioner has been in absolute possession and enjoyment of the said property. He formed a layout in the aforesaid scheduled mentioned property and also, conveyed a larger extent of property to the third parties by various Sale Deeds. While so, without the knowledge and consent of petitioner, respondents 3 & 4 have unilaterally cancelled the aforesaid Settlement Deed by way of execution of Cancellation Deed dated 13.04.2015. The said Cancellation Deed was registered as Document No.2166 of 2015 (Book 1) on the file of second respondent. Aggrieved over the same, the petitioner has filed the present writ petition before this Court for the reliefs stated *supra*.

3. The learned counsel appearing for the petitioner submitted that the

respondents 3 & 4 have executed the Cancellation Deed without the consent of the petitioner. The second respondent ought not to have permitted the respondents 3 & 4 to register the invalid cancellation deed. Without application of mind, second respondent has registered the Cancellation Deed, 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 which was executed by the respondents 3 & 4.

4. Admittedly, respondents 3 & 4 have settled the subject property in favour of their father/petitioner vide Settlement Deed dated 17.05.2013, but, subsequently, they have cancelled the said Settlement Deed vide Cancellation Deed dated 13.04.2015. Challenging the same, the petitioner is before this Court.

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:

> *"41.**<u>Regarding gift or settlement:</u>** 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 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 Subregistrar 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 descernible 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, 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.

(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."*

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 Deed dated 13.04.2015 registered by the 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 petitions are closed.

28.10.2022

mrr

Index : Yes/No

Speaking Order (or) Non-Speaking Order

<u>M.DHANDAPANI, J.</u>

mrr

Copy to

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   No.100, Santhome High Road,
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