



W.P.No.37988 of 2015

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.10.2022

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THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.No.37988 of 2015

And

M.P.No.1 of 2015

V.Selvam

... Petitioner

Vs.

1.The Sub – Registrar,
Sub – Registrar Office,
Jayamkondan,
Ariyalur District.

2.Chidambaram
3.C.Sakthivel
4.Alexander
5.Meena

6.Minor.Nandhini
Represented by Mother
Meena

7.Minor.Naveen
Represented by Mother
Meena

8.Thangam
9.M.R.Anandakumar
10.A.Thangam

(R5 to R10 impleaded vide order
dated 16.03.2022 made in
WMP.1028/2021 in
WP.37988/2015 by MGRJ)

... Respondents



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Prayer:

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Petition filed under Article 226 of the Constitution of India to issue a Writ of Declaration declaring that the Deed of Cancellation of settlement deed executed by the second respondent dated 06.07.2012 registered as document No.1008 of 2012 on the file of first respondent as null and void and not binding upon the petitioner's right, ownership or possession over the properties given under the settlement deed dated 11.10.2011 registered as Document number 1770 on the file of first respondent as null and void.

For Petitioner : Mr.N.Hariharan Nair

For Respondents : Mr.E.Vijay Anand for R1
Additional Government Pleader
M/s.T.T.Ravichandran for R2 & R3
M/s.S.Kamalakannan for R4
M/s.M.Senthilvadivu for R5, R8 to R10

ORDER

The petitioner has filed this writ petition seeking issuance of Writ of Declaration declaring that the Deed of Cancellation of settlement deed executed by the second respondent dated 06.07.2012 registered as document No.1008 of 2012 on the file of first respondent as null and void and not binding upon the petitioner's right, ownership or possession over the properties given under the settlement deed



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dated 11.10.2011 registered as Document number 1770 on the file of first respondent as null and void.

2.The case of the petitioner as stated in the affidavit filed in support of this petition is that the petitioner's father executed settlement deed in her favour and registered the same in the Sub – Registrar Office, Jayamkondam vide Document No.1770 of 2011 dated 11.10.2011 and handed over the same to the petitioner. After nearly one year, quarrel arose inbetween the petitioner and her brother since her brother did not repay the sum of Rs.65,000/- borrowed from her and her brother started to give trouble to her by creating encumbrances in the property. Hence, the petitioner filed a suit for declaration and injunction in O.S.No.233 of 2013 before the District Munsif Court, Jayamkondam. While such being the position, the petitioner's father, at the instance of the petitioner's brother, unilaterally cancelled the settlement deed executed in her favour Hence, this writ petition.

3.The learned counsel appearing for the fifth respondent submitted that already the petitioner has filed a suit for declaration and injunction in O.S.No.233 of 2013 before the District Munsif Court,



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Jayamkondam. When the said suit is pending, the petitioner has no right to file writ petition under Article 226 of the Constitution of India for the very same issue.

4.The learned Additional Government Pleader appearing for the first respondent submitted that the issue involved in this writ petition has already been considered by the Hon'ble Full Bench of the Madurai Bench of this Court in ***W.P.(MD).Nos.6889 of 2015 etc., batch, dated 02.09.2022 [Sasikala Vs. The Revenue Divisional Officer cum Sub Collector, Devakottai, Sivagangai District]*** and has categorically held that unilateral cancellation of a document is impermissible in law.

5.The issue involved in this writ petition is no longer *res integra* and it has already been considered by the Hon'ble Full Bench of the Madurai Bench of this Court in ***W.P.(MD).Nos.6889 of 2015 etc., batch, dated 02.09.2022 [Sasikala Vs. The Revenue Divisional Officer cum Sub Collector, Devakottai, Sivagangai District]***, the relevant portion of which reads as follows:

"44.From the discussions and conclusions we have reached above with reference to various provisions of Statutes and precedents,



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*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



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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



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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.Applying the ratio laid down in the decision cited supra, this Court is inclined to grant the relief sought for in this writ petition. The writ petition is accordingly allowed. However, liberty is granted to the private respondents to work out the remedy in the manner known to law. No costs. Consequently, the connected miscellaneous petition is closed.

18.10.2022

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Speaking Order/ Non Speaking Order

Index: Yes/ No

Internet: Yes/ No

To

1.The Sub – Registrar,
Sub – Registrar Office,
Jayamkondan,
Ariyalur District.



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M.DHANDAPANI,J.
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