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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : *27.01.2022

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THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

WP.No.13727 of 2021
and
WMP.No.14572 of 2021

K.Janarthanan

...Petitioner

Vs

1. The Sub Registrar, Kodambakkam,
Vadapalani, Chennai

2. M.Priyadarshini

...Respondents

Prayer :-

Writ Petition is filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus directing the first respondent to arrange to recall the registration of cancellation of settlement deed dated 18.02.2005 as requested vide representation dated 28.12.2020.

For Petitioner : Mr.R.Senniappan

For Respondents

For R1 : Mr.Yogesh Kannadasan,
Special Government Pleader

For R2 : Mr.C.Prasanna Venkatesh

ORDER

This writ petition is filed for direction directing the first respondent to arrange to recall the registration of cancellation of settlement deed dated 18.02.2005 as requested vide representation dated 28.12.2020.

2. Heard, Mr.R.Senniappan, the learned counsel for the petitioner, Mr.Yogesh Kannadasan, Special Government Pleader appearing for the first respondent, and Mr.C.Prasanna Venkatesh,



the learned counsel for the second respondent.

3. The case of the petitioner is that the petitioner got married with the second respondent. When the petitioner was employed in abroad, he used to send money to the second respondent for education of the children and maintenance of the family. When the petitioner was in abroad, he had purchased the property situated at Flat No.F1, Jayaram Apartments, First Floor, Baroda 3rd Street, West Mambalam, Chennai-33 in the name of his wife i.e. the second respondent herein by the registered sale deed dated 16.07.1997 registered vide document No.2390 of 1997. When the petitioner returned back to India during the year 2004, the second respondent transferred the subject property in favour of the petitioner by the registered settlement deed dated 09.07.2004 vide document No.2680 of 2004. In fact, in the settlement deed, the second respondent recited that the subject property having been purchased by the second respondent from out of her husband's income by the sale deed dated 16.07.1997. Thereafter, when the petitioner intended to sell the property, he came to understand that the settlement deed dated 09.07.2004, has been unilaterally cancelled by the cancellation of settlement deed dated 18.02.2005 registered vide document No.653 of 2005. However, the first respondent without even conducting any enquiry and without issuing any notice to the petitioner, registered the unilateral cancellation of settlement deed executed in favour of the petitioner. The first respondent has no jurisdiction to register the unilateral cancellation of settlement deed.

4. The issues involved in the writ petition has already been settled by the Hon'ble Full Bench of this Court in the case of Latif Estate Line India Ltd Vs. Hadeeja Ammal reported in 2011 (2) CTC 1, which was subsequently followed by the Division Bench of this Court in WA.No.108 of 2020 dated 24.01.2020, wherein it is held as follows:

5. We have considered the submissions raised and we find that the Full Bench has dealt with the aforesaid issues in detail holding that the writ petition would be maintainable, and on merits also held that a deed of cancellation of a sale unilaterally executed by the transferor does not create, assign, limit or extinguish any right, title or interest in the property and is of no effect. The sum and substance, therefore, is that the writ petition filed by the respondents could be entertained, and in our opinion has been rightly allowed, following the dictum of the Full Bench in the case of Latif Estate Line India Ltd vs Hadeeja Ammal reported in 2011 (2) CTC 1 cited supra.



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6. Learned counsel for the appellants then contends that the issuance of a Writ by this Court should not amount to extinguishing of any of the claims that the appellants can set up, questioning the very execution of the settlement deed dated 25.02.2008.

7. It is the submission of the learned counsel for the W.A.No.108 of 2020 appellants that the appellants' right to a settlement deed dated 25.02.2008 cannot be usurped by any legal provision and more so, the writ petition could not have been entertained after such a long passage of time.

8. We may clarify that an otherwise void document, as held by the Full Bench, cannot rejuvenate or survive any lapse of time and would not improve the situation any further, in as much as the document is non-est in the eyes of law. The order of the learned Single Judge dated 10.08.2018 is simply a declaration to that effect, taking into account the law propounded by the Full Bench, which in no way defeats the rights of the appellants to contest the original settlement deed dated 25.02.2008. We say this for the reason that the learned counsel for the appellants is right in his submission that the declaration granted by the High Court cannot extinguish the rights of the appellants to contest their position before the appropriate forum and even otherwise, the appellants must have been under the belief that the cancellation deed had fulfilled the said purpose. This may also be coupled with the issue of limitation, if any action is proposed by the appellants and we therefore, make it clear that from that point of view, W.A.No.108 of 2020 the filing of the writ petition and the grant of declaration on 10.08.2018 shall not be a disadvantage in that regard.

5. In view of the settled law, this Court has no hesitation to allow the writ petition. Accordingly, this writ petition is allowed and the registration of cancellation of settlement deed in doc.No.653 of 2005 dated 18.02.2005 is hereby quashed. It is also made clear that the cancellation of the said registration will not be a bar for the second respondent herein to agitate her right before the competent civil court challenging the settlement deed which was originally executed by her in favour



of the petitioner. Consequently, connected miscellaneous petition is closed. No order as to costs.

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Sd/-
Assistant Registrar(CS-VIII)

***Corrected as per letter
No.122, dated 21.03.2022**

//True Copy//

Sub Assistant Registrar

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To

The Sub Registrar, Kodambakkam,
Vadapalani,
Chennai

***To be Substituted the order
already despatched
on 17.02.2022**

+1cc to Mr.C.Prasannavenkatesh, Advocate, S.R.No.5507

+1cc to the Government Pleader, S.R.No.5641

WP.No.13727 of 2021

CP(CO)
RGA(09/02/2022)
PM/29/03/2022