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W.P.No.39337 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 24.11.2022

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.No.39337 of 2016
and W.M.P.No.33661 of 2016

1.Jothi
2.Minor.Lavanya
rep.by her next friend/mother 1st petitioner Jothi

..Petitioner

Vs.

1.The Sub Registrar,
Sub Registrar Office,
Edappadi, Salem District.

2.R.Madhusudhanan

...Respondents

Prayer: Writ petition has been filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus to call for the records in Cancellation Deed dated 13.07.2016 bearing Doc.No.2883 of 2016 on the file of the first respondent and quash the same and consequently direct the 1st respondent to remove the entry caused by the impugned Cancellation Deed dated 13.07.2016, bearing Doc.No.2883 of 2016, from its records.

For Petitioner : Mr.T.Nirmaleswar

For R1 : Mr.G.Krishnaraja
Additional Government Pleader

For R2 : No appearance



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ORDER

This petition has been filed for issuance of writ of Certiorarified Mandamus to call for the records in Cancellation Deed dated 13.07.2016 on the file of the first respondent and quash the same and consequently direct the 1st respondent to remove the entry caused by the impugned Cancellation Deed dated 13.07.2016.

2. The case of the petitioner is that the marriage between her and the 2nd respondent was solemnized on 05.02.2004 and due to matrimonial dispute, they got divorce on 28.04.2014 and subsequently the petitioner is living with his minor daughter, who is the 2nd petitioner herein. While so, in the year 2011, the 2nd respondent had executed an irrevocable Settlement Deed in favour of the petitioners on 09.02.2011, settling certain extent of land situated in S.F.No.257/1A1, Aavaniperur Keezhmugam Village, Edappadi Taluk, Salem District. Thereafter to her shock and surprise, the said Settlement Deed executed on 09.02.2011 was unilaterally cancelled by the 2nd respondent by executing a Cancellation of Settlement Deed dated 13.07.2016 and with the help of the same, the 2nd



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respondent is taking steps to change the patta in his name. Aggrieved by the same, the petitioner is before this Court.

3. The learned counsel appearing for the petitioner submitted that though the impugned Cancellation of Settlement Deed was effected by the 2nd respondent on the ground that there was a matrimonial dispute between the petitioner and the 2nd respondent, the very same issue was decided by the Hon'ble Full Bench of this Court in a batch of Writ Petitions in ***W.P.Nos.6889/2020 and etc., batch vide order dated 02.09.2022 (Sasikala Vs. The Revenue Divisional Officer cum Sub Collector, Devakottai, Sivagangai District and another)***, wherein this Court held that the unilateral cancellation is impermissible. In view of the said Full Bench Judgment, this Court may set aside the unilateral cancellation executed by the petitioner's husband.

4. Though notice was served on the private respondent, paper publication was effected and his name appeared in the cause list, no one has entered appearance on behalf of him. This Court considering the



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pendency of this issue, is inclined to dispose of the matter based on the available records.

5. Admittedly the 1st petitioner's husband settled the property in favour of the petitioners in the year 2011 vide Settlement Deed dated 09.02.2011 and subsequently the same was cancelled in the year 2016. Challenging the same, the petitioners are before this Court. However this Court is of the opinion that ***the Full Bench of this Court, vide order dated 02.09.2022 in W.P. No.6889/2020, etc., Batch***, while considering an identical issue, held as under:

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



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***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.



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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. Considering the categorical finding of the Full Bench of this Court in the above cited decision as the present petition being on the identical issue, the order passed in the aforesaid case is squarely attracted to the present petition as well, and hence this Court is inclined to allow this writ petition. Accordingly, this Writ Petition is allowed and the unilateral cancellation of Settlement Deed dated 13.07.2016 is declared as null and void and the revenue official are directed to mutate the revenue records in its original position as before execution of the said Cancellation of Settlement Deed. No costs. Consequently connected miscellaneous petition is closed.

24.11.2022

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To
The Sub Registrar,
Sub Registrar Office,
Edappadi, Salem District.



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M.DHANDAPANI.,J.

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