



Writ Petition No.6106 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 10/10/2022

C O R A M

THE HONOURABLE MR.JUSTICE N. SATHISH KUMAR

Writ Petition No.6106 of 2016

a n d

W.M.P.No.5435 of 2016

A. Mohanasundari ... Petitioner

Vs

1. The Sub-Registrar
Bhavani
Erode District.

2. Ayyavoo (died)

3. A. Sakthivel
(Impleaded vide, order, dated 11/2/2019
made in W.M.P.No.34020 of 2018 in
W.P.No.6106 of 2016 by PSNJ)

4. A. Velumani

5. Chitra ... Respondents

(R.R.4 and 5 impleaded as Lrs of the deceased
second respondent, vide, order dated 20/9/2022
made in W.M.P.No.24377 of 2022 in
W.P.No.6106 of 2016 by NSKJ)



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PRAYER : Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of declaration declaring that the registration of the deed of cancellation of settlement dated 4/9/2015 executed by the second respondent, registered as Doc.No.4984/2015 on the file of the first respondent is null and void, and not binding upon the petitioner's right conferred under the settlement deed dated 31/1/2011 registered as Doc.No.462/2011 on the file of the first respondent.

For petitioner	...	Mr.R.Prabakar
For respondents	...	Mr.P.Sathish Additional Government Pleader for R.1
		R.2 – died
		Mr.S.Vinoth Kumar for R.3
		Mr.M.R.Vivekananthan for R.R.4 and 5.

ORDER

This writ petition has been filed to declare the registration of the deed of cancellation of settlement, dated 4/9/2015, executed by the second respondent,



registered as Doc.No.4984/2015, on the file of the first respondent as null and void, and not binding upon the petitioner's right conferred, under the settlement deed, dated 31/1/2011, registered as Doc.No.462/2011, on the file of the first respondent.

2. The case of the petitioner is that the second respondent, who is none other than the father of the petitioner. Grandfather of the petitioner purchased the property on 30/6/1967. He executed Settlement Deed in favour of the second respondent, father of the petitioner. Thereafter, father of the petitioner executed a Settlement Deed, dated 31/1/2011 registered as Doc.No.462 of 2011 on the file of the first respondent in favour of the petitioner. Pursuant to this settlement, he was put in possession on the very same day.

3. When the matter stood thus, the second respondent has made some fraudulent misrepresentation before the first respondent, thereby, he has managed to register the impugned cancellation of the Settlement Deed, dated 4/9/2015. Being aggrieved, the petitioner has come forward with the present writ petition praying for the relief as stated supra.



4. Pending writ petition, the second respondent died and fourth and fifth respondents were impleaded as legal representatives.

5. Heard Mr.R.Prabakar, learned counsel for the petitioner, Mr.P.Sathish, learned Additional Government Pleader for the first respondent, Mr.S.Vinoth Kumar, learned counsel for third respondent and Mr.M.R.Vivekananthan, learned counsel for the respondents 4 and 5.

6. The learned counsel appearing for the petitioner submitted that unilateral cancellation of the Settlement Deed, without notice to the petitioner by the first respondent is contrary to the provision of the Transfer of Property Act and also against the judgment rendered by this Court in ***D.V.Loganathan's case 2014 (3) CTC 113.***

7. He further submitted that once the execution of valid gift is registered, as per the provisions of the Registration Act, the revocation of a validly made settlement is legally impermissible in law. In support of his submissions, he has placed reliance on the Full Bench judgment in ***SASIKALA Vs. 1. THE REVENUE DIVISIONAL OFFICER-CUM-SUB COLLECTOR,***



DEVAKOTTAI, SIVAGANGAI DISTRICT AND ANOTHER {W.P.(MD)

Nos.6889, 8330, 13297 of 2020, 11674 of 2015 and W.A.(MD) No.800 of 2022}.

8. Section 126 of the Transfer of Property Act, reads as follows:-

“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, 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



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be deemed to affect the rights of transferees for consideration without notice.”

9. Above provision makes it clear that unless the revocation is reserved unilateral cancellation is not permissible in law. On a careful perusal of the materials available on record, this Court is of the view that document in question, is a absolute Settlement. Therefore, once the property is settled, transfer of title is complete, the settlor or executor is divested with the title. Such being the position, again cancelling the Gift Deed unilaterally is not permissible under law. The Hon'ble Full Bench of this Court, in ***SASIKALA Vs. 1. THE REVENUE DIVISIONAL OFFICER-CUM-SUB COLLECTOR, DEVAKOTTAI, SIVAGANGAI DISTRICT AND ANOTHER {W.P.(MD) Nos.6889, 8330, 13297 of 2020, 11674 of 2015 and W.A.(MD) No.800 of 2022}***, at paragraph Nos.44 and 45, held as follows:-

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



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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-lineSC 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.”

10. In view of the above judgment, this court is of the considered view that unless the agreement is mutual, expressed in the recitals, the registering Authority cannot accept the document for registration. Such being the position,

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this Court is inclined to set aside the cancellation of settlement deed dated 4/9/2015.



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11. Accordingly, this Writ Petition is allowed and deed of cancellation of settlement, dated 4/9/2015, executed by the second respondent, registered as Doc.No.4984/2015, on the file of the first respondent, is set aside. No costs. Consequently, the connected Miscellaneous Petition is closed.

10/10/2022

Index : Yes / No

Internet: Yes

Speaking/non speaking order

mvs.

To

1. The Sub-Registrar
Bhavani
Erode District.

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