



W.P.No.624 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.12.2022

CORAM :

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

Writ Petition No.624 of 2016

S.Chandrasekaran

.... Petitioner

-Vs-

1.The Sub Registrar
Registration Department
Vellakovil, Tiruppur District.
2.V.Shanmugam
3.Smt. Samiathal
4.S.Chitra
(R4 impleaded vide court order
dated 23.08.2018 in WMP No.
1313 of 2017 SMSJ)

.... Respondents

Prayer : Writ Petition under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorari calling for the records relating to the impugned cancellation of settlement deed dated 02.12.2015 executed by the 2nd and 3rd respondents and registered as Document No.4250 of 2015 on the file of the 1st respondent herein and quash the same.

For Petitioner : Mr.K.Govi Ganesan
For Respondents : Mrs.N.Senthilselvi
Government Advocate – for R1
R2 – Died
M/s.I.Abrar Md.Abdullah – for RR 3 and 4



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ORDER

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The prayer sought for herein is for a Writ of Certiorari calling for the records relating to the impugned cancellation of settlement deed dated 02.12.2015 executed by the 2nd and 3rd respondents and registered as Document No.4250 of 2015 on the file of the 1st respondent herein and quash the same.

2. It is the case of the petitioner that, the 2nd and 3rd respondents are the parents of the petitioner. The land in S.F.Nos.267/C and 268/B1A measuring 1.4.00 and 2.38.50 hectares situated at Vellakovil Village, Kangeyam Taluk, Tiruppur District originally belonged to the paternal grandfather of the petitioner one Velappa Gounder. He executed a registered Will dated 13.07.1982 bequeathing the said property in favour of the petitioner. The petitioner's grandfather died on 07.12.1985 and thereafter the Will came into effect. Therefore, the petitioner became the absolute owner of the property in question.

3. Subsequently, the petitioner executed a settlement deed dated 23.02.2006 and registered the same as Document No.362/2006 in Sub Registrar Office (SRO), Vellakovil settling the properties to and in favour of the 2nd and 3rd respondents herein. Thereafter, the respondents 2 and 3 herein executed a settlement deed on 03.07.2015 and registered the same as Document No.2327 of 2015 in SRO, Vellakovil settling the above said properties in favour of the



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petitioner. The settlement deed, according to the petitioner, was executed and acted upon. While that being so, when the petitioner applied for encumbrance certificate sometime in December 2015 in respect of the said land, the petitioner claims that, to his shock and surprise, he found that the 2nd and 3rd respondents have unilaterally cancelled the settlement deed dated 03.07.2015 under Document No.2327 of 2015 on untenable grounds. The 1st respondent also has registered the cancellation of the settlement deed on 02.12.2015 registered as Document No.4250/2015. Challenging the said unilateral cancellation of the settlement deed made by the respondents 2 and 3, the present writ petition has been filed.

4. Heard Mr.Govi Ganesan, learned counsel for the petitioner and Mrs.N.Senthilselvi, learned Government Advocate for the first respondent.

5. Learned counsel for the petitioner submitted that the issue raised in this writ petition is covered by the dictum of this Court made in a Full Bench judgment in the matter of **"S.Sasikala -Vs- The Revenue Divisional Officer and Others"** in **W.P.(MD) Nos.6889 of 2020 etc., batch** dated 02.09.2022.



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6. I have gone through the said Full Bench judgment, where the Full Bench has settled the issue that, whatever be the reason, unilateral cancellation of settlement deed cannot be permitted and it cannot be given any effect. Therefore, such kind of registration, if any, made by way of unilateral cancellation of settlement deed, that can very well be set aside and the original position before the cancellation of settlement deed can be restored. The relevant portion of the orders of the Full Bench reads thus,

“ 40.Hence, we have no hesitation to answer the issue by holding that the Sub-Registrar namely, the Registering Authority has no power to accept the deed of cancellation to nullify the deed of conveyance made earlier.

41.Regarding gift or settlement: 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



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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 clarify 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 Sub-registrar 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 discernible 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



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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.-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



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Company (India) Ltd., case, reported in 2022 SCC Online 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



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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.”

7. In view of the law having been settled in this regard, this Court has no hesitation to hold that the said unilateral cancellation made by the respondents 2 and 3 in respect of the settlement made already in favour of the petitioner and the registration of the same as Document No.4250 of 2015 dated 02.12.2015 by the 1st respondent is liable to be quashed. Accordingly the same is quashed and the writ petition is allowed. As a sequel, the petitioner would be entitled to enjoy the property in question as a true owner pursuant to the earlier settlement made by the 2nd and 3rd respondents in favour of the petitioner.

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Index : Yes/No
Internet : Yes/No
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To



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The Sub Registrar
Registration Department
Vellakovil, Tiruppur District.

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R. SURESH KUMAR, J.

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