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WP.No.31378/2014

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.08.2022

CORAM:

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

WP.No.31378/2014 & MP.No.1/2014

K.Dilli Babu

... Petitioner

Vs

1.The Sub Registrar
Ashok Nagar
Chennai.

2.M.Parameswari

... Respondents

Prayer: Writ Petition filed Article 226 of the Constitution of India praying for issuance of a writ of declaration declaring that the deed of cancellation executed by the 2nd respondent on 05.11.2014 and registered as Document No.2772 of 2014 at the office of the 1st respondent cancelling the settlement deed dated 05.05.2014 registered as Document No.1103 of 2014 at the office of the 1st respondent as null and void and that such document does not affect the petitioners right over the property being the 497 sq.ft. of land together with house therein being the middle portion of the property comprised in T.S.No.99 Block No.177 of Kodambakkam Village bearing Old Door No.26 New Door No.61 Plot No.2461 Kabilar Street MGR



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Nagar Chennai 78 Mambalam - Guindy Taluk Chennai measuring an extent of 138.50 Sq.M. Or 149 sq.ft.

For Petitioner : Mr.T.Sai Krishnan
For R1 : Mr.U.Baranidharan, AGP
For R2 : Mr.Sunny Sheen for
Mr.V.Raghavachari

ORDER

- (1) This writ petition has been filed challenging the registration of the Cancellation Deed dated 05.11.2014 whereby the Settlement Deed dated 05.05.2014 was unilaterally cancelled by the 2nd respondent.
- (2) The case of the petitioner is that he is the brother of the 2nd respondent. The 2nd respondent came forward to execute a Settlement Deed with respect to the subject property. It is stated in the affidavit filed in support of the writ petition that the petitioner also paid a sum of Rs.3,50,000/- to the 2nd respondent in this regard. Thereafter, the Settlement Deed dated 05.05.2014 came to



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be executed by the 2nd respondent in favour of the petitioner and the subject property was absolutely conveyed in favour of the petitioner and the possession was also handed over to the petitioner.

- (3) The grievance of the petitioner is that the 2nd respondent unilaterally cancelled the Settlement Deed through a Deed of Cancellation dated 05.11.2014. According to the petitioner, the 1st respondent ought not to have entertained the Deed of Cancellation. Aggrieved by the same, the registration of the Deed of Cancellation as Document No.2772 of 2014 has been put to challenge in the present writ petition.
- (4) Heard Mr.T.Sai Krishnan, learned counsel appearing for the petitioner ; Mr.U.Baranidharan, learned Additional Government Pleader appearing for the 1st respondent and Mr.Sunny Sheen, learned counsel appearing for the 2nd respondent.
- (5) The issue that is involved in the present writ petition is squarely covered by the Division Bench judgment of this Court in the case of *N.Jeevalakshmi and Another Vs. Maheswaran and Others* in WA.No.984/2022 dated 24.06.2015.



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(6) The Division Bench, after analysing the entire law on the issue, held as follows:-

"12. In paragraph 40, it has been specifically held that once the document is registered, it is not open for the Registering Officer to cancel that registration even if his attention is invited to some irregularity committed during the registration of the document and after making it clear, it was further observed that if a party is aggrieved by the registration of the document and its validity, challenge can be made before the civil court. The remedy before the civil court was thus given if somebody is aggrieved by the registration of the deed and not on cancellation of the registered deed. Rather for that, the Registrar has no power even as per the judgment of the Apex Court in the case of Satya Pal Anand (supra) and if the Registrar still makes cancellation of the deed presented unilaterally, then the authority of the Registrar for it can be questioned by maintaining a writ petition being a legal question. In the light of the aforesaid, we find that the writ petition was maintainable and the order has not been passed going contrary to what has been held by the Apex Court.



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13. *The judgment in the case of P.Rukumani (supra) was against the judgment of the learned Single Judge, wherein also the judgment of the Apex Court in the case of Satya Pal Anand (supra) was considered. The Division Bench, however, referred the judgment of the Full Bench of this Court in the case of Latif Estate Line India Limited v. Hadeeja Ammal and others, 2011 (2) CTC 1 to hold that writ jurisdiction would not be available, but it was after finding that a civil suit was already instituted by the appellants seeking cancellation of the sale deed which was later on cancelled by another cancellation deed dated 20.09.2007. It was on the facts of that case held that the writ petition would not be maintainable. If there is any dispute on facts and the rights of the parties involved therein, the only appropriate remedy for the parties is to approach the civil court by way of civil suit. It would not apply when power of the authority is in question. The aforesaid would be borne out from paragraph 9 of the aforesaid judgment. But the facts of this case are distinguishable and, therefore, the judgment of the Division Bench in the case of*



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P.Rukumani (supra) would not have application. In view of the discussion made above, we do not find that the writ petition in the case was not maintainable.

14. The further issue is regarding the authority of the Sub~Registrar to cancel the registered deed. The issue aforesaid has already been decided by the Apex Court in the case of Satya Pal Anand (supra) and held that once a deed is registered by the Sub~Registrar, he has no power to cancel it and, accordingly, the second issue is covered by the judgment in the case of Satya Pal Anand (supra) and in the instant case, the registered settlement deed was cancelled unilaterally by the Sub~Registrar having no power for it and otherwise, the writ petition does not involve a disputed question of fact, rather the simple issue was as to whether the Sub~Registrar has authority to cancel the registered document or not and if it has no power to do it, the cancellation of the registered document is held to be illegal. Accordingly, we answer the second issue."

- (7) The above judgment of the Division Bench was subsequently followed by a Learned Single Judge of this Court in the case of ***S.Joseph Raj Vs. Sub Registrar, SRO, Vadaponparappi and Others***



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in WP.No.17232/2021 dated 27.07.2022 reported in
MANU/TN/5801/2022.

(8) The learned Single Judge held as follows:-

"10.The Circular dated 29.11.2018 issued by the Inspector General of Registration and the decision of the Hon'ble First Bench of this Court reported in 2022 SCC OnLine Mad 3364 (N.Jeevalakshmi and another Vs. N.Maheswaran and others), mandates the presence of settlor and settlee, while cancelling the settlement deed. In the absence of beneficiary, unilateral cancellation of settlement deed is non est in law."

(9) In the present case, on going through the Settlement Deed, it is found that there was an absolute settlement made in favour of the petitioner by the 2nd respondent and the possession was also handed over to the petitioner. The petitioner was also permitted to deal with the property absolutely. The 2nd respondent had also undertaken in the document that she will not cancel the Settlement Deed under any



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circumstances. After having executed such a document, the 2nd respondent proceeded further to unilaterally cancel the Settlement Deed through the Deed of Cancellation dated 05.11.2014. While executing this document, the 2nd respondent mentions about a condition which is not found in the Settlement Deed. The condition that has been stated in the Deed of Cancellation, looks like an oral understanding between the parties. If really there was any such understanding and the same was violated by the petitioner, the 2nd respondent ought to have approached a competent Civil Court and sought for cancellation of the Settlement Deed. This is in view of the fact that the ground taken by the 2nd respondent in the Deed of Cancellation requires appreciation of evidence. The 2nd respondent cannot unilaterally cancel the Settlement Deed by stating a condition which is not found in the Settlement Deed.

- (10) The 1st respondent ought not to have entertained the document presented by the 2nd respondent and the 1st respondent failed to take note of the fact that once a Deed is registered, he has no power to cancel it and the same has been made clear by the Division Bench



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referred supra.

(11) In view of the above discussion, this Court has absolutely no hesitation to interfere with the registration of the Deed of Cancellation dated 05.11.2014 entertained by the 1st respondent and accordingly, the registration of the Deed of Cancellation as Doc.No.2772/2014 is held to be null and void and non-est in the eye of law. If really the 2nd respondent seeks to cancel the Settlement Deed, it will be open to the 2nd respondent to approach the competent Civil Court and work out her remedy.

(12) In the result, the writ petition is **allowed** in the above terms. No costs. Consequently, the connected miscellaneous petition is closed.

30.08.2022

AP

Internet : Yes

To

The Sub Registrar

Ashok Nagar

Chennai.



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N.ANAND VENKATESH, J.

AP

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