BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **06.09.2022**

CORAM

THE HON'BLE MR.JUSTICE R.VIJAYAKUMAR

W.P(MD)No.10642 of 2014
and
M.P(MD)No.1 of 2014

Jose Mary ... Petitioner

Vs.

1.The Inspector General of Registration,
No.100, Santhome High Road,
Pattinapakkam,
Chennai-600 028.

2.The District Registrar (Administration),
Marthandam,
Kanyakumari District.

3.The Sub Registrar,
Vekilampi Sub Registrar's Office,
Vekilampi,
Kanyakumari District.

4.Mary Pushpam ... Respondents

PRAYER : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Mandamus, directing the third respondent to strike off the registration of cancellation deed executed by the fourth respondent bearing Document No.77/2009 and

78/2009, dated 13.01.2009 on the file of the third respondent.

For Petitioner	: Mr.T.Lajapathi Roy
For Respondents 1 to 3	: Mr.S.R.A.Ramachandran Additional Government Pleader
For 4th Respondent	: Mr.P.Thiyagarajan

ORDER

The present writ petition has been filed seeking a writ of mandamus directing the Sub Registrar to strike of the registration of unilateral cancellation deed executed by the fourth respondent on 13.01.2009.

2.According to the petitioner, two gift deeds were executed by the fourth respondent herein in her favour on 10.02.1987 and 12.02.1987. The petitioner further has contended that there are no clauses in the said gift deeds reserving the right of the settlor to revoke the said settlement deed. Based upon the said settlement deed, she has also obtained revenue patta in her favour. According to the petitioner, she has deposited the title deeds and obtained loan from the Indian Overseas Bank, Marthandam, in the year 2008. At this juncture, the fourth respondent has chosen to execute two cancellation deeds on 13.01.2009 cancelling the gift deeds dated 10.02.1987 and 12.02.1987.

3.The learned counsel for the petitioner has further contended that when the seller has not reserved any power to revoke the settlement deed, she has no power to execute the cancellation deed that to a unilateral cancellation deed. The third respondent authority has no jurisdiction whatsoever to entertain such a cancellation deed and registered the same. He further contended that once settlement deed is executed, the title deeds passed to the settlement deed and thereafter unilaterally the said documents cannot be cancelled. The third respondent has no jurisdiction to entertain such a documents and register the same. The petitioner further contended that the settlement deed has come into force and patta has been issued in favour of the petitioner and the petitioner has also deposited the documents and obtained loan from the IOB . In the said circumstances, The third respondent ought not to have entertained the cancellation deed.

4.Per contra, the learned counsel appearing for the fourth respondent has contended that after execution of the settlement deed, the petitioner had agreed for cancellation of the settlement deed. As a consideration for the said cancellation, the fourth respondent had paid a sum of Rs.5,75,000/- to the writ petitioner and the said amount has been credited to the savings bank account of the writ petitioner. The learned counsel appearing for the fourth respondent has further contended that the petitioner has given a consent letter on 24.09.2011 agreeing for the said cancellation on payment of Rs.5,75,000/-. Hence, the counsel for the fourth respondent has contended that the cancellation was effected only with the consent of the writ petitioner and that to on payment of consideration of Rs.5,75,000/-. Hence, the cancellation of the settlement deeds can never be considered to be a unilateral cancellation.

5.In view of the judgement of the Honourable Full Bench of this Court in ***W.P.Nos.6889 of 2020 etc., batch, dated 02.09.2022,*** in the case of ***Sasikala -vs- The Revenue Divisional Officer and others***, this court has held that the sub registrar will not have any jurisdiction whatsoever to entertain a unilateral cancellation deed of the settlement deed, unless all ingredients of Section 126 of the Transfer of Property Tax Act have satisfied. According to the petitioner, none of the ingredients as contemplated under Section 126 of the Transfer of Property Act are satisfied and hence, the acceptance of cancellation deed by the third respondent is not valid.

6.Though the contention of the writ petitioner is attractive, in this case, this Court finds that the fourth respondent has pleaded that the cancellation deed was executed only with the consent of the writ petitioner and that too after payment of a consideration of Rs.5,75,000. The learned counsel appearing for the fourth respondent has cited the statement of accounts to the effect that the said amount was transferred to the account of the present writ petitioner. However, the learned counsel appearing for the petitioner strongly disputes the fact that she had ever consented of the cancellation of the settlement deed.

7.The learned counsel for the petitioner has also pointed out that the transfer of the amount to the account of the writ petitioner is towards other transactions and not towards the consideration for the cancellation of the settlement deed.

8.The facts narrated above will clearly indicate that there are factual disputes whether the settlement deed was cancelled with the consent of the writ petitioner or not. It is also in dispute whether the amount transferred to the account of the writ petitioner is towards the consideration for cancellation document or not.

9.In view of the above said facts, this Court is not in a position to exercise jurisdiction under Article 226 of the Constitution of India. The petitioner is at liberty to approach the competent Civil Court challenging the cancellation deed. In case, the petitioner approaches the competent civil Court, this period spent in this court between 30.06.2014 and 06.09.2022 shall stand excluded, while calculating the period of limitation for challenging the said cancellation deed. In case, if the petitioner challenges the settlement deed before the competent civil Court, the same shall be decided without being influenced by any of the observation made in the writ petition.

10.In view of the above observations, this Writ petition stands disposed of. No costs. Consequently, the connected Miscellaneous Petition is closed.

06.09.2022

Index : Yes / No
Internet : Yes / No
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<u>R.VIJAYAKUMAR ,J.</u>

vsg

Order made in
W.P(MD)No.10642 of 2014

Dated:
06.09.2022