



1

W.P.(MD)NO.21895 OF 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 23.12.2022

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P.(MD)No.21895 of 2021

Muthupandian

... Petitioner

Vs.

1. The District Registrar,
O/o.The District Registrar Office,
Tenkasi, Tenkasi District.

2. The Sub Registrar,
Sub Registrar Office,
Melaneelithanallur,
Sankarankovil Taluk,
Tenkasi District.

3. V.Pown Pandian

4. M.Mahalakshmi

(R-3 & R-4 are impleaded vide order dated 24.01.2022
in W.M.P.(MD)No.19600 of 2021)

... Respondents

Prayer: Writ petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the records of the 1st respondent's reply dated 27.10.2021 in Na.Ka.No.6998/AA/2021 relating to the unilateral cancellation of the settlement deed dated 03.10.2012 registered as Document No.2314/2012 in the 2nd respondent and to quash the same as illegal and consequently direct the 2nd respondent to delete the entries of the



cancellation of Settlement deed dated 03.10.2012 registered as Document No.2314/2012 in the 2nd Respondent.

For Petitioner : Mr.V.Muthuvelan

For R-1 & R-2 : Mr.N.Sathees Kumar,
Additional Government Pleader.

For R-3 & R-4 : No appearance.

* * *

ORDER

Heard the learned counsel appearing for the writ petitioner and the learned Additional Government Pleader appearing for the official respondents.

2. Though the fourth respondent has been served and her name is also entered in the cause list, she has not chosen to enter appearance. Notice sent to the third respondent was returned as “unclaimed.

3. The petitioner's father Thiru.Veliyappathevar executed a settlement deed dated 26.08.2002 in favour of the writ petitioner. It was registered as document No.2186 of



2002 on the file of the second respondent. Ten years later, the said deed was unilaterally cancelled vide document No.2314 of 2012 dated 01.10.2012. The petitioner came to know about the same only recently. Thereafter, the present writ petition has been filed.

4. The petitioner's father passed away in the meanwhile. The learned counsel appearing for the petitioner categorically asserts that till date the property has not changed hands. The said submission made by the petitioner through his counsel is placed on record.

5. It is beyond dispute that the issue raised in this writ petition is no longer *res integra*. The Hon'ble Full Bench of this Court in the decision reported in **2022 (5) CTC 257 (Sasikala V. Revenue Divisional Officer-cum-Sub Collector)** has held as follows:-

“ 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



WEB COPY



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 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



WEB COPY



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



WEB COPY



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 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



WEB COPY



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



WEB COPY



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. V. Government of Andhra Pradesh & Ors.***, (2010) 15 SCC 207 and the Full Bench of this Court in ***Latif Estate Line India Ltd.***, case, 2011 (2) CTC 1(FB): AIR 2011Mad. 66 and inclined to follow the Judgment of Three Member Bench of Hon'ble Supreme Court in ***Veena Singh's case*** (2022) 7 SCC 1 and the judgment of Two-Member Bench of Hon'ble Supreme Court in ***Asset Reconstruction Company (India) Ltd., case***, 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.



WEB COPY



(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.”

6. Applying the aforesaid ratio laid down by the Hon'ble Full Bench of this Court, the impugned registration is quashed. This writ petition stands allowed. No costs.

23.12.2022

Index : Yes / No
Internet : Yes/ No

PMU



WEB COPY



To:

1. The District Registrar,
O/o.The District Registrar Office,
Tenkasi, Tenkasi District.
2. The Sub Registrar,
Sub Registrar Office,
Melaneelithanallur,
Sankarankovil Taluk,
Tenkasi District.



WEB COPY



12

W.P.(MD)NO.21895 OF 2021

G.R.SWAMINATHAN,J.

PMU

W.P.(MD)No.21895 of 2021

23.12.2022