



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 12.04.2022

CORAM:

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

W.P. (MD)No.18236 of 2016

and

W.M.P. (MD)No.13140 of 2016

WEB COPY

Vinmathy Augustian

... Petitioner

versus

1. The Joint I Sub Registrar,
Madurai South,
Madurai.

2. The Joint II Sub Registrar,
Madurai South,
Madurai.

3. The District Registrar,
Madurai.

4. Vidhwakani

... Respondents

Writ Petition filed under Article 226 of the Constitution of India, seeking for the issuance of writ of certiorarified mandamus, to call for the records in relation to the cancellation deed dated 03.06.2011 registered as document No.5194/2011 in the office of the first respondent and quash the same and further direct the first respondent to remove the unilateral cancellation of settlement deed executed by the 4th respondent in Document No.5194/2011 in the encumbrance certificate in relation to the schedule property.

For Petitioner : Mr.A.R.M.Ramesh

For R1 to R3 : Mr.J.John Rajadurai
Government Advocate

For R4 : Mr.C.Vakeeswaran

ORDER

This writ petition is filed challenging the action of unilateral cancellation of settlement deed, made by the first respondent/the Joint -1 Sub Registrar, Madurai South.

2. The property in Door No.12, Poonthottam Cross Street, Kamarajar Salai, Madurai, originally belonged to one Meivazhi Kamalakan Ananthahi, who is none other than the mother of the petitioner. The fourth respondent is the sister of the petitioner. The property was acquired by the mother of the petitioner under



registered sale deed dated 15.12.1969. She conveyed the property in favour of her daughter, namely, the fourth respondent, under Gift Settlement deed dated 13.12.2002. Thereafter, the fourth respondent executed a gift settlement deed dated 28.12.2007 in favour of the petitioner. While so, the fourth respondent, at the instance of her sons, cancelled the settlement deed, by document No.5194/2011 dated 03.06.2011. Challenging the same, the present writ petition has been filed.

3. Mr.A.R.M.Ramesh, learned counsel for the petitioner, by relying on the Full Bench Judgment of this Court reported in 2011 (2) CTC 1 and the Judgment of the First Bench in W.A.No.108 of 2010, submits that once the document has been registered even on irregularities, the document cannot be cancelled unilaterally by the Sub Registrar. However, in this case, behind the back of the petitioner, the settlement deed executed by the fourth respondent in favour of him, was cancelled by the Sub Registrar.

4. Mr.C.Vakeeswaran, learned counsel for the fourth respondent submits that the cancellation of settlement deed is in accordance with law and as per the guidelines of the Hon'ble Apex Court and the High Court and therefore, the same cannot be questioned under Article 226 of the Constitution of India. If the petitioner is having any grievance against the cancellation deed, the remedy available to the petitioner is only before the civil court. In support of his contention, he also relied upon the Judgment of a Division Bench of this Court in **P.Rukumani vs. Amudhavalli**, reported in **2019 6 MLJ 290**, wherein, the Division Bench of this Court by following the Judgment of the Hon'ble Apex Court in **Satya Pal Anand vs. State of Madhya Pradesh and others**, reported in **(2016) 10 SCC 767**, wherein, it was held that the remedy available as against the cancellation deed is only before the appropriate Civil Court.

5. This Court considered the rival submissions.

6. This writ petition is filed against the action of unilateral cancellation of settlement deed made by the first respondent. The fourth respondent, who executed the settlement deed in favour of the petitioner, presented a document for cancellation of settlement deed in the year 2011 and based on that, the first respondent cancelled the settlement deed, without affording an opportunity to the petitioner.

7. The Full Bench of this Court, in the case of **Latif Estate Line India Ltd., vs. Hadeeja Ammal and others**, reported in **2011 (2) CTC 1**, held as follows:

"59. After giving our anxious consideration on the questions raised in the instant case, we come to the following conclusion: -



(i) A deed of cancellation of a sale unilaterally executed by the transferor does not create, assign, limit or extinguish any right, title or interest in the property and is of no effect. Such a document does not create any encumbrance in the property already transferred. Hence such a deed of cancellation cannot be accepted for registration.

(ii) Once title to the property is vested in the transferee by the sale of the property, it cannot be divested unto the transferor by execution and registration of a deed of cancellation even with the consent of the parties. The proper course would be to re-convey the property by a deed of conveyance by the transferee in favour of the transferor.

(iii) Where a transfer is effected by way of sale with the condition that title will pass on payment of consideration, and such intention is clear from the recital in the deed, then such instrument or sale can be cancelled by a deed of cancellation with the consent of both the parties on the ground of non-payment of consideration. The reason is that in such a sale deed, admittedly, the title remained with the transferor.

(iv) In other cases, a complete and absolute sale can be cancelled at the instance of the transferor only by taking recourse to the Civil Court by obtaining a decree of cancellation of sale deed on the ground inter alia of fraud or any other valid reasons."

8. Following the above Judgment, this Court is of the view that once the document has been registered and right has been conveyed to the petitioner, the same cannot be cancelled by way of cancellation deed, at the instance of the fourth respondent alone.

9. Accordingly, the writ petition is allowed and the cancellation deed dated 03.06.2011 is hereby set aside. It is always open to the fourth respondent to work out her remedy before the appropriate forum in the manner known to law. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS II)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

ogy



To

1. The Joint I Sub Registrar,
Madurai South,
Madurai.
2. The Joint II Sub Registrar,
Madurai South,
Madurai.
3. The District Registrar,
Madurai.

+1 CC to M/s.C. VAKEESWARAN, Advocate (SR-18214[F] dated
12/04/2022)

+1 CC to M/s.A.R.M. RAMESH, Advocate (SR-18337[F] dated
12/04/2022)

W.P. (MD) No.18236 of 2016
12.04.2022

MGJ(27.05.2022) 4P 6C