



W.P.No.11580 of 2015

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.06.2023

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.11580 of 2015
and
M.P.Nos.1 and 2 of 2015

K.Revathi

... Petitioner

Vs

1.The Sub Registrar,
Tharamangalam,
Salem District.

2.M.Kalaimohan

... Respondents

PRAYER : Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorari calling for the records of the 1st respondent in respect of Document No.3609/2012 registering the cancellation of Gift Deed on 04.07.2012.

For Petitioner : Mr.N.Suresh

For Respondents : Mr.T.Arunkumar
Additional Government Pleader for R1

: Mr.T.S.Vijaya Raghavan for R2

ORDER



W.P.No.11580 of 2015

The writ petition has been instituted to quash the unilateral cancellation of gift deed registered in Document No.3609/2012 dated 04.07.2012.

2. The petitioner states that her husband / 2nd respondent had executed a registered settlement deed on 27.04.2011 in respect of the properties in Survey Nos.62/1 – 0.71.0 hectares, S.No.62/7 – 0.67.5 hectares, S.No.57/1A – 0.11.0 hectares, S.No.57/1B – 0.73.5 hectares totalling 5.51 acres situated at Mallikuttai Village Tharamangalam Taluk, Salem District.

3. The learned counsel for the petitioner states that the settlement deed executed by the husband of the writ petitioner had been unilaterally cancelled and therefore the petitioner has chosen to file the present writ petition.

4. The issues raised by the petitioner in the present writ petition is no more *res integra*.

5. The Full Bench of this Court in the case of ***M/s.Latif Estate Line India Ltd. Vs. Mrs.Hadeeja Ammal*** reported in ***2011 (2) CTC 1*** has settled



principles as follows:

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“(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



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W.P.No.11580 of 2015

cancellation of sale deed on the ground inter alia of fraud or any other valid reasons.”

6. In view of the judgment of the Full Bench, the writ petition is to be considered. Accordingly, the 1st respondent Sub Registrar is directed to cancel the Document No.3609/2012 and effect necessary entries in the encumbrance and all other registers. Accordingly, the Writ Petition stands allowed. However, there shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

06.06.2023

Index : Yes/No

Speaking Order : Yes/No

Sgl

To

The Sub Registrar,
Tharamangalam,
Salem District.



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W.P.No.11580 of 2015

S.M.SUBRAMANIAM, J.

Sgl

W.P.No.11580 of 2015

06.06.2023