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Writ Petition Nos.28652 and 28653 of 2015

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.06.2023

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THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

Writ Petition Nos.28652 and 28653 of 2015

and

M.P.No. 1 of 2015 [in both W.Ps.]

Jan Jagran Trust,
Rep. by its Chairman Mr.M.Ramakrishnan,
Having its office at No.107,
Dr.Radhakrishnan Salai,
Mylapore, Chennai – 600 004.

... Petitioner in both W.Ps.

Vs.

1. The Inspector General of Registration,
Chennai – 600 028.

2. The District Registrar,
Chengelpet.

3. The Sub-Registrar,
Thiruporur.

4. Mrs.Kokilam Subbiah

5. Mr.Jayakarthisesan Subbiah

... Respondents in both W.Ps.

COMMON PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the entire records pertaining to Cancellation Deed dated 25.06.2008 registered as Document Nos.4672 of 2008 and 4673 of 2008 respectively on the file of the 3rd respondent unilaterally executed by the 4th respondent and quash



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the same and consequently direct the 3rd respondent to remove the entries pertaining to the said document.

For Petitioner : Mr.R.Swaminathan
[in both W.Ps.]

For Respondents : Mr.N.Naveenkumar
[in both W.Ps.] Government Advocate [R1 to R3]

R4 and R5 – Not ready in notice

COMMON ORDER

The unilateral cancellation of gift deeds executed by the fourth respondent in favour of the petitioner in document Nos.4672 and 4673 of 2008 dated 25.06.2008 is under challenge in the present writ petition.

2. The writ petitioner is a trust and the subject property was gifted by an irrevocable gift by Mrs.Kokilam Subbiah, fourth respondent through her power of attorney Mr.G.V.Vetrivelu to the trust as per the registered document Nos.4672 and 4673 of 2008 in the office of the Sub-Registrar at Thiruporur.

3. The gift deed was made for the purpose of running an old age home for senior citizen and the petitioner's trust was put in possession and enjoyment of the property and was also muted to the name of the trust in the revenue registers. The gift deed was absolute, irrevocable and has taken immediate effect



upon its execution as per clause 7 of the gift deed. The gift deed was acted upon and in confirmation, the fourth respondent executed the rectification deed. The possession of the property was handed over to the petitioner's trust and they are running a home of orphans and senior citizen. While so, the fourth respondent executed a cancellation deed unilaterally on 25.06.2008 registered as document Nos.4672 and 4673 of 2008. Thus, the petitioner is constrained to move the present writ petition.

4. Issue regarding unilateral cancellation of documents are no more *res-integra*. 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***, where the following has been stated:

(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.”

5. In view of the judgment of the full bench cited supra, the impugned unilateral cancellation deed is untenable and accordingly, the third respondent is directed to cancel the impugned cancellation deed dated 25.06.2008 registered as document Nos.4672 and 4673 of 2008 within a period of four(4) weeks from the date of receipt of a copy of this order and effect necessary entries in the encumbrance certificate and other relevant documents.



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Accordingly, these writ petitions stand allowed. No costs. Connected

miscellaneous petitions are closed.

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Index : Yes
Speaking order

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To

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S.M.SUBRAMANIAM., J

mp

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