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W.P.No.12234 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.01.2023

CORAM :

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

Writ Petition No.12234 of 2019
and WMP.Nos.12516 & 12518 of 2019

Ms.Karuna Bhandari

... Petitioner

-Vs-

1. Inspector General of Registraion,
Santhome High Road,
Mylapore, Chennai – 28.
2. Sub Registrar of Registration,
Office of Sub Registrar of Registration,
T.Nagar, Chennai – 600 017.

3. P.Harak Chand Bhandari

... Respondents

Prayer : Writ Petition under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorari, to call for the entire records pertaining to registration of the cancellation of settlement deed document dated 24.1.2019 registered as document No.181 of 2019 on the file of the second respondent and quash the same.

For Petitioner : Mr.R.Natarajan

For Respondents : Mr.P.Sathish
Additional Government Pleader
[R1 and R2]



WEB COPY



W.P.No.12234 of 2019

Mr.K.Balamurali for
M/s.Shivakumar & Suresh [R3]

ORDER

The prayer sought for herein is for a writ of Certiorari to quash the impugned document pertaining to registration of the cancellation of settlement deed document dated 24.1.2019 registered as document No.181 of 2019 on the file of the second respondent.

2. The petitioner is granddaughter of the third respondent i.e., the petitioner's father is the son of the third respondent. During his life time of the petitioner's grandfather i.e., third respondent, as he is a widower, since there was no other person to look after the interest of the third respondent, he thought of settling the property in question in favour of the petitioner, who is none other than the granddaughter of the third respondent on condition that, the petitioner shall look after the third respondent and accordingly, a settlement deed has been executed by the third respondent and registered before the Register office on 24.05.2013 as document No.1280 of 2013. The said settlement deed has been subsequently cancelled unilaterally by the third respondent and that has also been registered by the second respondent by way of document



W.P.No.12234 of 2019

No.181 of 2019 dated 24.01.2019. Challenging such unilateral cancellation of settlement deed made by the third respondent, the petitioner has moved the present writ petition with the aforesaid prayer.

3. Heard Mr.R.Natarajan, learned counsel appearing for the petitioner, who would submit that, whatever be the reasons, the third respondent has no right to make a unilateral cancellation of the settlement deed in view of the law declared by this Court in the recent Full Bench judgment in the case of ***Sasikala Vs. Revenue Divisional Officer & anr.*** reported in ***[2022 (5) CTC 257]***.

4. Learned counsel would also submit that, in fact the third respondent has approached the Civil Court and filed a suit seeking for a declaration to declare the settlement deed made in favour of the petitioner as null and void and the said suit went on for trial. During the trial, the third respondent, in fact had been examined and only at that time, all of a sudden, the third respondent withdrew the suit.



W.P.No.12234 of 2019

5. He would also submit that, in the meanwhile, based on a circular issued by the Inspector General of Registration[in short, 'IG of Registration'] in circular No.52666/C1/2018 dated 29.11.2018, the third respondent approached the second respondent and got it cancelled the settlement deed unilaterally and this factor has not been brought to the notice of the learned Judge, before whom the suit was pending and without disclosing the same or suppressing the same, the third respondent has withdrawn the suit and accordingly the suit was dismissed as withdrawn.

6. Making these points, learned counsel appearing for the petitioner would submit that, first of all the third respondent has not got any right to cancel the settlement deed unilaterally. Secondly, when he approached the Civil Court seeking for a declaration, the suit should have been pursued by the third respondent and if at all, he wanted to withdraw the suit, the cancellation unilaterally he has made pursuant to the circular issued by the IG of Registration in the year 2018 should have been brought to the notice of the Civil Court, without disclosing the same, the suit ought not to have been withdrawn and because of these



W.P.No.12234 of 2019

reasons, the unilateral cancellation made by the third respondent and the registration of such cancellation deed registered by the second respondent on 24.01.2019 are unlawful and against the law declared by this Court of the Full Bench judgment referred to above. Therefore, the learned counsel seeks indulgence of this Court against the impugned cancellation of settlement deed.

7. On the other hand, Mr.K.Balamurali, learned counsel appearing for the third respondent would submit that, the third respondent is a senior citizen and a widower and since there was no one to look after the affairs of the third respondent and having faith over the petitioner, who is none other than the granddaughter of the third respondent thought of settling the property, which was earned by the third respondent, in favour of the petitioner that is how in 2013, the settlement deed has been registered by the third respondent.

8. He would also submit that, the settlement deed even according to the recital is a conditional settlement, based on the said conditions, the settlement would come into effect only after the life time of the third



W.P.No.12234 of 2019

respondent and the settlor has reserved his rights to revoke or amend the settlement deed at any time during his life time. Therefore, if these kind of recitals are available in the settlement deed itself, that can very well be invoked for cancellation of the same.

9. He would also submit that, since that has been enabled by the Registration Department through the circular issued by the IG of Registration dated 29.11.2018, even though already the third respondent has approached the Civil Court by filing a suit in view of the circular issued by the IG of Registration, the settlement has been cancelled by the third respondent and since the settlement has been cancelled and it has been registered accordingly by the second respondent office, there was no need to pursue the suit filed by the third respondent and therefore, the said suit was withdrawn.

10. Learned counsel would also submit that, insofar as the law declared by the Full Bench judgment as referred to above is concerned, if such a recital is available, where there is an agreeable terms between settlor and settlee that can very well be invoked by the settlor, who is the



W.P.No.12234 of 2019

third respondent herein and accordingly, even if the principle of the Full Bench judgment is applied to the facts of the present case, there is absolutely no impediment for the third respondent to cancel the settlement deed and accordingly, registration done by the second respondent, which is impugned herein is to be sustained.

11. Heard Mr.P.Sathish, learned Additional Government Pleader appearing for the respondents 1 and 2, who would submit that, earlier the law was that there could be no unilateral cancellation of the settlement deed. However, if there is a recital to that effect having binding effect between the settlor and settlee that can be taken into account and accordingly, the cancellation can be registered by the Registering Authorities and in order to give such mandatory guidelines, a circular has been issued by the IG of Registration in the circular dated 29.11.2018. Therefore, invoking the clauses of the circular, the second respondent Registering Authority after having verified the recital in the settlement deed itself, where such a clauses are available in an agreeing terms between the settlor and settlee, the cancellation made by the third respondent having been accepted and registered by the second



W.P.No.12234 of 2019

respondent. Therefore, absolutely there has been no fault on the part of the second respondent in registering the said document. Hence, the learned Additional Government Pleader appearing for the respondents 1 and 2 seeks for dismissal of this writ petition.

12. I have considered all these submissions made by the learned counsel appearing for the parties and have perused the materials placed before this Court.

13. The fact remains that the third respondent is a widower and since there was no one to look after the affairs of the third respondent, the petitioner being the granddaughter, believing her faith that she would look after till the life time of the third respondent, he decided to settle his hard earned property to and in favour of the petitioner that is how the settlement deed has been made in the year 2013.

14. If we peruse the recital of the document, it has been made clear that, it is a conditional settlement, where the following clauses are available:

“The “SETTELOR” hereby declare that this SETTLEMENT shall remain and absolute and shall take



W.P.No.12234 of 2019

effect immediately after the life time of the “SETTELOR” herein.

THE “SETTELOR” RESERVE THE RIGHT TO REVOKE OR AMEND THIS SETTLEMENT DEED ANY TIME DURING HIS LIFE TIME”

15. Therefore the settlement itself since is a conditional one, which come into effect only after the life time of the settlor i.e., third respondent. Even assuming that the settlement deed is not cancelled as on date, based on the settlement deed, the petitioner cannot seek any benefit out of it.

16. Moreover, since the settlement has been made by the third respondent in favour of the petitioner on believing that the petitioner would look after the affairs of the third respondent during the advanced age of the third respondent, since he is a widower as no one was available to look after and if that conditions have not been complied with and the petitioner has not shown any reciprocal gesture, the settlor being a senior citizen has got every right to cancel the same.



W.P.No.12234 of 2019

17. Moreover, insofar as the circular issued by the IG of Registration dated 29.11.2018 has made it clear that, if there is a terms in the recital of the settlement deed, in terms of an agreement between the settlor and settlee to revoke the same, based on which such revocation can be made.

18. Coming to the law declared by the full bench judgment of this Court as referred to above in **Sasikal's** case (cited supra), the learned counsel appearing for the petitioner has relied upon the following paragraphs:

“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



W.P.No.12234 of 2019

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 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 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;



WEB COPY



W.P.No.12234 of 2019

(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 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 the gift deed, merely on the basis of the statement of the donor or the recitals in the document for cancellation.”



W.P.No.12234 of 2019

19. Insofar as the cancellation of gift deed or settlement deed is concerned, if the law declared by the full bench is applied to the facts of the present case, where if there is an agreement mutually between the settlor and settlee and that is available in the very document itself then that can very well be invoked by the settlor or the doner.

20. In the present case, such a recital is very well available in the document itself with the following words, “That the settlor reserve the right to revoke or amend the settlement deed any time during his life time.”

21. Moreover, it is to be noted that it is not an absolute settlement, since there is a condition to the extent that “the settlor is hereby declared that the settlement shall remain and absolute and shall take effect immediately after the life time of the settlor herein”. That means, it is a conditional settlement, which can come into effect from the date of demise of the settlor i.e., third respondent.



W.P.No.12234 of 2019

22. Therefore, it goes without saying that during the life time of the settlor, the settlement deed will not come into effect in favour of the petitioner and at any time, the settlor can revoke or amend the settlement deed. This recital can very well be construed as an agreement between the settlor and settlee. Therefore, applying the principle of the Full Bench judgment as cited supra, this Court has no hesitation to hold that the third respondent has got every right to invoke such clause and revoke the settlement and accordingly, he has rightly revoked the same and that document was registered by the second respondent.

23. This issue can also be looked into by another angle, where as per Senior Citizen Act, under Section 4 read with Section 23, any senior citizen can approach the Revenue Divisional Officer concerned i.e., Authority under the Senior Citizen Act to cancel the settlement deed made in favour of any children or any persons, who with the expectations to look after the senior citizen and accordingly, if the senior citizen has expressed their anguish about the person in favour of whom the settlement has been made who has not looked after the senior citizen, based on which, the Revenue Divisional Officer under Section 23 of the



W.P.No.12234 of 2019

Senior Citizen Act can cancel the settlement the deed or gift deed etc.

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24. That law was very well in force on that date, when this cancellation has been made. Even though the settlement has not been made based on the Senior Citizen Act, the effect of the cancellation of the settlement even for the argument sake, if it is cancelled or the settlement deed is now restored, based on which, the petitioner cannot seek for any right as that right is now vested with the third respondent, who is the senior citizen. That apart, in any date during the life time of the third respondent, the third respondent can invoice the clauses in the recital and accordingly, the settlement deed can very well be cancelled, because the settlement deed would come into effect from the date of the death of the settlor i.e., third respondent. Therefore, looking from any angle, the action taken by the third respondent in cancelling the settlement deed made in favour of the petitioner, which has been registered by the second respondent through the impugned communication is strictly in consonance with the various provisions of the law and also in accordance with law declared by the Full Bench of this Court as referred to above.



W.P.No.12234 of 2019

25. Therefore, this Court has no hesitation to hold that the petitioner has not made any presentable case to succeed in this writ petition. Hence, this writ petition deserves to be dismissed and accordingly, it is dismissed. No costs. Connected miscellaneous petitions are closed.

05.01.2023

Index : Yes/No
Speaking order: Yes/No
Neutral Citation: Yes/No

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To

1. Inspector General of Registraion,
Santhome High Road,
Mylapore, Chennai – 28.
2. Sub Registrar of Registration,
Office of Sub Registrar of Registration,
T.Nagar, Chennai – 600 017.



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W.P.No.12234 of 2019

R. SURESH KUMAR, J.

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Writ Petition No.12234 of 2019

05.01.2023