



W.P.(MD) No.3346 of 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 16.03.2023

CORAM:

THE HONOURABLE MS.JUSTICE P.T.ASHA

W.P.(MD) No.3346 of 2020

1.Rajendran
2.Thirupathy Kumaran
3.Ramuthai

.. Petitioners

Vs.

1.The Sub Registrar,
O/o. The Sub Registrar,
Peraiyur Taluk,
Madurai District.

2.Marimuthu

3.Pandiyammal

.. Respondents

Prayer :- Petition filed under Article 226 of the Constitution of India, praying for issuance of Writ of Mandamus, directing the first respondent to set aside the cancellation settlement deed dated 27.05.2008 registered as Document No.1255/2008 executed by the first petitioner's father Ramasamy at once.

For Petitioner : Mr.P.Ganapathi Subramanian



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For R1 : Mr.M.Prakash
Additional Government Pleader

For R2 : No appearance

ORDER

This writ petition is filed to issue a Writ of Mandamus, directing the first respondent to set aside the cancellation settlement deed, dated 27.05.2008 registered as Document No.1255/2008 executed by the first petitioner's father Ramasamy.

2. The first petitioner would submit that the properties comprised in S.F.Nos.197/2b, 197/13, 198/3, 198/4, 170/8, 197/13 and 143/8 are the ancestral properties of his father Ramasamy. The said Ramasamy executed a settlement deed on 05.05.2005 in favour of the first petitioner along with the second petitioner Thirupathy Kumaran and his other son Rajesh Kumar. Rajesh Kumar died on 05.08.2016 and the first petitioner and his wife, the third petitioner succeeded to his estate. The first petitioner would submit that he has been in possession and enjoyment of the aforesaid properties. The second respondent is the younger brother of the first petitioner and the third respondent is the wife of his



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predeceased brother Murugan Boopathy. It is the further case of the first petitioner that his father had executed two settlement deeds; one in favour of himself, his son Rajesh Kumar and the another in favour of respondents 2 and 3.

3. It appears that when the first petitioner attempted to sell his properties and applied for encumbrance certificate, he came to learn that his father had unilaterally cancelled the settlement deed dated 05.05.2005 by a cancellation deed dated 27.05.2008 registered as document No.1255 of 2008 on the file of the first respondent. Challenging this unilateral cancellation, the petitioners are before this Court.

4. The subject matter of this writ petition is covered by the decision of the Hon'ble Full Bench of this Court in ***Sasikala Vs. Revenue Divisional Officer*** reported in ***2022 (5) CTC 257***. The Full Bench had been constituted to consider the issue of whether the Registrar has power to accept the Deed of Cancellation to nullify the Deed of conveyance made earlier, when the deed of conveyance has been already acted upon



the transferee. The cases that were placed for consideration were cases relating to the cancellation of settlement deeds. After elaborately considering the agreements and the judgments on the point, the Bench had held as follows:

“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 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:

(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.



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(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.

5. The Full Bench, on considering the judgments placed for its consideration, ultimately relied upon the judgment of the Hon'ble Supreme Court in ***Veena Sing Vs. District Registrar/Additional***



Collector and another reported in (2022) 7 SCC 1 and the judgment of the Hon'ble Supreme Court in ***Asset Reconstruction Company (India) Limited Vs. SP Velayutham*** reported in ***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.

(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



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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. Thus, following the aforesaid judgment, this Writ Petition is allowed. The first respondent is directed to set aside the cancellation settlement deed dated 27.05.2008 registered as Document No.1255 of 2008 within a period of four weeks from the date of receipt of a copy of this order. No costs.

16.03.2023

NCC : Yes/No
Index : Yes/No
Internet : Yes

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To

The Sub Registrar,
O/o. The Sub Registrar,
Peraiyur Taluk,
Madurai District.



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P.T.ASHA, J.

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