



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **30.11.2023**

CORAM:

THE HONOURABLE MR.JUSTICE G.CHANDRASEKHARAN

S.A(MD)NO.649 OF 2023

1.Kamalam(deceased) :Deceased/Ist Appellant/Defendant

2.G.Nagarajan :Appellant/2nd Appellant/Third Party

.vs.

1.G.Vijayakumar :2nd Respondent/Ist Respondent/
Plaintiffs

2.G.Balasubramaniam

3.G.Jothilakshmi

:Respondents 2 and 3/Respondents
2 and 3/Third party

PRAYER: Second Appeal filed under Section 100 of Civil Procedure Code against the judgment and decree made in A.S.No.18 of 2019, dated 3.1.2020, on the file of the Principal Sub-Judge, Nagercoil confirming the judgment and decree made in O.S.No.212 of 2007, dated 10.7.2017, on the file of Ist Additional District Munsif Court, Nagercoil.

For Appellants

:Mr.C.K.M.Appaji

For Respondent-1

:No appearance

**JUDGMENT**

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This Second Appeal is filed challenging the judgment in A.S.No.18 of 2019, dated 3.1.2020, on the file of the Principal Sub-Judge, Nagercoil and the judgment in O.S.No.212 of 2007, dated 10.7.2017, on the file of Ist Additional District Munsif Court, Nagercoil.

2.The first respondent/Plaintiff filed the suit for permanent injunction restraining the defendant from interfering with his possession and enjoyment of the suit property; to declare the Settlement Cancellation Deed, dated 15.03.2007 in Document No.987 of 2007, registered on the file of Rajakkamangalam Sub Registrar Office is to be declared as null and void and for costs.

3.The case of the plaintiff is that the suit property and other properties measuring an extent of 15 ½ cents belongs to one George. That properties were purchased by the plaintiff on 09.09.1993 from George and his son Joseph Vinister. The plaintiff's father was working in Tamil Nadu Electricity Board and he was not able to meet with the family expenses. The plaintiff was the eldest son in the family. The Plaintiff's father sent the plaintiff to Singapore in the year 1988 to help the



family. The plaintiff joined the job of Technician in Singapore and earning a sum of Rs.20,000/-p.m. He used to send his salary to the family every month. The plaintiff was running an industry in the name and style of "Viji Engineering Industry" in S.No.G-3/22-1 in an extent of 6 ½ cents. The money borrowed for the purpose of purchase of the property by the plaintiff's father was settled from the plaintiff's salary. The Plaintiff's brother Balasubramaniam informed that a Coconut thoppu in 1 ½ acre was coming for sale. The plaintiff arranged funds for the purchase of the coconut thoppu and sent the money to Balasubramaniam. Balasubramaniam instead of buying the property in the name of the plaintiff, had purchased the property in his name and cheated the plaintiff. In the year 2001, there was a compromise between the plaintiff and his brother Balasubramaniam. In the said settlement, Balasubramaniam agreed to transfer 1 ½ acre coconut thoppu to the plaintiff and 50% of the land in S.No.G-3/22-1. The plaintiff had agreed to give a property to Balasubramaniam. Accordingly, the plaintiff had given the said property to Balasubramaniam. But Balasubramaniam did not execute the document in respect of Coconut thoppu and 6 ½ cents of land. On 18.01.2006, Balasubramaniam executed a settlement deed in favour of his



mother namely, the defendant. On the same day, the defendant had executed a settlement deed in respect of the property to the plaintiff. There was a condition made in the settlement deed that the plaintiff had to pay a sum of Rs.2,40,000/- to his another brother Nagarajan. The Plaintiff is in possession and enjoyment of the suit property from 9.9.1993. The settlement deed, dated 18.1.2006 cannot be unilaterally cancelled. However, the defendant had threatened to cancel the settlement deed. Therefore, the suit was filed.

4.The defendant filed a written statement denying the plaintiff averments with regard to the purchase of 15 ½ cents. The plaintiff's alleged contribution towards purchase etc, the alleged compromise and the agreement to mutually execute documents to transfer the properties, are denied. The defendant has not executed a settlement deed in favour of the plaintiff voluntarily. The four boundaries in the settlement deed are not correct. On coming to know about the cheating committed by the plaintiff, defendant cancelled the settlement deed executed in favour of the plaintiff. The Plaintiff was never in possession and enjoyment of the suit property. Thus she prayed for the dismissal of the suit.



5. On the basis of these pleadings, the trial Court has framed the following issues for consideration:

1. Whether the plaintiff is entitled for the relief of injunction as sought for?

2. To what other relief, the plaintiff is entitled to?

6. During the trial, P.W.1 was examined and Ex.A1 to Ex.A6 were marked. D.W.1 was examined and no document was marked.

7. On the basis of the oral and documentary evidence, the learned Trial Judge found that the defendant had unilaterally cancelled Ex.A1-Settlement Deed. From the evidence, it was seen that the plaintiff was in possession and enjoyment of the suit property. Thus the learned trial Judge decreed the suit.

8. Against the said judgment, the defendant filed an appeal in A.S.No.18 of 2019. During the pendency of the appeal, she was dead and therefore his legal heirs have been impleaded as second appellant and respondents 2 and 3. The learned



Appellate Judge through confirmed the relief of declaration, denied the relief of injunction on the ground that the suit property was not in possession and enjoyment of the plaintiff. Not satisfied with the judgment, the appellant filed this Second Appeal.

9.It is the submission of the learned counsel for the appellants that there is absolutely no evidence to show that the plaintiff sent money to the family and that the money sent by the plaintiff was used to buy the suit property in the name of Balasubramaniam. The defendant was an uneducated and old woman. Taking advantage of her old age and illiteracy, she was made to execute Ex.A1-Settlement Deed in favour of the plaintiff. Later on, coming to know about the fraud committed by the plaintiff, she had unilaterally cancelled the settlement deed. As per Section 126 of the Transfer of Property Act, the cancellation of settlement deed is correct. In support of his submission, he produced the judgment in the case of **Lakshmi Ammal(died) and another .vs. Mari Ammal and another reported in CDJ 2020 MHC 1151**. It is observed in this judgment as follows:



“Section 126 of the Transfer of Property Act is a special provision dealing with the power of the donor to revoke a gift deed in certain circumstances. Such kind of revocation does not require the consent of the beneficiary of the gift. Basically, such a gift is not a contract in terms of the definition of contract as found in the [Indian Contract Act](#), since gift is a transfer made voluntarily without consideration, whereas, a sale of an immovable property is a contract entered into between two parties where consideration is a since-qua-non. Therefore, revocation of a gift deed cannot be equated to cancellation of a sale deed. Both operate on different spheres. A reference has also been made in the judgment to [Section 23-A](#) of the Registration Act.” In the case on hand, admittedly after execution of the settlement deed in favour of the plaintiff by her husband the first defendant, there was a misunderstanding between them due to their family dispute. Therefore, they got separated and in fact, the plaintiff was driven out from the matrimonial home by the first defendant. Only for the said reason, the first defendant cancelled the settlement deed executed in favour of the plaintiff. Therefore, the cancellation of settlement deed Ex.B.3 is valid in law in view of the



provision under [Section 126](#) of the Transfer of Property Act as the first defendant did not require to get any consent from the plaintiff, when she failed to render duties, love and affection as wife to the first defendant.”

10.This Court considered the rival submissions made on either side and perused the records.

11.From the oral and documentary evidence produced, it is seen that Ex.A1-Settlement Deed was executed by the defendant in favour of the plaintiff. Ex.A2 is the settlement deed executed by Balasubramaniam in favour of the plaintiff. The deed cancelling the settlement deed in favour of the plaintiff is produced as Ex.A6. Ex.A3 to Ex.A5 are the Patta Passbook, Kist receipt, and E.B receipts respectively. It is stated in the written statement that “even assuming that the settlement deed was executed voluntarily, even then, the condition in the settlement deed has to be complied with.” The condition imposed in the settlement deed is that the plaintiff has to pay a sum of Rs. 2,40,000/- to his brother Nagarajan, who was in jail. That condition was not complied with by the plaintiff. Therefore, it is submitted by the learned counsel for the appellants that the



cancellation of the settlement deed is correct.

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12.The core issue that arises for consideration in this appeal is whether the unilateral cancellation of Ex.A1-Settlement Deed in ExA6-Settlement Cancellation Deed, is in accordance with law?

13.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 rovocable 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.”

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14.As per the above Section, the gift may be suspended or revoked, only if the following conditions are present:

(1)the donor and donee might agree that on the happening of any specified event which does not depend on the Will of the donor; gift may be suspended or revoked;

(2)this condition has a rider which says that the gift shall be revokable wholly or in part, at the mere Will of the donor is void wholly or in part, as the case may be.

(3) 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.

15.Except the grounds as aforesaid, a gift cannot be revoked. In the case before, none of these conditions are present, entitling the defendant to revoke/cancel the settlement deed.



16. In considering the unilateral cancellation of gift which is not revocable, in **Sasikala vs. Revenue Divisional Officer and Another**, reported in **2022 SCC Online Mad 4343**, this Court has held as follows:

41.Regarding gift or settlement: With regard to unilateral cancellation of gift deed, which is not revocable 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



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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 Subregistrar 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.

(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.

*44.From the discussions and conclusions we have reached above with reference to various provisions of Statutes and precedents, we reiterate the dictum of Hon'ble Supreme Court in **Thota Ganga Laxmi and Ors.-vs- Government of Andhra Pradesh & Ors.**, reported in (2010) 15 SCC 207 and the Full Bench of this Court in *Latif Estate Line India Ltd.*, case, reported in AIR 2011(Mad) 66 and inclined to follow the judgment of three member Bench of Hon'ble Supreme Court in *Veena Singh's* case reported in (2022) 7 SCC 1 and the judgment of two member Bench of Hon'ble Supreme Court in *Asset Reconstruction Company (India) Ltd.*, case, reported in 2022 SCC On-line 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.



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(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 falls under Section 126 of Transfer of Property Act, and the Registering Authority can accept the deed of 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.

17. As already stated, none of the conditions stipulated in Section 126 of the Transfer of Property Act, 1882, is satisfied in this case. In the said circumstances, this Court concurs with the views taken by the Courts below that revocation of Ex.A1 Settlement Deed by Ex.A6 Cancellation of revocation deed, is not in accordance with law.

18. In this view of the matter, this Court confirms the view taken by the Courts below that the plaintiff is entitled for the



relief of declaration as prayed for. The Plaintiff has not filed any appeal against the dismissal of the prayer seeking injunction. The first appellate Court on re-appreciation of evidence, found that the plaintiff was not in possession and enjoyment of the suit property. Therefore, the finding of the first appellate Court in this regard, is confirmed. As such, there is no substantial question of law arises for consideration in this Second Appeal.

19. In ***Sir Chunilal V. Mehta and Sons .vs.The Century Spinning Co. Limited*** reported in ***AIR 1962 SC 1314***, the Honourable Supreme Court formulated what amounts to a substantial question of law, as follows:

1. Whether it is of general public importance (or)
2. Whether it directly and substantially affects the rights of parties **and if so;**
3. Whether it is **either** an open question (in the sense not finally settled by this Court or Privy Council or Federal Court) **(or);**
4. The question is not free from difficulty and calls for discussion of alternative views;



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20. In the case before hand, the appellant has not made out any of the aforesaid grounds to formulate substantial question of law. There is no substantial question of law arises for consideration in this Second Appeal. Thus this Court finds that there is no cause for interference in the judgments of the Courts below and hence, the Second Appeal is dismissed. No costs.

30.11.2023

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

To

- 1.The Principal Sub-Judge,
Nagercoil.
- 2.The Ist Additional District Munsif,
Nagercoil..
- 3.The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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G.CHANDRASEKHARAN,J.

vsn/pm

**JUDGMENT MADE IN
S.A(MD)No.649 Of 2023**

30.11.2023