



W.P(MD)No.11424 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 08.03.2023

CORAM

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

W.P(MD).No.11424 of 2022
and WMP(MD)No.8123 of 2022

Malarkodi

... Petitioner

Vs

1. Inspector General of Registration,
100, Santhome High Road, Mullima Nagar,
Mandavelipakkam, Raja Annamalaipuram,
Chennai, Tamilnadu- 600 028.
2. The Sub Registrar,
Office of Sub Registrar, Madagupatti,
Sivagangai District- 630 553.
3. Shanthi
4. Sumathi
(R3 and R4 are impleaded vide
Court Order, dated 20.06.2022)

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, to call for records of the 2nd respondent pertaining to its Refusal Check Slip No.



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RFL/Madagupatti/17/2022, dated 11.05.2022, quash the same as illegal consequently direct the 2nd respondent to remove the entries of unilateral cancellation of Document No. 1067 of 2015 and to register the documents presented by the petitioner, for registration in light of the order made by this Court in K.Raman Vs Inspector General of Registration in W.P. 4356 of 2021, within the time that may be stipulated by this Court.

For Petitioner	: Mr.K.Krishna
For R1, R2	: Mr.M.Prakash Additional Government Pleader
For R3, R4	: No Appearance

ORDER

The Writ Petition has been filed in the nature of Certiorarified Mandamus seeking records of the second respondent/Sub Registrar, Sivagangai District relating to refusal check slip No. RFL/Madagupatti/17/2022, dated 11.05.2022, to set aside the same and consequently, to direct the second respondent to remove the entries relating to unilaterally cancelled Doc.No.1067 and to register the document presented by the petitioner for registration.



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2.The mother of the petitioner had executed a gift deed relating to land in S.No. 299/2, measuring 2744 sq.ft in Okkur village, in favour of the petitioner herein. Similarly, the mother had also executed a gift deed in favour of her sister, which was registered as Doc.No. 1704/2011, dated 21.09.2011. Both the gift deeds were registered in the Office of the second respondent/Sub Registrar, Sivagangai District. From the date of execution of said gift deed, the petitioner became the title holder of the property.

3.The requisites required for a gift deed under Section 124 of Transfer of Property Act, 1882 are that the Donor not execute the deed, the Donee not take possession and accept the gift.

4.The petitioner had acted upon the gift deed and had taken possession. The petitioner also mortgaged the property with a bank and had also redeemed the mortgage. She has for all purposes exercised her title in the said property.

5.In the meanwhile, without the knowledge of the petitioner, her mother had executed Doc.No. 1067/2015 on 20.07.2015, cancelling the gift



deed. The petitioner had not signed in that particular cancellation of deed.

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6.The learned counsel for the petitioner had relied on a Judgment of a learned Single Judge in WP.No.4356 of 2021, dated 25.10.2018 wherein, it was finally observed that unilateral cancellation of settlement deed is not permissible under the provisions of the Registration Act, 1908. In this connection, the learned Single Judge had cited the following Judgments, which are also cited herein.

“7. The learned counsel for the petitioner, in support of his contention has relied on the following Orders of this Court : (i) W.P.No.7725 of 2015 [P.A.G.Kumaran Vs. Inspector General of Registration] wherein at Paragraph No.16 among other things, it is held as follows:-

“16. In view of the fact that the unilateral cancellation of the settlement deed made by the first and second respondents is bad, this Court declares that the said cancellation of document, namely Deed of Cancellation of Settlement deed, registered as Document No.3328 of 2014, dated 10.11.2014, is illegal and in view of the same, the first and second respondents are directed to remove the entries in the Register and the subsequent transaction, namely settling the property in favour of the son of the third respondent, made pursuant to the unilateral cancellation of settlement deed, is also null and void....”



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(ii) *W.P.No.22386 of 2015 [P.Dinesh Kumar Vs. The Inspector General of Registration]* wherein at Paragraph No.6 among other things, it is held as follows:-

“....in my considered opinion, whether it falls within the exception under Section 126 of the Transfer of the Property Act or not is purely a matter of evidence. The same has to be adjudicated only before the Civil Court. The Registrar is not a competent person to register the unilateral cancellation deed by deciding the question whether it falls within the exception under Section 126 of the Transfer of Property Act, since he is not the competent authority to decide the disputed question of facts. Further, in my considered opinion, by executing a registered settlement deed in favour of petitioners/settlees, the settlor/3rd respondent herein had lost his right in the property. Unless the said right is restored by setting aside the settlement deed executed by the settlor in favour of the settlees by a competent Court, the Sub-Registrar is not competent to register the unilateral cancellation of settlement deed.”

(iii) *Reported in 2014(3) CTC – 113 [D.V.Loganathan Vs. Sub Registrar, Chennai]*

“The registration of cancellation of settlement deed is against the public policy as it is not open to the Sub Registrar to register the cancellation deed when the settlement deed is unconditional and irrevocable. The cancellation deed and its registration, therefore, being without jurisdiction is liable to be set aside.”

(iv) *Apanan Banu Vs. The Sub Registrar in W.P.No.2897 of*



2017 on 04.09.2018, this Court by stating that

“In view of the fact that the unilateral cancellation of settlement deeds are impermissible under the Registration Act as well as the legal principles are settled by the full bench of this Court, this Court has cancelled the Unilateral cancellation deed.”

(v) In the order [N.Vijayabaskar Vs. Gokul Anand] in W.P.No. 27342/2016, this Court has taken note of the

“settled legal position and quashed a unilateral cancellation of settlement deed by an order dated 10.10.2018”.

It is also further observed by the learned Single Judge as follows:

13. It is to be noted that this Court in the case of D.V.Loganathan Vs. the Sub-Registrar, Office of the Sub-Registrar, Pallavaram, Chennai and another reported in 2014(3) CTC 113 it is observed that the Unilateral cancellation of settlement deed is without jurisdiction and liable to be set aside. Further, in the case of Samiappan and Others Vs. Rajamani reported in CDJ 2014 MHC 5730, the Hon'ble Division Bench of this Court held that the 'settlement deed cannot be set at naught unilaterally by one party'. The party, who settled the property in favour of the petitioner is none other than his father, who had executed the settlement deed dated 28.09.1999 and the petitioner was put in possession. It is also brought to the notice of this Court by the petitioner that in the settlement deed, no power of cancellation was reserved by the father of the petitioner and however, the father chose to cancel the documents during the year 2001.

14. It is pertinent to point out that the Sub Registrar, who



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registered the cancellation deed, ought to have issued notice to the parties under the settlement deed, namely, the petitioner and concerned parties and without doing so, has unilaterally registered the documents ignoring the fact that the settlement deed was acted upon and the cancellation deed was presented for registration after nearly 2 years after the date of settlement. This being contrary to the legal position, the same requires to be interfered with.

15. Moreover, the Hon'ble Full Bench of this Court [Latif Estate Line India Ltd., Vs. Hadeeja Ammal] reported in 2011 (2) CTC 1 has held that unilateral cancellation of a registered sale deed through a deed of cancellation is of no effect in law. The conclusion drawn by the Full Bench as recorded in paragraph nos.58 and 59 are extracted hereunder:

“58. It can also not be overlooked or ignored that a unilateral cancellation of a sale deed by registered instrument at the instance of the vendor only encourages fraud and is against public policy. But there are circumstances where a deed of cancellation presented by both the vendor and the purchaser for registration has to be accepted by the Registrar if other mandatory requirements are complied with. Hence, the vendor by the unilateral execution of the cancellation deed cannot annul a registered document duly executed by him as such an act of the vendor is opposed to public policy.

59. After giving our anxious consideration on the questions raised in the instant case, we come to the following conclusion:-

(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 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 nonpayment 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."

The ration laid is clear. They are directly on the point that cancellation or unilateral cancellation of a settlement gift deed is impermissible under the



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provisions of the Registration Act, 1908.

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7.The forum for such cancellation is to approach the Court of law and to obtain a decree. In this case, the mother of the petitioner had not taken that steps. The Sub Registrar had also not issued any notice to the petitioner.

8.In view of the reasons stated above, I hold that the refusal of Sub Registrar to register the sale deed presented by the petitioner herein has to be interfered with by the Court. The refusal check slip is set aside. A direction is given to the Sub Registrar/second respondent that if the document presented by the petitioner for registration, is otherwise in order and stamp duty and registration charges are payable, proceed further to register the said document. The Sub Registrar may also note in the Registers that cancellation of gift deed, which had been earlier registered is not valid, in the eyes of law. Such entries should be made in the relevant registers. Such exercise should be completed by the second respondent, within a period of 15 working days, from the date on which the document is presented for registration.



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9.Accordingly, this Writ Petition stands disposed of. No costs.

Consequently, connected miscellaneous petition is closed.

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NCS : Yes/No
Index : Yes / No
Internet: Yes/ No
PNM

To

1. Inspector General of Registration,
100, Santhome High Road, Mullima Nagar,
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Chennai, Tamilnadu- 600 028.
2. The Sub Registrar,
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C.V.KARTHIKEYAN, J.

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