



W.P(MD)No.12307 of 2014

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 30.06.2023

CORAM :

THE HON'BLE MR.JUSTICE B.PUGALENDHI

W.P(MD) No.12307 of 2014 and
MP(MD) No.1 of 2014

V.Ramalingam (Died)

1.Pitchaiammal @ Kamatchiammal

2.R.Murugan

3.R.Dakshinamoorthy

4.R.Thirunavukkarasu

5.R.Meenakshi Sundaram

6.R.Nagalakshmi

7.Muthukrishnan

Petitioners

(Petitioners 1 to 7 are substituted vide Court order dated 07.07.2021 in W.M.P(MD).No. 10557 of 2020 in W.P.(MD).No.12307 of 2014 by NAVJ)

Vs

1.The District Collector,
Madurai District,
Madurai.

2.The District Revenue Officer,
Madurai.

3.The Revenue Divisional Officer,
Madurai.

4.The Tahsildar,
Madurai East,
Madurai.

5.M.Thiruppathy



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6.R.Vijayakumar

Respondents

*(R4 amended the cause title vide Court order dated 17.06.2015 in M.P.(MD).No.7 of 2015 by RMDJ)
(R6 is impleaded vide Court order dated 07.07.2021 in W.M.P.(MD).No.10558 of 2020 in W.P.(MD).No.12307 of 2014 by NAVJ)*

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorari calling for the records pertaining to the impugned order passed by the second respondent in Na.Ka.No.53038/2008/G2, dated 09.06.2014 and quash the same.

For Petitioner	:Mr.M.Saravanan
For R1 to R4	:Mr.G.V.Vairam Santhosh Additional Government Pleader
For R5	:Mr.S.Ramesh

ORDER

This writ petition is filed challenging the proceedings of the second respondent in Na.Ka.No.53038/2008/G2, dated 09.06.2014, cancelling the patta issued in the name of the petitioner.

2.The properties in S.Nos.113/1A1 to an extent of 0.29.5 Ares, 113/1C1 to an extent of 0.44.0 Ares and 114/1C to an extent of 0.40.5 Ares of Vandiyur Bit I Village, Madurai North Taluk, Madurai originally belonged to the fifth respondent's mother Sethu @ Ponammal. The issue arises out of the gift settlement deed known as



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“Kalyana Settlement Deed” dated 05.02.1978, executed by the fifth respondent’s mother Sethu @ Ponammal in favour of her daughter Jayam @ Nallamuthu and the first petitioner, namely V.Ramalingam on condition of marriage between them. Accordingly, both the first petitioner and the fifth respondent's sister (Daughter of Sethu @ Ponammal) got married and patta was also transferred in their name vide Patta No.293. However, the marriage did not last long and both were separated. Hence the fifth respondent’s mother cancelled the settlement deed vide cancellation deed dated 28.11.1991. Consequently, the fifth respondent approached the fourth respondent to mutate patta in his name and an order dated 01.10.1993 came to be passed cancelling the patta in the name of petitioner. The petitioner has challenged this order dated 01.10.1993 before the fourth respondent and also prayed for dismissal of the fifth respondent’s application to mutate his name in the patta. However, by order dated 20.03.2002, the fourth respondent ordered for change of patta in the name of fifth respondent. Challenging the same, the petitioner has filed an appeal before the third respondent, who



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allowed the appeal by order dated 09.04.2003 and the patta was restored in the petitioner's name. Now, after six years, the fifth respondent has preferred a revision before the second respondent. The second respondent considering that the civil dispute is pending between the parties, by order dated 09.06.2014 has quashed the earlier order dated 09.04.2003 and has referred the parties to establish their rights by way of a civil suit before the competent civil Court.

3. Pending this writ petition, the petitioner died and hence, the legal heirs of the petitioner are substituted as petitioners in this writ petition.

4. The learned counsel appearing for the petitioners submits that the Gift Settlement Deed, dated 05.02.1978 is irrevocable and the same was acted upon and mutations were done. Hence, the cancellation deed executed after expiry of 15 years from the date of execution of irrevocable settlement deed will not confer



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any right to the settlers. The learned counsel further submits that the second respondent has failed to consider the fact that the order of the year 1993 removing the first petitioner's name from patta was passed without any opportunity to the first petitioner.

5. On the other hand, the learned counsel appearing for the fifth respondent has raised preliminary objections to this writ petition that this writ petition has been filed challenging the consequential order of the second respondent, pursuant to the earlier order dated 01.10.1993. Hence, the petitioner was legally estopped from challenging the consequential order without challenging the earlier order. The learned counsel further submits that the Settlement deed executed in favour of the petitioner is a conditional settlement deed more specifically recited as 'Kalyana Settlement', which was executed by one Sethu @ Ponnammal in favour of the petitioner and she has every right to cancel the deed, if the condition of the Settlement Deed is not complied with. Moreover, the cancellation is permissible as per Section 126 of Transfer of Property Act. The



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learned counsel further submits that as per G.O.Ms.No.409, dated 04.07.2008, the order impugned in this writ petition can only be challenged before the competent civil Court and the petitioner cannot invoke this writ jurisdiction. Therefore, this writ petition is liable to be dismissed.

6.Heard both sides and perused the materials placed on record.

7.The issue herein depends on the validity of the cancellation deed dated 28.11.1991 executed by the 5threspondent's mother. The 5th respondent's mother Sethu @ Ponammal has executed a "Kalyana Settlement Deed" dated 05.02.1978, in favour of her daughter Jayam @ Nallamuthu and the first petitioner, on condition of marriage between them. Though the marriage of Jayam @ Nallamuthu was performed with the first petitioner, it did not last long. Hence, the fifth respondent's mother cancelled the settlement deed. The fact remains that the petitioner has not challenged the



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cancellation deed, cancelling the settlement deed anywhere yet. A full bench of this Court in *Sasikala v. Revenue Divisional Officer*, reported in *[2022 (5) CTC 257]* has held that a regards to a gift or settlement Deed, a deed of revocation or cancellation is permissible only in a case which fall under Section 126 of the Transfer of Property Act. This Court in this writ jurisdiction cannot delve into this issue containing factual aspects.

8.In view of the above, this writ petition is dismissed with a liberty to the petitioner to approach the competent Civil Court and if any Civil Suit is filed by the petitioner, the same shall be entertained by the Civil Court by excluding the period, for which, this Writ Petition was pending before this Court for the purpose of calculating the limitation. No costs. Consequently, connected Miscellaneous Petition is closed.

30.06.2023

NCC : Yes / No.

Index : Yes / No.

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B.PUGALENDHI, J

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