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W.P.(MD)NO.10788 OF 2015

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 06.07.2023

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P.(MD)No.10788 of 2015 AND
M.P.(MD)No.2 of 2015

1.K.Narayanan

2. K.Chellaiya

... Petitioner

Vs.

1. The Sub Registrar,
Thallakulam Sub Registrar Office,
Rajagambeeram,
Othakadai,
Madurai District.

2. Vellaiammal

... Respondents

Prayer: Writ petition is filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, directing the 1st respondent to cancel deed Doc.No.652/2014 dated 19.02.2014 and for deleting the entries with regard to the said document from 'A' register, maintained by the 1st respondent.

For Petitioner : Mr.A.Shajahan

For R-1 : Mr.SR.A.Ramachandran,
Additional Government Pleader.

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ORDER

Heard the learned counsel appearing for the petitioners and the learned Additional Government Pleader appearing for the first respondent.

2. Service of notice could not be completed on the second respondent.

3. It is seen that the second respondent is none other than the mother of the petitioners herein. She executed settlement deed dated 01.12.2008 in favour of the petitioners vide document No.4896 / 2008 registered on the file of the first respondent. This document was unilaterally cancelled vide document No.652 / 2014 dated 19.02.2014.

4. It is well settled that the document once registered cannot be unilaterally cancelled. The Hon'ble Full Bench in the decision reported in ***AIR 2011 Mad 66 (Latif Estate Line India Ltd. and Ors. Vs. Hadeeja Ammal and Ors)*** held as follows:-



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“ 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 transferrer 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 a deed of conveyance by the transferee in favor 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 non-payment 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 aforesaid decision has been relied on by another Full Bench of Madras High Court in the decision reported in **2022 (5) CTC 257 (Sasikala Vs. The Revenue Divisional Officer)**. The Hon'ble Full Bench has held as follows:-

“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 MANU/SC/1267/2010 :



(2010) 15 SCC 207 and the Full Bench of this Court in Latif Estate Line India Ltd., case, reported in MANU/TN/0310/2011 : 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 MANU/SC/0615/2022 : (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 MANU/SC/0579/2022 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



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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 transferrer 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 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.”



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5. The first respondent could not have entertained the document for unilateral cancellation. In this view of the matter, the impugned registration is set aside. This writ petition stands allowed. No costs. Consequently, connected miscellaneous petition is closed.

06.07.2023

NCS : Yes / No
Index : Yes / No
Internet : Yes / No
PMU

To:

The Sub Registrar,
Thallakulam Sub Registrar Office,
Rajagambeeram,
Othakadai,
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G.R.SWAMINATHAN,J.

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