



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 11.09.2023

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P.(MD)No.14486 of 2015

Thirumathi Noorjahan

... Petitioner

Vs.

1. The Sub Registrar,
O/o.The Sub Registrar,
Athirampattinam Town,
Athirampattinam,
Thanjavur District.
(Within registration District of Pattukottai)

2. The District Registrar,
Pattukottai District Registrar Office,
Pattukottai,
Thanjavur District.

3. Ummal Hayya
(R-3 is impleaded vide Order dated 22.04.2019
in W.M.P.(MD)No.5238 of 2019)

... Respondents

Prayer: Writ petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records pertaining to the registration of cancellation deed dated 10.10.2011 vide document No.1570/2011 on the file of the 1st respondent office and quash the same and consequently direct the respondent herein to remove the entry regarding registration of cancellation deed dated 10.10.2011.



For Petitioner : Mr.B.Jameel Arasu
For R-1 & R-2 : Mr.N.Satheesh Kumar,
Additional Government Pleader.

* * *

ORDER

Heard the learned counsel appearing for the writ petitioner and the learned Additional Government Pleader appearing for the official respondents.

2. Though the third respondent has been served and her name is also printed in the cause list, she has not chosen to enter appearance.

3. The petitioner is the daughter of the third respondent. The third respondent executed a settlement deed in favour of the petitioner on 03.04.2006. It was registered as document No.4491 of 2006. The third respondent unilaterally cancelled the same. The same was registered by the first respondent as document No.1570 of 2011 dated 10.10.2011. Questioning the same, the present writ petition came to be filed.



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4. It has been held in more than one case that such registration of unilateral cancellation of deeds is impermissible in law. The learned counsel appearing for the petitioner draws my attention to the decision of the Hon'ble Full Bench reported in ***AIR 2011 Mad 66 (Latif Estate Line India Ltd. and Ors. Vs. Hadeeja Ammal and Ors)***. The Hon'ble Full Bench has held as follows:-

“ 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



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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



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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 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.”

5. Hence, the act of the first respondent is illegal. The impugned registration is set aside. The first respondent shall also remove the entry caused in the encumbrance certificate on account of such registration. This writ petition stands allowed. No costs.

11.09.2023

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

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To:

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G.R.SWAMINATHAN,J.

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