



W.P(MD)No.18592 of 2015

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 01.08.2023

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)No.18592 of 2015
and
M.P.(MD)Nos.1 and 2 of 2015

Eswari

... Petitioner

Vs.

1.The Sub Registrar,
Office of the Sub Registrar,
Kottaram, Alagappapuram,
Kanyakumari District.

2.Atchuthan Vadiriyar (Died)

3.Anitha

... Respondents

*(R2 and R3 are substituted vide order dated
02.12.2022 in W.M.P.(MD)No.9068 of 2016
in W.P.(MD)No.18592 of 2015 by RVJ)*

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari, calling for the records pertaining to the registration of the cancellation of settlement deed by the first respondent vide document No.2213/2015 dated 13.07.2015 and quash the same.



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For Petitioner : Mr.A.Robinson

For Respondents : Mr.S.RA.Ramachandran,
Addl. Government Pleader for R1.
Mr.K.K.Kannan for R3.

ORDER

Heard the learned counsel on either side.

2.The petitioner / Eswari got married to one Suresh. Suresh is the son of Atchuthan Vadiriya (second respondent). The second respondent is no more and the third respondent has been brought on record as the legal heir. When the second respondent was alive, he executed a settlement deed in favour of the petitioner and her husband. It was registered as Document No.1396/2011 on the file of the Sub Registrar, Kottaram. The allegation of the petitioner is that at the instance of the third respondent and her sister, the second respondent unilaterally cancelled the settlement deed on 13.07.2015 vide Document No. 2213/2015. Challenging the registration of the cancellation deed, the present writ petition came to be filed.



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3. It is well settled that a settlement deed or deed of conveyance cannot be unilaterally cancelled. The The Hon'ble Full Bench of the Madras High Court in the decision reported in *[2011 (2) CTC 1 (M/s.Latif Estate Line India Ltd. Vs. Hadeeja Ammal)]* 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 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 a deed of conveyance by the transferee in favour of the transferor.



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(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.

60. Having regard to the conclusions arrived at as aforesaid, the questions referred are answered accordingly. The appeals are referred back to the concerned Court for deciding the case on merits.”

4. In a recent decision reported in **2022 (5) CTC 257 (Sasikala V. Revenue Divisional Officer-cum-Sub Collector)** another Hon'ble Full Bench of this Court held as follows:-

“40. Hence, we have no hesitation to answer the issue by holding that the Sub-Registrar namely, the Registering Authority



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has no power to accept the Deed of Cancellation to nullify the Deed of Conveyance made earlier.

41.Regarding Gift or Settlement: With regard to unilateral cancellation of gift deed, which is not revokable 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 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 clarifies 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 Sub Registrar 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. V. Government of Andhra Pradesh & Ors.**, (2010) 15 SCC 207 and the Full Bench of this Court in **Latif Estate Line India Ltd.**, case, 2011 (2) CTC 1(FB): AIR 2011Mad. 66 and inclined to follow the Judgment of Three Member Bench of Hon'ble Supreme Court in **Veena Singh's case** (2022) 7 SCC 1 and the judgment of Two-Member Bench of Hon'ble Supreme Court in **Asset Reconstruction Company (India) Ltd.**, case, 2022 SCC Online SC 544 for the following propositions:*



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(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.

(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 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. Respectfully following the ratio laid down above, I hold that the registration of the impugned cancellation deed by the first respondent is without jurisdiction. It is set aside and the writ petition is allowed. No costs. Consequently, connected miscellaneous petitions are closed.

01.08.2023

NCC : Yes/No
Index : Yes / No
Internet : Yes/ No
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To:-

The Sub Registrar,
Office of the Sub Registrar,
Kottaram, Alagappapuram,
Kanyakumari District.



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G.R.SWAMINATHAN, J.

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