



S.A.(MD)No.228 of 2017

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **06.06.2023**

CORAM:

THE HONOURABLE **MR.JUSTICE ABDUL QUDDHOSE**

S.A.(MD)No.228 of 2017

and

C.M.P.(MD)No.4603 of 2017

Retnasamy

... Appellant

/Vs./

Ponraj

... Respondent

PRAYER: Second Appeal filed under Section 100 of the Civil Procedure Code to set aside the Judgment and Decree dated 19.01.2017 made in A.S.No.8 of 2011 on the file of the Subordinate Judge, Valliyoor, confirming the judgment and decree dated 29.11.2010 made in O.S.No. 27 of 2009 on the file of the Additional District Munsif, Valliyoor, and to allow the Second Appeal.

For Appellant : Mr.R.Subramanian

For Respondent : Mr.Ananth C.Rajesh



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JUDGMENT

This second appeal has been filed challenging the concurrent findings of the Courts below. The appellant is the defendant in the suit in O.S.No.27 of 2009 on the file of the Additional District Munsif, Valliyoor. The respondent is the plaintiff in the said suit. The suit was filed for a declaration to declare the cancellation deed executed by the appellant / defendant dated 16.12.2008, by which, the settlement deed dated 29.04.2005 executed in favour of the respondent / plaintiff was cancelled as null and void. In the forthcoming paragraphs, the parties are described as per their litigative status in the suit.

2. The plaintiff filed the suit for the aforesaid declaration on the ground that a valid settlement deed dated 29.04.2005 was executed in his favour by the defendant, which was unilaterally cancelled by the defendant by a cancellation deed dated 16.12.2008. According to the plaintiff, the cancellation deed dated 16.12.2008 is illegal and therefore, the said cancellation deed dated 16.12.2008 has to be declared as null and void.



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3. However, as seen from the written statement filed by the defendant, he claims that the plaintiff was his ex-employee and out of love and affection towards him and to provide him a place for living during his employment, he had executed the settlement deed dated 29.04.2005 in his favour and had paid all the necessary charges for registering the settlement deed and had also retained the original settlement deed dated 29.04.2005 with him. The defendant states that on the belief that the plaintiff will be in the defendant's service forever, the defendant had executed the settlement deed dated 29.04.2005 in favour of the plaintiff by retaining the original settlement deed dated 29.04.2005 with him. However, according to the defendant, the plaintiff left the services of the defendant arbitrarily and hence, the plaintiff is not entitled to retain ownership/possession of the suit schedule property based on the settlement deed dated 29.04.2005. Hence, according to the defendant, the cancellation deed dated 16.12.2008 executed by him cancelling the settlement deed dated 29.04.2005 executed in favour of the plaintiff is a valid document.

4. The trial Court framed issues based on the pleadings of the



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respective parties and they are as follows:

(a) Whether the plaintiff is entitled to the relief of declaration that the cancellation deed dated 16.12.2008 is void, inoperative and not binding on the plaintiff?

(b) Whether the plaintiff is entitled to the relief of injunction against the defendant?

(c) To what other reliefs, the plaintiff is entitled to?

5. Before the trial Court, the plaintiff filed 13 documents, which were marked as Exs.A1 to A13 and they are as follows:

“Ex.A1 – 29.04.2005 – A certified copy of settlement deed executed by Rethinasamy in favour of Ponraj.

Ex.A2 – 29.04.2005 – Copy of approved plan.

Ex.A3 – 22.12.2008 – Notice issued by Ramesh to the plaintiff.

Ex.A4 – 03.01.2009 – A legal notice issued by Selvam in favour of plaintiff.

Ex.A5 – 02.01.2009 – Patta in favour of plaintiff.

Ex.A6 – 19.01.2009 – Electricity Receipt.

Ex.A7 – 21.01.2009 – The certificate issued by the Executive Officer Selection Grade Panchayat.

Ex.A8 – 02.01.2009 – Letter issued by defendant to the



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plaintiff.

Ex.A9 – 10.12.2008 – Legal notice sent by the plaintiff to the defendant.

Ex.A10 – 16.12.2008 – A certified copy of cancellation settlement deed executed by Rethinasamy in favour of Ponraj.

Ex.A11 – 24.08.2006 – A original sale deed executed by Annalakshmi ammal and 2 another in favour of Murugan.

Ex.A12 – 19.11.2008 – Solvency Certificate.

Ex.A13 – 11.12.2008 – Paper publication.”

Two witnesses were examined on the side of the plaintiff, namely the plaintiff himself as P.W.1 and Mr.Raman as P.W.2. On the side of the defendant, two documents were filed, which were marked as Exs.B1 and B2 and they are as follows:

“Ex.B1 – Receipts issued by Muthu Electricals

Ex.B2 – Account statement of plaintiff.”

Three witnesses were also examined on the side of the defendant, namely, Rethinasamy as D.W.1, Selvam as D.W.2 and Arunachalam as D.W3.

6. Based on the oral and documentary evidence available on record and on the ground that the cancellation deed dated 16.12.2008



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(Ex.A10) has been cancelled unilaterally by the defendant, the trial Court has decreed the suit as prayed for by the plaintiff by its judgment and decree dated 29.11.2010. The trial Court held that unilateral cancellation is illegal, as the said cancellation was done without the concurrence of the plaintiff. Aggrieved by the judgment and decree of the trial Court dated 29.11.2010, passed by the Additional District Munsif, Valliyoor, the defendant filed the first appeal before the Sub Court, Valliyoor in A.S.No.8 of 2011. The lower appellate Court also confirmed the findings of the trial Court by dismissing the first appeal by its judgment and decree dated 19.01.2017. Aggrieved by the concurrent findings of the Courts below, this second appeal has been filed by the defendant in the suit.

7. This Court, on 25.05.2017 admitted the second appeal by formulating the following substantial questions of law:

"(1)Whether the Courts below are right in decreeing the suit relying on the judgment relating to unilateral cancellation of sale deed, which was over ruled by the Hon'ble Apex Court in Sathya Pal Anand case?

(2)Whether the Courts below are right in



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dismissing the case without formulating the issue regarding the validity of the Ex.A1 settlement deed?

(3) Whether the Courts below are right in holding that under Ex.A1, settlement had taken effect when the original settlement deed, the prior title deed of the property and physical possession of the property were not handed over to the respondent?

(4) Whether the Courts below are right in deciding the issue contrary to the evidence adduced in the case?"

8. The learned counsel appearing for the appellant / defendant would submit that the plaintiff was an ex-employee of the defendant and only to provide him a place for living during his employment, the settlement deed referred to supra was executed in his favour by the defendant on the belief that he will continue to be in the defendant's service forever. He also drew the attention of this Court to the settlement deed dated 29.04.2005 (Ex.A1) and would submit that the recitals to the said settlement deed make it clear that the plaintiff was an employee to the defendant and only out of natural love and affection for his service rendered and that too on the belief that the plaintiff will continue to be in the defendant's service forever, the said settlement deed was executed.



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9. The learned counsel appearing for the appellant / defendant would submit that since the plaintiff left the service of the defendant arbitrarily, the defendant had to cancel the settlement deed by way of cancellation deed dated 16.12.2008 (Ex.A10). The learned counsel appearing for the appellant / defendant would further submit that there was a fiduciary relationship between the plaintiff and the defendant. Since the plaintiff had committed breach of contract by leaving the service of the defendant, the defendant had every right to cancel the settlement deed and therefore, the cancellation of the settlement deed by the defendant is not illegal.

10. However, the learned counsel appearing for the respondent / plaintiff has placed before this Court a judgment of the Full Bench of this Court rendered in the case of **Sasikala vs. Revenue Divisional Officer cum Sub Collector, Devakottai, Sivagangai District** reported in **2022 (5) CTC 257** and would submit that any unilateral cancellation of any registered document of conveyance is illegal. He would refer to



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paragraph 44 of the said judgment for the said proposition.

11. The judgment rendered by the Full Bench of this Court referred to supra relied upon by the learned counsel appearing for the respondent / plaintiff is also not disputed by the learned counsel appearing for the appellant / defendant. But, however, the learned counsel appearing for the appellant / defendant would submit that the findings rendered by the Courts below with regard to other defences raised by the appellant / defendant should not be detrimental to the interest of the appellant / defendant, as and when a suit is filed by him in the near future to declare the settlement deed dated 29.04.2005 (Ex.A1) as null and void.

12. The learned counsel appearing for the respondent / plaintiff has not raised any serious objection, if such an observation is made by this Court, while dismissing this second appeal on the ground that unilateral cancellation of the settlement deed by the defendant is impermissible in law as rightly held by the Courts below.



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13. Paragraph 44 of the Full Bench Judgment referred to supra, which is the operative portion of the said judgment makes it clear that any unilateral cancellation of a deed of conveyance is impermissible under law. Paragraph 44 of the Full Bench Judgment referred to supra is extracted hereunder:

“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 (2010) 15 SCC 207 and the Full Bench of this Court in Latif Estate Line India Ltd., case, reported in 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 (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 2022 SCC On-line SC 544 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*



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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.”

14. In the case on hand, it is an admitted fact that the defendant had cancelled the settlement deed dated 29.04.2005 (Ex.A1) by way of



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cancellation deed dated 16.12.2008 (Ex.A10) unilaterally without the concurrence of the plaintiff. Being a deed of conveyance, the Full Bench Judgment referred to supra clearly applies to the same and therefore, the unilateral cancellation made by the defendant is illegal and the Courts below have rightly held that the same is illegal by decreeing the suit for declaration and injunction as prayed for by the plaintiff.

15. For the foregoing reasons, there is no merit in this second appeal and the substantial questions of law formulated by this Court on 25.05.2017, which have been extracted supra are answered against the appellant / defendant, as the settlement deed has been unilaterally cancelled by the appellant / defendant, which is not permissible under law as laid down by the decision of the Full Bench of this Court referred to supra in the case of **Sasikala vs. Revenue Divisional Officer cum Sub Collector, Devakottai, Sivagangai District** reported in **2022 (5) CTC 257**.

16. However, it does not prevent the appellant / defendant to file a fresh suit to declare the settlement deed dated 29.04.2005 (Ex.A1) as null



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and void and it is also made clear that excepting for the finding given by the Courts below that unilateral cancellation is not permissible under law, the trial Court, while deciding the fresh suit to be filed by the appellant / defendant in the near future, shall decide the same uninfluenced by the other findings given by the Courts below with regard to other defences raised by the appellant / defendant in his written statement.

17. In the result, this Second Appeal is dismissed. However, liberty is granted to the appellant / defendant to file a suit for declaration to declare the settlement deed dated 29.04.2005 (Ex.A1) as null and void against the respondent / plaintiff and the respondent / plaintiff is also granted liberty to raise all defences available to him under law in the said suit, as and when the suit is filed by the appellant / defendant. No costs. Consequently, connected Miscellaneous Petition is closed.

06.06.2023

Index : Yes / No
NCC : Yes / No
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- 1.The Subordinate Judge, Valliyoor.
- 2.The Additional District Munsif, Valliyoor.
- 3.The Section Officer, VR Section,
Madurai Bench of Madras High Court,
Madurai.



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ABDUL QUDDHOSE, J.

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Judgment made in
S.A.(MD)No.228 of 2017

Dated:
06.06.2023