



W.P(MD)No.28161 of 2022

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 30.01.2023

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THE HONOURABLE **MR.JUSTICE G.R.SWAMINATHAN**

W.P(MD)No.28161 of 2022

and

W.M.P(MD)Nos.22226 & 22228 of 2022

Pechiammal

... Petitioner

Vs.

1.The Sub Registrar,
Melur,
Tuticorin.

2.Dravidamuthu

3.Maharajan

4.Sakthipandi

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the records relating to the proceedings of the impugned cancellation deed, dated 07.07.2011, vide document number 2303/2011 on the file of the first respondent and the consequent impugned refusal slip in RFL/Melur Thoothukudi/105/2022, dated 28.11.2022, on the file of the first respondent and quash the same and further direct the first respondent to register the settlement deed presented by the petitioner in favour of her husband M.Balasubramaniyan in respect of property bearing Door No.28M/2 in T.S.No.2, Ward C, Block 82 situated in Bryant Nagar 7th Street, Thoothukudi.



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For Petitioner : Mr.K.Jeyamohan
For R-1 : Mr.N.Satheeskumar
Additional Government Pleader
For R-2 to R-4 : No appearance

ORDER

Heard the learned Counsel for the writ petitioner and the learned Additional Government Pleader for the first respondent. The second respondent is none other than the petitioner's father's first wife. The respondents 3 and 4 are the second respondent's sons born to the petitioner's father. The private notice issued by the petitioner was received by the second respondent for herself and on behalf of the third and fourth respondents. The Court notice issued to the second and third respondents has been returned with an endorsement 'Unclaimed'.

2. The writ petitioner's father Thiru.Murugan executed a settlement deed in favour of the petitioner when she was a minor. The settlement deed was executed on 25.11.1991 and registered as document No.2123/1991 on the file of SRO Melur, Tuticorin. This document was unilaterally cancelled on 07.07.2011 (vide document No.2303/2011). To quash the registration of the cancellation deed unilaterally executed and presented by the settlor, this writ



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petition has been filed. A further relief has also been sought for. On the strength of the settlement deed dated 25.11.1991, the petitioner had executed a settlement deed dated 28.11.2022 in favour of her husband. She presented a sale for registration. The impugned refusal check slip came to be issued citing the cancellation deed. Challenge to the impugned refusal check slip is the other part of the writ prayer.

3. The learned Counsel appearing for the petitioner reiterated all the contentions set out in the affidavit filed in support of the writ petition and called upon this Court to quash the registration of the cancellation deed as well as the impugned refusal check slip and grant relief as prayed for.

4. The learned Additional Government Pleader submitted that this writ petition is barred by laches. He pointed out that this Court in W.P(MD)No. 23577 of 2019 dated 05.06.2020 dismissed the writ petition, where challenge to unilateral cancellation of the year 1994 was made. He submitted that if this Court would intervene in the matter, it may possibly affect third party rights that might have accrued in the meanwhile.

5. The private respondents have not appeared before this Court to oppose the writ petition.



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6. After carefully considering the objections of the learned Additional Government Pleader, I am of view that the relief sought for in the writ petition has to be granted. This is primarily for the reason that the issue raised by the writ petition is no longer *res integra*. The Hon'ble Full Bench of the Madras High Court in the decision reported in **2011 (2) CTC 1 (Latif Estate Line India Limited Vs. Hadeeja Ammal and Others)** had held that unilateral cancellation of sale deed is illegal. The Hon'ble Full Bench judgment was rendered on 11.02.2011. Even though the decision of the Hon'ble Full Bench pertains only to unilateral cancellation of a sale deed, still the underlying principle is applicable to unilateral cancellation of other transactions also. Registration of the cancellation deed in the instant case was made on 07.07.2011 (i.e.,) after the Hon'ble Full Bench pronounced the judgment. Another Hon'ble Full Bench of the Madras High Court in the decision reported in **AIR 2022 Madras 323 (Sasikala Vs. Revenue Divisional Officer and another)** in paragraph No.58 has held as follows:

"58. 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 Vs. Government of Andhra Pradesh, reported in (2010) 15 SCC 207 and the Full Bench of this Court in Latif Estate Line India Limited case, reported in AIR 2011 Mad 66 and inclined



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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) Limited case, reported in 2022 SCC Online 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 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 deed 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



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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."

7. The first respondent had erred in registering a deed of unilateral cancellation. All the more so because, the settlement deed dated 25.11.1991 executed in favour of the writ petitioner contains a clause that the settlor has no authority to change or revoke the settlement deed. In the face of such an express stipulation, the first respondent could not have registered the document dated 07.07.2011. I therefore, hold that the registration of the cancellation deed dated 07.07.2011 (vide document No.2303/2011) is null and void.

8. Since the impugned refusal check slip is anchored entirely on the said deed of cancellation, it also has to go as a matter of consequence. The impugned refusal check slip dated 28.11.2020 is also set aside. The petitioner is permitted to re-present the settlement deed dated 28.11.2022 before the first respondent. The first respondent shall entertain the same, register it and release it subject to the fulfillment of the other usual formalities. This writ petition



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stands allowed. There shall be no order as to costs. Consequently, connected

Miscellaneous Petitions stand closed.

30.01.2023

NCC : Yes / No

Index : Yes / No

Internet : Yes / No

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To

The Sub Registrar,
Melur,
Tuticorin.

G.R.SWAMINATHAN, J.



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