



W.P.No.3752 of 2018

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.04.2024

CORAM:

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

WP.No.3752 of 2018 & WMP.No.4579 of 2018

S.V.Gowtham

... Petitioner

Vs

1. The Inspector General of Registration,
Santhome, Chennai.
2. The Sub Registrar,
Komarapalayam Sub Registration Office,
Komarapalayam, Namakkal District.
3. S.Venkatesan
4. S.Amutha

... Respondents

Prayer:- Writ Petition filed under the Article 226 of Constitution of India, to issue a Writ of declaration to declare that the impugned Deed of Cancellation dt 26.4.2016 which was duly registered as Document No.2900 of 2016 on the file of the office of the 2nd respondent and subsequent Deed of Partition dt 26.4.2016 which was duly registered as Document No.2905 of 2016 on the file of the 2nd respondent as Null and Void and non-est in law.

For Petitioner : Mr.R.Marudhachalamurthy



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For Respondents : Mr.Yogesh Kannadasan
Special Government Pleader – R1 & R2
Mr.D.Selvaraju – R3 & R4

ORDER

This Writ Petition has been filed challenging the Unilateral Deed of Cancellation dated 26.4.2016 which was duly registered as Document No.2900 of 2016 on the file of the office of the second respondent and subsequent Deed of Partition dated 26.4.2016 which was duly registered as Document No.2905 of 2016 on the file of the second respondent as null and void and non-est in law.

2. Heard Mr.R.Marudhachalamoorthy, learned counsel appearing for the petitioner and Mr.Yogesh Kannadasan, learned Special Government Pleader appearing for the respondents 1 and 2 and Mr.D.Selvaraju, learned counsel appearing for the respondents 3 and 4.

3. It is the case of the petitioner that the subject property is



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originally owned by the petitioner's grandfather Nachimuthu Gounder and after his life time, the property came to his father and his father executed a settlement deed in favour of the writ petitioner on 19.12.2014. However, the said settlement deed has been unilaterally cancelled on 26.04.2016. Hence, challenging the unilateral cancellation of the settlement deed executed in favour of the petitioner, the present Writ Petition has been filed.

4. Counter has been filed by the second respondent to the effect that the document has been registered which was presented by the settlor. The third and fourth respondents took a stand that the property is a joint family property and they being the co-parcener, they have right to cancel the document.

5. Once, a settlement deed is executed and transfer of title is immediate and the title passes. Unless the right of revocation is reserved in the settlement deed, the settlement deed cannot be unilaterally cancelled. Only exception is Tamilnadu Welfare and Maintenance of Parents and Senior Citizens Act. Therein also, when the settlement is



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executed only for the purpose of maintaining the senior citizens and the same is not acted upon. Such a document can be cancelled. In such view of the matter, this Court is of the view that unilateral cancellation of the settlement by executing a cancellation deed is not permissible under law. Further, the Full Bench of this court in a decision in ***Sasikala vs. Revenue Divisional Officer cum Sub Collector and another*** made in **W.P.(MD).Nos.6889 of 2020 etc., batch cases dated 02.09.2022** 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.-vsGovernment 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



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(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 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



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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.

6. In view of the above settled provision of law, unilateral cancellation of the settlement deed is not valid in the eye of law. Hence, the unilateral cancellation of the settlement deed is liable to be set aside. However, this will not prevent the third and fourth respondents to establish their right for claiming partition in the suit since the allegation of both sides refer to the joint family properties. It is for the parties to establish their stand over the properties in a proper civil suit.



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7. With the above observation, this Writ Petition is allowed and cancellation deed dated 26.04.2016 and the subsequent deed of partition dated 26.04.2016 are set aside. Consequently, connected miscellaneous petition is closed. No costs.

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Index: Yes/No

Neutral Citation : Yes/No

vrc

To,

1. The Inspector General of Registration,
Santhome, Chennai.
2. The Sub Registrar,
Komarapalayam Sub Registration Office,
Komarapalayam, Namakkal District.



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N.SATHISH KUMAR, J.

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