



W.P. No. 5934 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.04.2024

CORAM

THE HON'BLE MR. JUSTICE N. SATHISH KUMAR

W.P. No. 5934 of 2018

and

W.M.P. No. 7313 of 2018

J.Noorul Murshitha

... Petitioner

-VS-

1. The Inspector General of Registration,
Office of the I.G. of Registration,
No. 100, Santhome High Road,
Chennai – 600 028.
2. The District Registrar,
O/o. the District Registrar,
Chidambaram,
Cuddalore District.
3. The Sub-Registrar,
O/o. the Sub-Registrar,
Kattumannarkoil Town & Taluk, Cuddalore District.
4. M.Safiullah Sahib

5. A.Sivasankari

... Respondents

Prayer:- Writ Petition filed under Article 226 of the Constitution of India, 1950, praying to issue a Writ of Certiorarified Mandamus, calling for the records of the 3rd respondent pertaining to the cancellation deed dated 30.08.2007, vide Document No. 1755/2007 executed unilaterally by the 4th respondent cancelling the settlement deed dated 07.05.1986 bearing Document



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No. 575/1986 and quash the same, consequently directing the 3rd respondent to cancel the sale deed dated 01.11.2016 bearing Document No. 2975/2016 executed by the 4th respondent in favour of the 5th respondent.

For Petitioner : Mr. G.Balamanikandan
for Ms. S.Kanmani

For Respondents : Mr. B.Vijay,
Additional Government Pleader
(for R1 to R3)

Mr. G.Pugazhenthhi (for R4)

Mr. R.Shivakumar
for M/s. K.M.Vijayan Associates (for R5)

ORDER

The writ petition has been filed challenging the unilateral cancellation of the settlement deed by the 4th respondent.

2. It is the case of the writ petitioner that her father, who is the 4th respondent in this writ petition, had executed a registered settlement deed in favour of his wife on 06.05.1986. The mother of the petitioner took possession and residing with the settlor in the same house. The mother of the petitioner died on 10.07.2005. After the death of the mother of the petitioner, her father had unilaterally cancelled the settlement deed on 30.08.2007 and thereafter, he had sold the property to the 5th respondent on 01.11.2016. Hence, challenging



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the unilateral cancellation of the settlement deed, the writ petition has been filed.

3. The 4th respondent has not filed counter. However, the learned counsel for the 4th respondent would submit that as far as the Mohammedan Law is concerned, the cancellation of the settlement has to be decided only in civil court. Further, there is no bar to revoke the gift by the donor at any time before delivery of possession under Section 167 of Chapter XI of Mulla's Principles of Mohammedan Law. Whereas the counsel appearing for the writ petitioner submit that the mother of the petitioner was all along residing with the settlor and therefore question of proving possession does not arise at all. Therefore, cancellation of the settlement deed after the death of the mother of the petitioner is not valid in the eye of law.

4. Heard the learned counsel for both sides and considered the submissions made on either side and also perused the entire materials available on record before this Court.

5. The learned counsel for the 4th respondent has placed reliance on the decision of the Division Bench of this Court in ***S.M.Syed Mohammed Buhari***



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vs. *The Sub Registrar, Triplicane, Chennai and others* made in **W.A.**

No. 1283 of 2012 dated 28.06.2018 to the effect that since there is a dispute with regard to the validity of the settlement, the same has to be decided only in civil court. The law relating to unilateral cancellation of the settlement has been settled by 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) No. 6889 of 2020 etc., batch cases dated 02.09.2022** holding 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 (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:



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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



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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. Further, Section 167 of the Mulla's Principles of Mohammedan Law reads as follows:-

“167. Revocation of gifts (1) A gift may be revoked by the donor at any time before delivery of possession. The reasons is that before delivery there is no completed gift at all.

(2) Subject to the provisions of sub-sec, (4), a gift may be revoked even after delivery of possession except in the following cases:-

- (a) when the gift is made by a husband to his wife or by wife to her husband;*
- (b) when the donee is related to the donor within the prohibited degrees;*
- (c) when the donee is dead;*
- (d) when the thing given has passed out of the donee's possession by sale, as gift or otherwise;*
- (e) when the thing give is lost or destroyed;*
- (f) when the thing given has increased in value, whatever be the cause of the increase;*



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(g) *when the thing given is so changed that it cannot be identified, as when wheat is converted into flour by grinding;”*

The above makes it very clear that when donee is dead, there cannot be any revocation of gift. The unilateral cancellation of settlement has been made in this case only after the settlee has died.

7. In such view of the matter, when the law declares that no such unilateral cancellation of document is permissible, such cancellation cannot be sustained in the eye of law. Whether possession is taken or not and gift is valid or not, has to be established by the 4th respondent only in civil court.

In view of the above, the writ petition is allowed. Consequently, the connected Miscellaneous Petition is closed. No costs.

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Index: Yes/No

NCC: Yes/No

vjt



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To

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N. SATHISH KUMAR, J.

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