



WP.No.16869 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : **01.08.2024**

CORAM

THE HONOURABLE MR. JUSTICE N. SATHISH KUMAR

W.P.No.16869 of 2023

B.R.Premavani

.. Petitioner

Versus

1. The Sub Registrar,
Sub Registrar Office, Kadathu, Dharmapuri District.

2. Raniammal

3. Inbaraja

4. Rajeshwari

5. Ganeshraja

.. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus to call for the records pertaining to the cancellation of Settlement Deed dated 29.03.1994 in Document No. 244 of 1994 on the file of the 1st respondent and quash the same as illegal and incompetent and ultravires and consequently direct the first respondent to remove the above mentioned entry from the Encumbrance Certificate.

For Petitioner : Mr.R.Jayaprakash

For Respondent : Mr.B.Vijay
Additional Government Pleader – R1

R2 to R5 – No appearance

ORDER



WP.No.16869 of 2023

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With the consent of both sides, this Writ Petition is taken up for final disposal at the admission stage itself.

2. Challenging the impugned refusal slip issued by the respondent dated 05.07.2024 refusing to register the settlement deed presented by the petitioner for registration, the present Writ Petition has been filed.

3. Heard learned counsel for the petitioner and the learned Additional Government Pleader appearing for the first respondent and perused the materials available on record. Despite notice to the respondents 2 to 5, none appeared for the respondents.

4. The case of the petitioner is that the subject property was originally owned by her husband's grand father Sithamalai Gounder and he settled the property in favour of the petitioner's father-in-law. The petitioner's father-in-law has filed a suit in O.S.No.92 of 2004 against the one Sethuraman and his legal heirs for declaration and permanent injunction and the suit was decreed exparte in favour of her father-in-law and the application filed by respondents 2 to 5 for setting aside the exparte decree has been dismissed for default on 27.04.2022.

After the demise of the petitioner's father-in-law, the husband of the petitioner is



WP.No.16869 of 2023

in absolute possession and enjoyment of the property and patta has also been issued in his name. The husband of the petitioner subsequently, settled the property in favour of the petitioner by a registered settlement deed dated 18.09.2013 and the patta and the revenue records have also been mutated in the name of the petitioner. While so, the said Sithamalai Gounder, without issuing any notice to the petitioner's father-in-law, unilaterally cancelled the settlement deed executed in favour of her husband by way of registered cancellation of settlement deed dated 29.03.1994. Challenging the same the present Writ Petition.

5. Counter has been filed by the official respondent, wherein his main contention is that this Writ Petition has been filed with enormous delay and the petitioner ought to have approached the Civil Court and at this stage the authorities have no power to cancel the document.

6. Though there is huge delay in coming before this Court, the fact remains that based on the settlement deed executed by his father, the petitioner's father-in-law, Subramaniam filed a suit in O.S.No.92 of 20024 before the District Munsif Court, Harur, against his own brother and the suit has been decreed in favour of the petitioner and that has also reached finality. Thereafter, the property



WP.No.16869 of 2023

is in continued in possession of the said Subramaniam, who in turn executed a settlement deed in favour of his son. In the meanwhile, in the year 1994, the document has been cancelled by the original settlor. Though there is a huge delay in coming to the Court, the fact remains that the settlement deed indicate that the absolute right has been settled in favour settlee. The conduct of filing suit for declaration clearly indicate that he is asserting right only on the basis of the settlement deed. Now the said settlement deed has been unilaterally cancelled.

7. 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 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 of settlement 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 :



WP.No.16869 of 2023

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“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 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



WP.No.16869 of 2023

conveyance cannot be accepted for registration.

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(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.”

8. As far as the issue of delay in coming to the Court is concerned, the Division Bench of this Court by an Order dated 24.01.2020 in W.A.No.108 of



WP.No.16869 of 2023

2020 [Kanniyan and another Vs. Mrs.Saranya and 5 others] has held as follows :

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“We may clarify that an otherwise void document, as held by the Full Bench, cannot rejuvenate or survive any lapse of time and would not improve the situation any further, in as much as the document is non-est in the eyes of law. The order of the learned Single Judge dated 10.08.2018 is simply a declaration to that effect, taking into account the law propounded by the Full Bench, which in no way defeats the rights of the appellants to contest the original settlement deed dated 25.02.2008. We say this for the reason that the learned counsel for the appellants is right in his submission that the declaration granted by the High Court cannot extinguish the rights of the appellants to contest their position before the appropriate forum and even otherwise, the appellants must have been under the belief that the cancellation deed had fulfilled the said purpose. This may also be coupled with the issue of limitation, if any action is proposed by the appellants and we therefore, make it clear that from that point of view, the filing of the writ petition and the grant of declaration on 10.08.2018 shall not be a disadvantage in that regard.”



WP.No.16869 of 2023

WEB COPY

9. 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.

10. Accordingly, this Writ Petition is allowed and cancellation of settlement deed dated 27.01.2011 is quashed and the second respondent is directed to remove all the entires pertaining to the cancellation of settlement deed dated 27.01.2011. Consequently, connected miscellaneous petition is closed. No costs.

01.08.2024

vrc

Index :Yes/No

Internet :Yes/No

Neutral Citation : Yes/No

To,

The Sub Registrar,
Sub Registrar Office, Kadathu, Dharmapuri District.



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WP.No.16869 of 2023

N. SATHISH KUMAR, J.

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W.P.No.16869 of 2023

01.08.2024