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W.A.No.1978 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.02.2024

CORAM

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM
and
THE HONOURABLE MR. JUSTICE K.RAJASEKAR

W.A.No.1978 of 2022

C.Jayaraj

... Appellant/Petitioner

Vs.

1. The Inspector General of Registration
Santhome, Chennai-04.

2. The Sub-Registrar,
Ashok Nagar, Chennai-78.

3. Josphine Mary

4. Pushparaj

... Respondents/Respondents

Prayer :- Writ Appeal filed under Clause 15 of Letters Patent, praying to set aside the order dated 07.06.2022 made in W.P. No.13198 of 2022 and thus render justice.

For Appellant : Mr.K.Venkateswaran

For Respondents : Mr.Yogesh Kannadasan,
Special Government Pleader
(for R1 & R2);

Mr.T.Balaji (for R3 & R4).



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J U D G E M E N T

WEB COPY *(Judgement of the Court was delivered by S.M.Subramaniam J.)*

Writ order dated 07.06.2022, in W.P.No.13198 of 2022 is under challenge in the present writ Appeal.

2. The undisputed facts between the parties are that the father's brother of the writ appellant, Late S.Savarimuthu, executed a settlement deed in favour of the appellant, Mr.C.Jayaraj on 15.12.2006, in respect of certain properties. The said S.Savarimuthu, unilaterally cancelled the settlement deed on 27.06.2007 and subsequently, died.

3. The writ petition was instituted in the year 2022. Learned counsel for the appellant would submit that he was not aware of the cancellation deed executed unilaterally by the deceased S.Savarimuthu. Question arises whether, unilateral cancellation of settlement deed is permissible under the provisions of the Indian Registration Act, 1908, or not.

4. In the present case, the fact that the settlement deed was unilaterally cancelled is not in dispute. The learned Single Judge taking note of the fact that, cancellation of the Settlement Deed involves civil



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dispute and therefore, the parties have to approach the competent Civil Court of law for the purpose of resolving the issues. However, the issue is about the unilateral cancellation of Settlement Deed which is impermissible under the provisions of the Indian Registration Act, 1908.

5. The issues are no more res integra as two different full Benches of this Court has ruled that such unilateral cancellation of settlement deed is void. In the case of ***M/S.Latif Estate Line India Ltd vs Mrs. Hadeeja Ammal, reported in (2011) 2 CTC 1***, full Bench held as follows:

“ 48. Section 54 of the Transfer of Property Act defined the word? Sale?, which means transfer of ownership by one person to another. In other words, sale is transfer of all rights, title and interest in the properties which are possessed by the transferor to another person namely, the purchaser. In case of transfer by way of sale, the transferor cannot retain any part of his interest or right in that property. Such transfer of ownership must be for a price paid or promised or part-paid and part-promised. Even if the whole price is not paid, but the document is executed and registered, the sale would be complete. The transfer is complete and effective upon the completion of the registration of the sale deed. Once the vendor is divested himself of his ownership of the property, then he retains no control or right over the said property.



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...
54. There is no provision in the Transfer of Property Act or in the Registration Act, which deals with the cancellation of deed of sale. The reason according to us is that the execution of a deed of cancellation by the vendor does not create, assign, limit or extinguish any right, title or interest in the immovable property and the same has no effect in the eye of law. A provision relating to the cancellation of a document is provided in Section 31 of the Specific Relief Act, 1963 (Old Section - 39). Section 31 reads as under:—

“31. When cancellation may be ordered : - (1) Any person against whom a written instrument is void or voidable, and who has reasonable apprehension that such instrument, if left outstanding, may cause him serious injury, may sue to have it adjudged void or voidable, and the Court may, in its discretion, so adjudge it and order it to be delivered up and cancelled.

(2) If the instrument has been registered under the Indian Registration Act, 1908 (16 of 1908), the Court shall also send a copy of its decree to the officer in whose office the instrument has been so registered; and such officer shall note on the copy of the instrument contained in his books the fact of its cancellation.”



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55. From the reading of the aforesaid provision, it is manifest that three conditions are requisite for the exercise of jurisdiction to cancel an instrument ie.,

- (1) An instrument is avoidable against the plaintiff;*
- (2) The plaintiff may reasonably apprehend serious injury by the instrument being left or outstanding; and*
- (3) In the circumstances of the case, the Court considers it proper to grant this relief of preventive justice.*

56. A Full Bench of the Madras High Court in the case of Muppudathi Pillai v. Krishnaswami Pillai, AIR 1960 Madras 1 elaborately discussed the provision of Section 39 (New Section 31) and held:—

“12. The principle is that such document though not necessary to be set aside may, if left outstanding, be a source of potential mischief. The jurisdiction under Section 39 is, therefore, a protective or a preventive one. It is not confined to a case of fraud, mistake, undue influence, etc. and as it has been stated it was to prevent a document to remain as a menace and danger to the party against whom under different circumstances it might have operated. A party against whom a claim under a document might be made is not bound to wait till the document is used against him. If that were so he



might be in a disadvantageous position if the impugned document is sought to be used after the evidence attending its execution has disappeared. Section 39 embodies the principle by which he is allowed to anticipate the danger and institute a suit to cancel the document and to deliver it up to him. The principle of the relief is the same as in quia timet actions.”

57. There is no dispute that a third party can claim title to the property against the purchaser who purchased the property for valuable consideration and came into possession of the same. But it is the Civil Court of competent jurisdiction to give such declaration in favour of the third party or a stranger.

58. It can also not be overlooked or ignored that a unilateral cancellation of a sale deed by registered instrument at the instance of the vendor only encourages fraud and is against public policy. But there are circumstances where a deed of cancellation presented by both the vendor and the purchaser for registration has to be accepted by the Registrar if other mandatory requirements are complied with. Hence, the vendor by the unilateral execution of the cancellation deed cannot annul a registered document duly executed by him as such an act of the vendor is opposed to public policy.”



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The other full bench in the case of ***Sasikala vs. Revenue Divisional Officer reported in 2022 (7)SCC 1***, another full bench of this Court held as follows:

“ 54. Hence, we have no hesitation to answer the issue by holding that the Sub-Registrar namely, the Registering Authority has no power to accept the deed of cancellation to nullify the deed of conveyance made earlier.

Regarding gift or settlement:

55. With regard to unilateral cancellation of gift deed, which is not revokable and does not come under the purview of Section 126 of the Transfer of Property Act, the Registrar has no power to accept the deed of cancellation to nullify the registered settlement deed. Section 126 of the Transfer of Property Act, reads as follows:

“126. When gift may be suspended or revoked.—The donor and donee may agree that on the happening of any specified event which does not depend on the will of the donor a gift shall be suspended or revoked; but a gift which the parties agree shall be revocable wholly or in part, at the mere will of the donor, is void wholly or in part, as the case may be. A gift may also be revoked in



any of the cases (save want or failure of consideration) in which, if it were a contract, it might be rescinded. Save as aforesaid, a gift cannot be revoked. Nothing contained in this section shall be deemed to affect the rights of transferees for consideration without notice.

56. Section 126 of the Transfer of Property Act recognizes the power of revocation where the donor reserves a right to suspend or revoke the gift on happening of any specified event. However, the illustrations clarify that the revocation should be with the assent of the donee and it shall not be at the will of donor as a gift revocable at the mere Will of the donor is void. The Sub-registrar cannot decide whether there was consent for revocation outside the document. If the donor by himself reserves a right to revoke the gift at his Will without the assent by donee, the gift itself is void. Since we are dealing with unilateral cancellation, the power of registration of cancellation or revocation of gift deed cannot be left to the discretion or wisdom of registering authority on facts which are not available or discernible from the deed of gift. When the power of revocation is reserved under the document, it is permissible to the registering officer to accept the document revoking the gift for registration only in cases where the following conditions are satisfied;

(a) There must be an agreement between the donor and



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donee that on the happening of a specified event which does not depend on the Will of the donor the gift shall be suspended or revoked by the donor.

(b) Such agreement shall be mutual and expressive and seen from the document of gift.

(c) Cases which do not fall under Section 126 of Transfer of Property Act, unless the cancellation of Gift or Settlement is mutual, the registering authority shall not rely upon the self serving statements or recitals in the cancellation deed. For example questioning whether the gift deed was accepted or acted upon cannot be decided by the registering authority for the purpose of cancelling the registration of gift or settlement deed.

57. The donor must specifically reserves such right to suspend or revoke the gift deed with the consent of donee to attract Section 126 of the Transfer of Property Act. Unless the agreement is mutual, expressed in the recitals, the Registering Authority cannot accept the document for registration. However, the factual allegations with regard to the acceptance of gift or the issue where the gift was acted upon or not do not come under the purview of the Registering Officer. Hence, the Registering Officer is not excepted to accept the document unilaterally cancelling the gift deed,



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merely on the basis of the statement of the donor or the recitals in the document for cancellation.

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 v. Government of Andhra Pradesh, 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 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



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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.



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59. As a result of our forgoing conclusions, we answer the reference by holding that the Registrar has no power to accept the deed of cancellation to nullify the deed of conveyance made earlier, when the deed of conveyance has already been acted upon by the transferee. Since anyone may try to mislead or misinterpret our judgment by referring to the question of reference we insist that our answer to the reference should be understood in the light of our conclusions summarised in the previous paragraph.”

6. In view of the judgements of the two different full Benches of this Court, the writ petition is to be allowed. Thus, the order impugned dated 07.06.2022, in W.P.No.13198 of 2022 is set aside and the writ appeal stands allowed. No costs.

(S.M.S.J.,)

(K.R.S.J.,)

29.02.2024

Index : Yes/No

Internet: Yes/No

Speaking order/Non-Speaking order

Neutral Citation : Yes/No

(sha)



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To
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1. The Inspector General of Registration
Santhome,
Chennai-04.
2. The Sub-Registrar,
Ashok Nagar,
Chennai-78.



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S.M.SUBRAMANIAM, J.

and

K.RAJASEKAR, J.

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