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W.A.No.2988 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.10.2024

CORAM :

THE HONOURABLE MR. JUSTICE S.S. SUNDAR

AND

THE HONOURABLE MR. JUSTICE G. ARUL MURUGAN

W.A.No.2988 of 2024

and

C.M.P.No.22443 of 2024

M.Vishnuram

... Appellant

Vs.

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

2.The Sub-Registrar,
Sub-Registrar Office,
Villivakkam.

3.M.Vijayalakshmi

... Respondents

Prayer:- Writ Appeal filed under Clause 15 of the Letters Patent against the order dated 13.06.2024 in W.P.No.6758 of 2018 on the file of this Court.

For Appellant : Mr.S.Shrish
for Mr.M.I.Javid Akbar

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For R1 and R2 : Mr.B.Vijay
Additional Government Pleader

For R3 : Mr.A.Thiyagarajan

J U D G M E N T

(Judgment was delivered by **S.S. SUNDAR, J.**)

This Writ Appeal is directed against the order of the learned Single Judge dated 13.06.2024 allowing the writ petition in W.P.No.6758 of 2018 filed by the 3rd respondent for issuance of a Writ of Declaration declaring the deed of cancellation of settlement dated 10.10.2013 executed by the father of appellant cancelling the previous settlement deed executed by him in favour of third respondent and the subsequent settlement deed dated 23.12.2013 executed by the father of the appellant in his favour, as null and void.

2.Brief facts that are necessary for the disposal of this Writ Appeal are as follows :



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It is admitted that a settlement deed was executed by the father of the appellant and the 3rd respondent, by a registered deed dated 07.10.2008, bequeathing his property which is in Anna Nagar West Extension, in favour of the 3rd respondent, vide Doc.No.3304 of 2008. It is also admitted that the appellant's father died on 07.06.2014. It is the case of the appellant that, before the death of his father, he executed a cancellation deed cancelling the earlier settlement deed by a document dated 10.10.2013 and subsequently, executed a settlement deed dated 23.10.2013 in favour of the appellant. Since a settlement deed cannot be unilaterally revoked, the 3rd respondent filed the writ petition in W.P.No.6758 of 2018, relying upon the judgment of a Full Bench of this Court in ***Sasikala v. The Revenue Divisional Officer cum Sub Collector, Devakottai and others*** reported in **2022 (5) CTC 257**. The writ petition was allowed by a learned Single Judge holding that the issue is covered by the judgment of the Full Bench of this Court in *Sasikala's case (supra)*. Aggrieved by the order of the learned Single Judge allowing the writ petition, the above Writ Appeal is filed.

3.Learned counsel for the appellant submitted that the cancellation of



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the document was in 2013. However, the writ petition itself was filed only on 21.03.2018 without an explanation for the delay.

4.Since the appellant admits that the writ petitioner has pleaded that she came to know about the cancellation through her mother just before filing the writ petition, this Court is unable to appreciate the contention that there is inordinate delay in approaching the Court. On the admitted facts, the learned Single Judge of this Court found that the unilateral cancellation of settlement deed is invalid and has to be declared *void ab initio* by virtue of the judgment of the Full Bench of this Court in *Sasikala's case (supra)*. It is to be noted that the same principle has also been laid, even by a earlier Full Bench of this Court in *M/s.Latif Estate Line India Ltd. v. Hadeeja Ammal* reported in *(2011) 1 LW 673*.

5.Learned counsel appearing for the appellant, relying upon Section 126 of the Transfer of Property Act, submitted that the cancellation of earlier settlement deed is permissible in view of Section 126 of Transfer of Property Act. He relied upon the recitals of the document, namely the



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settlement deed, which is extracted for convenience :

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“WHEREAS the Settlor herein now out of his natural love and affection has towards the Settlee herein, who is none else than his daughter and in view of the fact that the Settlor and his wife has been taken care of by the Settlee herein, desired to settle the said property, more clearly described in the Schedule hereunder, absolutely in favour of the Settlee herein ...”

6.While considering the scope of Section 126, the Full Bench of this Court, in *Sasikala's case (supra)*, has held as follows :

“41.Regarding gift or settlement: *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



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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.

42. 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 Subregistrar 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



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.

43.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, merely on the basis of the



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statement of the donor or the recitals in the document for cancellation.”

7.The extracted portion of the settlement deed clearly indicates that the donor did not reserve a right to suspend or revoke the gift deed. What is recorded is that he is under the care of settlee and that therefore, he decided to settle the property in favour of his daughter. The clause in the document does not give any scope for revocation of gift by the father at the later point of time, merely because he wished that his daughter would take care of him.

8.In view of the law settled by the Full Bench of this Court and the facts, this Court finds no merit in the Appeal. Therefore, this Writ Appeal is dismissed as devoid of any merit. No costs. Consequently, connected miscellaneous petition is closed.

(S.S.S.R., J.) (G.A.M., J.)
19.10.2024

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To

- 1.The Inspector General of Registration,
Santhome, Chennai.
- 2.The Sub-Registrar,
Sub-Registrar Office,
Villivakkam.



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