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W.A.NO.2612 OF 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.07.2024

CORAM:

THE HONOURABLE MR. JUSTICE R.SUBRAMANIAN

AND

THE HONOURABLE MR. JUSTICE R.SAKTHIVEL

W.A.NO.2612 OF 2022

AND

CMP NO.20709 OF 2022

R.Ramachandran

... Appellant /
Petitioner

Vs.

1.The District Registrar

Chennai South

537, Fanepet, Nandanam,

Chennai – 600 035.

2.The Sub Registrar – Avadi

No.246, 1st Floor, New Military Road,

Chennai – 600 054.

3.R.Srinivasan

... Respondents /
Respondents

PRAYER: Writ Appeal filed under Clause 15 of the Letter Patent against the order dated 02.08.2022 made in W.P.No.19299 of 2022.



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For Appellant : Mr.S.Thanka Sivan

For Respondents

1 and 2 : Mr.L.S.M.Hasan Faizal
Additional Government Pleader

For Respondent 3 : Ms.R.Chitra Devi

J U D G M E N T

(Judgment of the Court was made by R.SUBRAMANIAN, J.)

The appellant is aggrieved by the dismissal of his writ petition in W.P.No.19299 of 2022 by order dated 02.08.2022. The prayer in the writ petition reads as follows:

“Prayer: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Declaration, declaring that the following documents viz., (i) Deed of Cancellation of Settlement dated 20.06.2014 registered as document No.7573 of 2014 in the office of the Sub Registrar, Avadi executed by Laila Ammal, cancelling the Deed of Settlement dated 24.02.2012 registered as document No.1697 of 2012 executed by Laila Ammal in favour of the petitioner and the third respondent (ii) Deed of Cancellation of Settlement dated 20.06.2014 registered as document No.7574 of 2014 in



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the office of the Sub Registrar, Avadi executed by Laila Ammal, cancelling the Deed of Settlement dated 18.03.2021 registered as document No.2884 of 2011 executed by Laila Ammal in favour of the petitioner and the third respondent and the consequential document (iii) Deed of Settlement dated 28.08.2014 registered as document No.10813 of 2014 in the office of the Sub Registrar, Avadi executed by Laila Ammal in favour of the 3rd respondent settling an extent of 4.5 cents of land comprised S.No.403/1E1, T.S.No.1, Thandurai Village, Ward E, Block No.31 as per Avadi Taluk & Town Survey Land Registrar Extract and the building existing therein which was the property covered under the original Deed of Settlement dated 18.03.2011 registered as document No.2884 of 2011 in the office of the 2nd respondent, as illegal and void and consequently direct the respondent authorities 1 & 2 to remove the entries pertaining to the above said documents in the encumbrance registrar of the 2nd respondent.”

2.The Writ Court had relied upon its own order made in W.P.No.33892 of 2012 etc., batch dated 06.04.2022 and held that registration of unilateral cancellation of non-testamentary instrument cannot be questioned in writ proceedings.



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3.However, subsequently, there was a reference by Hon'ble

Mr.Justice S.Vaidyanathan made in W.P.(MD) Nos.11674 of 2015 etc.,

batch and the question that was referred to a Larger Bench was '*whether the Registrar has 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*'. The Hon'ble Full Bench answered the question referred to above as follows:

“(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



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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.”

3.1.The Hon'ble Full Bench also concluded as follows:

“45.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 summarized in the previous paragraph.”



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4.In view of the above dictum of the Hon'ble Full Bench,

which is subsequent to the order of the Hon'ble Single Judge, we have no other option but to allow the writ appeal and the writ petition will also stand allowed. The registration of the Cancellation Deed will stand set aside. However, in the circumstances, there shall be no order as to costs and there will also be a consequential direction to remove the entries regarding cancellation from the Encumbrance Certificate. Any consequential settlement or document executed after the cancellation will also be void. Consequently, connected Civil Miscellaneous Petition is closed.

[R.S.M., J.]

[R.S.V., J.]

11.07.2024

Index : No

Internet : Yes

Neutral Citation : No

Speaking Order

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To

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