



W.P(MD)No.2059 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 18.09.2024

CORAM :

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

W.P(MD)No.2059 of 2023

and

W.M.P.(MD)No.1840 of 2023

1.M.Sankarai
2.Anasuya Krishna Priya
3.S.Arun Kailash

... Petitioners

Vs.

1.The District Registrar,
Office of the District Registrar,
Tenkasi District.

2.The Sub Registrar,
Uthamalai Sub Registration Office,
Uthamalai, Tenkasi District.

3.A.Chellathurai
4.Shanmuga Ananthan

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Mandamus, directing the 2nd respondent to cancel the unilateral cancellation of the settlement deed vide Document No. 355/2005 dated 25.02.2005 on the file of the 2nd respondent and consequently, directing the 2nd respondent to remove the entries in respect of the registered Will document No.5/2005, dated 25.02.2005 and also the deed vide document No.3319/2017, dated 22.11.2017 within the time stipulated by this Court.



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For Petitioners : Mr.M.Sricharan Rangarajan,
Senior Counsel
for Mr.C.Jeganathan
For R1 & R2 : Mr.M.Siddharthan,
Additional Government Pleader
For R3 & R4 : Mr.A.Mohamed Hashim

ORDER

The petitioners seek a direction to the 2nd respondent to cancel the unilateral cancellation of the settlement deed vide Document No.355/2005, dated 25.02.2005 on the file of the 2nd respondent and consequently, directing the 2nd respondent to remove the entries in respect of the registered Will vide Document No.5/2005, dated 25.02.2005 and also the deed vide Document No.3319/2017, dated 22.11.2017 within the time stipulated by this Court.

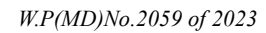
2.It is the case of the petitioners that the properties in S.No.315/1A to an extent of 3 acres 98 cents, S.No.321/3B to an extent of 93 cents and S.No.305/4 to an extent of 40 cents originally belonged to one Ayyasamy alias Maruthappa Asari, who is none other than the father-in-law of the 1st petitioner. The said Ayyasamy had three sons, namely, Chellathurai, Selvaraja and Ambalavanan. The 1st petitioner is the wife and the petitioners 2 and 3 are the daughter and son of the said Selvaraja.



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3.The said Ayyasamy had executed a settlement deed in favour of the husband of the 1st petitioner in respect of the 2/3rd share in the entire property vide document No.455 of 2003, dated 17.04.2003. Thereafter, he had executed a unilateral cancellation of the said settlement deed and it was registered vide Document No.355 of 2005, dated 25.02.2005 and on the same day, he had executed a Will in favour of the 4th respondent vide Document No.5 of 2005. The said Ayyasamy died in the year 2009 and the husband of the 1st petitioner also died in the year 2022. Thereafter, the petitioners sent a representation to the 2nd respondent, seeking cancellation of the said unilateral cancellation deed dated 25.02.2005. Since the same has not been considered so far, the petitioners have filed this Writ Petition with the aforesaid prayer.

4.It is the contention of the learned Senior Counsel appearing for the petitioners that unilateral cancellation is not valid in the eye of law, whereas the learned counsel appearing for the respondents 3 and 4 would submit that the 3rd respondent had also jointly executed a sale deed in respect of 1/3rd share in the entire property in the year 2002, which proves that the properties in question are not belonged to Ayyasamy absolutely. Therefore, the said Ayyasamy had cancelled the document later and executed a Will.



“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.*



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(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 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. In view of the law declared by this Court, unilateral cancellation of settlement deed is not valid and such cancellation will not give any absolute right to others. Further, the very Section 77(A) inserted under Registration Act is struck down by the Division Bench of this Court in W.P.No.10291 of 2022 batch. Therefore, the registering authorities have no power to cancel any



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document already registered as per ***Satya Pal Anand v. State of M.P.[2016 10***

SCC 767] and ***G. Rajasulochana v Inspector General made in W.P 29706 of 2024 dated 16.04.2024.***

7.In view of the above settled position of law, unless the power is specifically vested with the registering authority to cancel any document and to go into the matter, there cannot be any direction to the authorities concerned to cancel the document.

8.With the above observation, this Writ Petition is disposed of. It is for the parties to work out their remedy before the competent civil Court in the manner known to law. No costs. Consequently, connected miscellaneous petition is closed.

18.09.2024

NCC : Yes / No

Index : Yes / No

Internet : Yes / No

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To

1. The District Registrar,
Office of the District Registrar,
Tenkasi District.
2. The Sub Registrar,
Uthamalai Sub Registration Office,
Uthamalai, Tenkasi District.



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N.SATHISH KUMAR, J

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