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A.S.(MD)No.153 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 29.07.2024

CORAM:

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

A.S.(MD)No.153 of 2023 and

C.M.P.(MD).No.8404 of 2023

Sameemmunudeen

...Appellant

Vs.

1. Malikkunnikarbegum

2.The Sub Registrar,
No.II, Joint Sub Registrar,
Vandikara Street,
Ramanathapuram Town,
Ramanathapuram Taluk,
Ramanathapuram District.

...Respondents

PRAYER: This Appeal Suit filed under 96 of C.P.C., against the decree and judgment dated 03.01.2022 passed in the suit in O.S.No.10 of 2021 on the file of the Principal District Court, Ramanathapuram.

For Appellant	: Mr.S.A.Ajmalkhan
For R1	: Mr.M.Ajmalkhan Senior Counsel for M/s.Ajmal Associates
For R2	: Mr.P.T.Thiraviam Government Advocate



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JUDGMENT

The suit in O.S.No.161 of 2019, on the file of Sub Court, Ramanthapuram, was filed by the plaintiff mother namely Malikkunnikarbegum. Subsequently, the same was transferred to the file of Sub Court, Ramanathapuram, then again due to change in the jurisdiction, the same was transferred to the file of Principal District Court, Ramanathapuram and was renumbered as O.S.No.10 of 2021.

2. The prayer in the suit was to cancel the settlement deed, dated 25.11.2016 and consequential permanent injunction.

3. The brief facts of the case are that originally the suit property belongs to one Bakrudeen, after his demise his son Nazir Khan had inherited the property. The said Nazir Khan had sold the property to Malikkunnikarbegum through sale deed dated 22.10.2010 and thereafter she was in possession and enjoyment of the property. The property is having house and vacant space. The plaintiff is having three sons and a daughter. Two of her sons were in foreign countries and one son who is the appellant herein and the daughter are living in India. The appellant son is living with the plaintiff mother. The contention of the plaintiff is that the appellant herein requested the mother to mortgage the property in the bank and obtain loan so that the appellant herein may go aboard to carry on business.



However, the appellant herein prepared settlement deed and took the plaintiff for registering the document by misrepresenting the same as loan documents. When the said misrepresentation came to the knowledge of the plaintiff, an attempt was made to compromise the issue by cancelling the settlement deed and the 1st defendant also agreed. Hence the plaintiff and the 1st defendant had cancelled the settlement deed dated 28.04.2017 for the property in Door No.1/147 through cancellation deed dated 02.08.2019 in Document No.1332 /2019. But the 1st defendant refused to cancel the settlement deed dated 25.11.2016, hence the plaintiff approached the police to cancel the said settlement deed. In the meanwhile, the 1st defendant had filed O.S.No.65 of 2019 to declare the cancellation deed dated 02.08.2019 as null and void. Hence the suit in O.S.No.161 of 2019, on the file of Sub Court, Ramanathapuram then renumbered as O.S.No. 10 /2021 on the file of Principal District Court, Ramanathapuram and the suit was allowed, hence the present first appeal.

4. The point for consideration is whether unilateral cancellation of settlement deed is permissible under law.

5. The mother had executed the settlement deed, dated 25.11.2016 in Document No.2283 / 2016. The contention of the plaintiff mother is that the



settlement was executed with an intention that the son would take care of her, but the son had failed to take care and hence the mother is seeking to cancel the settlement deed. On perusal of the settlement deed dated 25.11.2016 marked as Ex.B5, there is no averment or no condition in the settlement deed that the son has to take care of the mother. Further, the mother has not reserved any right to revoke.

6. Gift revocable at the will of donor is void, hence the unilateral revocation of gift deed is void. However, under Section 23 of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 the same can be revoked if the condition to take care of the parents was not complied. But the said condition ought to be incorporated in the said gift, if not the said section 23 cannot be invoked. The issue of unilateral revocation of settlement deed was considered in the light of Section 23 of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 by the Hon'ble Full Bench in the case of **Sasikala Vs. Revenue Divisional Officer & another** reported in **2022 (5) CTC 257**, wherein it has been held as invalid. The relevant portion is extracted hereunder:

“46. The writ petition in W.P(MD)No.6889 of 2020 is filed by the daughter of the second respondent to quash the order passed by the first respondent under Section 23 of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007. The gift deed executed by the second respondent in favour of the writ petitioner was unilaterally cancelled by the second



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respondent father. The settlement deed stated to have been executed by the second respondent, dated 06.03.2015 is irrevocable and it is a deed of settlement out of love and affection. **The second respondent has specifically stated that he has no right to revoke the settlement deed.** From the recitals, the settlement does not attract Section 126 of Tamil Nadu Property Act. It is seen that the settlor viz., the second respondent, has not put any condition. In other words, the gift deed is not subject to any condition or terms that the transferor shall provide the basic amenities and basic physical needs to the second respondent. **In such circumstances, this Court is of the view that there is no scope for invoking the power provided to the second respondent under Section 23 of the Tamil Nadu Maintenance and Welfare of Parents and Senior Citizens Act, 2007.** Therefore, the order impugned is liable to be quashed....”

In the present case, as held supra in the Ex.B5 settlement deed dated 25.11.2016, there is no averment or condition in the settlement deed that the son has to take care of the mother. Further, the mother has not reserved any right to revoke. By following the judgment of the Hon'ble Full Bench of this Court, this Court is of the considered opinion that unilateral cancellation cannot be allowed.

7. The Trial Court had held that the patta Ex.B4, property tax and water tax Ex.B7 consisting of 8 receipts stands in the name of the mother and hence the settlement was not acted on. Further held that in Ex.B7, the 8th receipt stands in the name of the 1st defendant, but the amount was paid by the plaintiff, hence the same would not prove the settlement was acted on. This Court is of the considered



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opinion that the said reasoning is erroneous, since the same is not the criteria to revoke the settlement. In other words, the payment of taxes in the name of the mother are not relevant factors. As held supra once the settlement is executed the same cannot be revoked, unless the condition stipulated thereunder is violated.

8. The plaintiff mother has not raised any legally sustainable ground to cancel the settlement deed. Hence, the impugned judgment and decree are set aside. The settlement deed, dated 25.11.2016 is in force and the possession shall be handed over to the son within a period of two months from the date of receipt of a copy of this judgment.

9. With the above said observations, the appeal suit is allowed. No costs. Consequently, connected miscellaneous petition is closed.

29.07.2024

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NCC : Yes / No
Index : Yes / No
Internet : Yes
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To:

1. The Principal District Court,
Ramanathapuram.
2. The Sub Registrar,
No.II, Joint Sub Registrar,
Vandikara Street,
Ramanathapuram Town,
Ramanathapuram Taluk,
Ramanathapuram District.
3. The Section Officer,
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai.



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S.SRIMATHY, J.,

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