



W.P(MD)No.6439 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 20.12.2024

CORAM

THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

W.P(MD)No.6439 of 2023

and

W.M.P(MD)No.6097 of 2023

T.Sinatra

... Petitioner

Vs

1.The District Registrar (Administration),
Madurai South,
Madurai.

2.The Sub Registrar No.IV,
Madurai.

3.P.Thangaraj

... Respondents

PRAYER: Writ Petition filed under Article 226 of Constitution of India, to issue a Writ of Mandamus, directing the respondents to cancel the registration of the impugned sale cancellation executed by the third respondent dated 16.09.2015 registered as Document No.8041 of 2015 on the file of the second respondent.

*(Prayer amended vide order dated 19.09.2024
in W.M.P(MD)No.17738 of 2024)*

For Petitioner : Mr.D.Selva Aditya

For RR 1 & 2 : Mr.D.Gandhi Raj
Special Government Pleader

For R – 3 : Mr.R.Murali



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ORDER

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This Writ Petition has been filed by the petitioner for a direction directing the respondents to cancel the registration of the impugned deed of cancellation executed by the third respondent dated 16.09.2015 registered vide Document No.8641 of 2015 on the file of the second respondent.

2.Heard the learned counsel appearing on either side and perused the materials placed before this Court.

3.The third respondent and the petitioner are husband and wife. The property comprised in Plot Nos.1, 2, 3, 7A, 9, 10, 11, 12, 13, 14 and 15 comprised in R.S.No.273/1C in Ashwini Road Extension, Duraisamy Nagar, Palanganatham, Madakulam Village, Madurai owned by the third respondent. Thereafter, it was settled in favour of the petitioner by the settlement deed dated 07.08.2007 registered vide Document No.8591 of 2007 on the file of the second respondent. Thereafter, they had a misunderstanding and got separated in the year 2015. The petitioner as well as the third respondent obtained a decree of divorce in the year 2017. Thereafter, there was no conduct from the third respondent. The



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petitioner is living separately with her two children. While being so, the petitioner suddenly came to know that even in the year 2015 ie., after their separation, the third respondent executed the cancellation of settlement deed on 16.09.2015 and got registered vide Document No.8641 of 2015. The third respondent unilaterally cancelled the settlement deed dated 07.08.2007 and executed the cancellation of settlement deed dated 16.09.2015. Therefore, the petitioner submitted a representation to cancel the cancellation of settlement deed before the first respondent under Section 77-A of the Registration Act, 1908.

4.The issue of unilaterally cancelling the settlement deed has been dealt with by the Hon'ble Supreme Court of India and this Court repeatedly held that a person after executing the settlement deed has no right to cancel the same on his own without any notice or consent of the settlor and such cancellation would be void. Further, the affected person need not approach the civil Court as it would take further time. It is also relevant to rely upon the decision of the Hon'ble Full Bench of this Court reported in **AIR-2022(Mad.)323 (Sasikala V. Revenue Divisional Officer)**, wherein it is held as follows:



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"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



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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.

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,



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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 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 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.

(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.



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(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."

5.In view of the above, the order passed by the first respondent dated 02.03.2023 cannot be sustained and the same is liable to be quashed. Accordingly, the order passed by the first respondent dated 02.03.2023 is quashed and the cancellation of the



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settlement deed dated 16.09.2015 registered vide Document No.8641 of 2015 is hereby declared as void. The second respondent is directed to record the same in the book of records. The third respondent is at liberty to approach the civil Court for appropriate relief in the manner known to law if so advised.

6.With the above direction, this Writ Petition is allowed. There shall be no order as to costs. Consequently, connected Miscellaneous Petition is closed.

20.12.2024

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

- 1.The District Registrar (Administration),
Madurai South,
Madurai.
- 2.The Sub Registrar No.IV,
Madurai.



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G.K.ILANTHIRAIYAN, J.

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Order made in
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