



W.P.(MD) No.14371 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 26.04.2024

CORAM

**THE HON'BLE MR.JUSTICE C.SARAVANAN**

**W.P.(MD) No.14371 of 2019**

P.Vadivelan

... Petitioner

Vs.

1.The Sub Registrar,  
Sub Registrar Office,  
Karungalakudi,  
Madurai District.

2.Vijayalakshmi

3.Ramesh

4.B.Kala

... Respondents

[R2 to R4 are impleaded vide order dated 20.12.2022,  
in W.M.P.(MD)No.22444 / 2022]

Prayer: Writ Petition filed under Article 226 of Constitution of India for issuance of a Writ of Mandamus, directing the first respondent to cancel the Doc.No.413 of 2011, dated 11.02.2011, registered on 14.02.2011, which unilaterally cancelling the gift deed in Doc.No.2489 of 2010 as null and void and to direct the first respondent to delete the subsequent entries which was reflected in the Encumbrance Certificate.

For Petitioner

: Mr.R.Aravind Raj

For R1

: Mr.B.Saravanan  
Additional Government Pleader



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For R2 and R3 : Ms.R.Vennila

For R4 : Mr.S.Titus

### **ORDER**

This Writ Petition has been filed for a Mandamus to direct the first respondent [the only respondent at the time filing the Writ Petition] to cancel Document No.413 of 2011, dated 11.02.2011, registered on 14.02.2011, which unilaterally cancelled the Gift Deed, dated 13.10.2010, registered as Document No.2489 of 2010, as null and void.

2. A perusal of the documents and the submissions made by the learned counsel for the petitioner indicates that the petitioner's father Palaniyandi Servai had executed a Gift Deed in favour of the petitioner on 13.10.2010, which was registered as Document No.2489 of 2010. At that point of time, the subject land had been leased out to the fourth respondent herein by a registered Lease Agreement dated 22.11.2004 for a period of 10 years.

3. The property in question is the land measuring an extent of 33 cents, situated at Valaicherypatti Village, Karungalakudi, Madurai



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District. After execution of the Gift Deed on 13.10.2010, there were also mutations in the revenue records and Patta No.808 was issued in favour of the petitioner by the jurisdictional Tahsildar on 13.01.2011. Thereafter, the petitioner's father Late.Palaniyandi Servai cancelled the Gift Deed on 14.02.2011, vide Document No.413 of 2011. On the same day, the petitioner's father had also executed a Sale Agreement for selling 33 cents of land in favour of the fourth respondent.

4. It appears that the petitioner's father soon after passed away thereafter. The respondents 2 and 3 are the siblings of the petitioner. The second respondent appears to have filed O.S.No.589 of 2011 before the Sub-Court, Melur, Madurai District, to cancel the unilateral cancellation of the Gift Deed on 14.02.2011.

5. It is the specific case of the fourth respondent that the suit was dismissed for non-prosecution.

6. The learned counsel for the petitioner on the other hand would submit that the petitioner was not aware of the above said suit since no summon was issued to the petitioner.



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7. In support of the present Writ Petition, the learned counsel for the petitioner has placed reliance on the decision of the Full Bench of this Court in **Sasikala vs. Revenue Divisional Officer-cum-Sub Collector**, 2022 (5) CTC 257, wherein at Paragraphs 42 to 45, the Full Bench of this Court observed as under:-

*"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 Sub-Registrar 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*



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document of gift.

(c) Cases which do not fall under Section 126 of Transfer of Property 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 statement of the donor or the recitals in the document for cancellation.

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



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*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.*

*(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*



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*not coupled with interest.*

*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 summarised in the previous paragraph."*

8. The learned counsel for the petitioner would also rely on the decision of this Court rendered in **A.Selvan vs. The Sub-Registrar, Thirumangalam, Chennai and others** [W.A.No.2052 of 2022, dated 20.03.2024].

9. The learned counsel for the fourth respondent would submit that the fourth respondent has put up construction over the property and is continuing in possession of the property. However, the learned counsel admits no suit has been filed for specific performance of the Sale Agreement dated 14.02.2011 till date.

10. The rival submissions of the learned counsel for the petitioner as also the learned counsel for the fourth respondent are untenable. Since



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the Gift Deed dated 13.10.2010, has been cancelled on 14.02.2011, it was incumbent on the part of the petitioner to have taken steps to declare the said cancellation as null and void before the Civil Court by invoking Section 126 of the Transfer of Property Act, 1882. Instead, the petitioner has approached this Court belatedly in the year 2019 after filing complaints against the fourth respondent. The fourth respondent has also not made any attempt to perfect her occupation over the property pursuant to the above said Sale Agreement dated 14.02.2011, which is said to have been allegedly executed by the petitioner's father Late.Palaniyandi Servai.

11. Under these circumstances, this Writ Petition is dismissed. No costs. However, liberty is given to the petitioner as also the fourth respondent to work out their remedy in the manner known to law before the Civil Court.

Index : Yes/ No  
Neutral Citation: Yes / No  
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To

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The Sub Registrar,  
Sub Registrar Office,  
Karungalakudi,  
Madurai District.



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**C.SARAVANAN, J.**

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