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W.P.(MD) No.10088 of 2018

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 25.11.2024

CORAM:

THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

W.P.(MD) No.10088 of 2018

Senthilkumar

... Petitioner

-VS-

1.The Sub Registrar
Singampunari & Taluk
Sivagangai District

2.L.Nagappan

3.Egammai Achi

4.The Lakshmi Vilas Bank Ltd.,
rep.by its Branch Manager
Naicker New Street Branch
Madurai-625 001

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a writ of certiorari to call for the impugned cancellation deed dated 22.10.2007 bearing document No.1436/2007 executed by the second respondent, on the file of the first respondent and quash the same.



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For Petitioner : Mr.N.Balakrishnan
For Respondents : Mr.M.Sarangan
Additional Government Pleader for R1
No appearance for R2 to R4

ORDER

This writ petition has been filed challenging the unilateral cancellation deed dated 22.10.2007, bearing document No.1436 of 2007, executed by the second respondent.

2. The property comprised in Survey No.212/9, to an extent of 13.10 Cents, situated at A.Thekkur Village, Thiruppathur Taluk, Sivagangai District, belonged to the second respondent. He is none other than the father of the petitioner herein, who born to him through his first wife. Due to the love and affection, the second respondent had settled the subject property in favour of the petitioner *vide* settlement deed dated 24.02.2006. However, due to ill-advice of the third respondent, who is the second wife of the second respondent, the petitioner's father had cancelled the settlement deed executed by him in favour of the petitioner. Subsequently, the second respondent



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executed a settlement deed in favour of the third respondent on 06.07.2010. Thereafter, the third respondent mortgaged the subject property and availed loan from the fourth respondent.

3. Mr.P.R.Prithiviraj, learned counsel, would submit that he has already handed over the case bundle to the respondents 2 and 3 along with a change of vakalat. However, the respondents 2 and 3 have not engaged a new counsel to represent their case. In fact, it is seen that subsequently, this Court has ordered fresh notice to the respondents 2 and 3. Even then, there is no representation on their behalf.

4. The issue of unilateral cancellation has already been settled by the Hon'ble Full Bench of this Court in the case of ***Latif Estate Line India Ltd vs. Hadeeja Ammal***, reported in ***2011 (2) CTC 1***, which was subsequently followed by the Honourable Division Bench of this Court in W.A.No.108 of 2020 dated 24.01.2020, wherein it is held as follows:

“5. We have considered the submissions raised and we find that the Full Bench has dealt with the aforesaid issues in detail holding that the writ petition would be maintainable, and on merits



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*also held that a deed of cancellation of a sale unilaterally executed by the transferor does not create, assign, limit or extinguish any right, title or interest in the property and is of no effect. The sum and substance, therefore, is that the writ petition filed by the respondents could be entertained, and in our opinion has been rightly allowed, following the dictum of the Full Bench in the case of *Latif Estate Line India Ltd vs Hadeeja Ammal* reported in 2011 (2) CTC 1 cited *supra*.*

6. Learned counsel for the appellants then contends that the issuance of a Writ by this Court should not amount to extinguishing of any of the claims that the appellants can set up, questioning the very execution of the settlement deed dated 25.02.2008.

7. It is the submission of the learned counsel for the W.A.No.108 of 2020 appellants that the appellants' right to a settlement deed dated 25.02.2008 cannot be usurped by any legal provision and more so, the writ petition could not have been entertained after such a long passage of time.

8. We may clarify that an otherwise void document, as held by the Full Bench, cannot rejuvenate or survive any lapse of time and would



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not improve the situation any further, in as much as the document is non-est in the eyes of law. The order of the learned Single Judge dated 10.08.2018 is simply a declaration to that effect, taking into account the law propounded by the Full Bench, which in no way defeats the rights of the appellants to contest the original settlement deed dated 25.02.2008. We say this for the reason that the learned counsel for the appellants is right in his submission that the declaration granted by the High Court cannot extinguish the rights of the appellants to contest their position before the appropriate forum and even otherwise, the appellants must have been under the belief that the cancellation deed had fulfilled the said purpose. This may also be coupled with the issue of limitation, if any action is proposed by the appellants and we therefore, make it clear that from that point of view, W.A.No. 108 of 2020 the filing of the writ petition and the grant of declaration on 10.08.2018 shall not be a disadvantage in that regard.

5. The said decision is squarely applicable to the case on hand.



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6. Accordingly, this writ petition is allowed. The unilateral cancellation deed, dated 22.10.2007, bearing document No.1436 of 2007, executed by the second respondent, on the file of the first respondent, is quashed. It is also made clear that in respect of the subsequent document executed by the second respondent, the respondents 2 and 3 are at liberty to approach the Civil Court for appropriate relief. No costs.

25.11.2024

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

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To:
The Sub Registrar,
Singampunari & Taluk,
Sivagangai District.



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G.K.ILANTHIRAIYAN, J.

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