



W.P.(MD)No.21789 of 2021

WEB COPY

Reserved on : 15.04.2024

Pronounced on : 25.06.2024

CORAM:

THE HON'BLE MR.JUSTICE K.MURALI SHANKAR

W.P.(MD)No.21789 of 2021
and
W.M.P.(MD)No.18398 of 2021

Muthukumar

... Petitioner

Vs.

1. The Sub Registrar,
Nainarkovil Sub Registrar Office,
Sivagangai Registration District,
Paramakudi Taluk,
Ramanathapuram District.

2. Muniyandi

... Respondents

Prayer : This Writ Petition filed under Article 226 of Constitution of India, praying this Court to issue a Writ of Declaration, declaring the cancellation deed registered by the first respondent in Document No. 740/2015 dated 09.07.2015 as illegal, void and against the provision of Registration Act.



W.P.(MD)No.21789 of 2021

WEB COPY

For Petitioner : Mr.S.A.Ajmal Khan
For R1 : Mr.B.Saravanan
Additional Government Pleader
For R2 : Mr.S.Siva Thilakar

ORDER

The Writ Petition has been filed to declare that the cancellation deed registered by the first respondent in document No.740/2015 dated 09.07.2015 as illegal, void and against the provisions of the Registration Act.

2. Admittedly, the writ petitioner is the son of the second respondent and the property in dispute an extent of 3230 sq.feet situated in Survey No.546/1B of Salaigrama Village, Ilaiyangudi Taluk, Sivagangai District was owned by the second respondent.

3. It is not in dispute that the second respondent executed a gift settlement deed dated 30.04.2012 vide document No.555/2012 in favour of the writ petitioner in respect of the said property and that the second respondent has then executed a document dated 09.07.2015 cancelling the



W.P.(MD)No.21789 of 2021

gift settlement deed dated 30.04.2012 and got the same registered in document No.740/2015 on the file of the first respondent. Challenging the cancellation deed dated 09.07.2015, the present writ petition came to be filed.

4. The learned counsel appearing for the writ petitioner would submit that the second respondent out of his love and affection towards his son-writ petitioner herein executed a gift settlement deed dated 30.04.2012 and handed over the possession of the said property, that the writ petitioner has been in possession and enjoyment of the said property since the execution of the gift settlement deed, that the second respondent, without having any right over the property, has cancelled the settlement deed on 09.07.2015, that the second respondent if is willing to cancel the settlement deed should have filed civil suit for declaration before the competent civil Court and that the writ petitioner, after getting the property, has spent more money to improve the property.

5. The learned counsel appearing for the writ petitioner would further submit that the impugned document is not satisfying the conditions



W.P.(MD)No.21789 of 2021

WEB COPY

laid down under Section 32(A) of the Registration Act, that the impugned cancellation would amount to fraud and forgery on the statute and cannot nullify the transfer which was already made, that even though the said document is not valid in the eye of law, the same is creating confusion by reflecting the same in the encumbrance certificate, that the first respondent ought to have refused to register the cancellation deed as the transfer was already completed and there is no provision for re-transfer the same, that the title of the property once vested in the transferee by sale/gift of the property, the same cannot divested unto the transferor by execution and registration of deed of cancellation even with the consent of the party and the proper course would be to re-convey the property by the deed of conveyance by the transferee in favour of the transferor and that since the second respondent is making attempts to create further encumbrance, the writ petitioner is constrained to file the present writ petition.

6. The learned Additional Government Pleader appearing for the first respondent and the learned counsel appearing for the second respondent would contend that once the person executing the document is genuine, the Registrar has no option but to register the document, that the



W.P.(MD)No.21789 of 2021

WEB COPY

writ petitioner has no *locus standi* to challenge the registration of cancellation deed as the Sub Registrar has only considered objection under Section 5 of the Registration Rules and that the writ petitioner aggrieved by the cancellation of settlement deed can file a civil suit before the competent civil Court. They would further submit that merely because a document has been registered it would not amount to a valid gift unless and until the condition and parameters stipulated under Sections 122 and 123 of the Transfer of Property Act are complied with.

7. The learned counsel appearing for the writ petitioner has relied on some decisions of this Court. In the case of ***G.D.Subramaniam Vs. The Sub Registrar, Office of Konur Sub Registrar, Sidco Nagar, Chennai and others*** reported in ***2009 (1) CTC 709***, a power agent executed a sale deed in favour of the petitioner and subsequently the said power agent executed a deed of cancellation and cancelled the sale deed without the consent and knowledge of the petitioner and got it registered, that the power agent has then entered into a sale agreement with his brother and got the same registered and that when the petitioner challenged the registration of the cancellation deed, right of a seller to cancel the sale deed executed by him unilaterally came to be considered in the writ



W.P.(MD)No.21789 of 2021

petition and a learned Judge, after considering various decisions, has held that the writ petition is maintainable and set aside the cancellation deed.

The learned Judge has summed up the emerging conclusion and the same are extracted hereunder:-

“31. Out of the foregoing discussions, the emerging conclusions are summed up as follows:-

(i) Challenging registration of a unilaterally executed deed of cancellation of a sale, a writ petition is maintainable under Article 226 of the Constitution of India;

(ii) A deed of cancellation of a sale executed by mutual consent by all parties to the sale deed, if presented for registration, the registering Officer is bound to register the same provided the other requirements like Section 32-A of the Registration Act have been complied with.

(iii) The Registering Officer is obliged legally to reject and to refuse to register a deed of cancellation of a sale unilaterally executed without the knowledge and consent of other parties to the sale deed and without complying with sec.32A of the Registration Act.”

8. In the case of ***M/s.Latif Estate Line India Ltd Vs. Hadeeja Ammal and others*** reported in ***2011 (2) CTC 1***, where the registration of



W.P.(MD)No.21789 of 2021

unilaterally executed cancellation of a sale deed was challenged, the Hon'ble Full Bench of this Court, after considering various decisions of the Hon'ble Apex Court, this Court and other High Courts, have listed out their conclusions which are extracted hereunder:-

“59. After giving our anxious consideration on the questions raised in the instant case, we come to the following conclusion: -

(i) 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. Such a document does not create any encumbrance in the property already transferred. Hence such a deed of cancellation cannot be accepted for registration.

(ii) Once title to the property is vested in the transferee by the sale of the property, it cannot be divested unto the transferor by execution and registration of a deed of cancellation even with the consent of the parties. The proper course would be to re-convey the property by a deed of conveyance by the transferee in favour of the transferor.

(iii) Where a transfer is effected by way of sale with the condition that title will pass on payment of consideration, and such intention is clear from the recital



WEB COPY



W.P.(MD)No.21789 of 2021

in the deed, then such instrument or sale can be cancelled by a deed of cancellation with the consent of both the parties on the ground of non-payment of consideration. The reason is that in such a sale deed, admittedly, the title remained with the transferor.

(iv) In other cases, a complete and absolute sale can be cancelled at the instance of the transferor only by taking recourse to the Civil Court by obtaining a decree of cancellation of sale deed on the ground inter alia of fraud or any other valid reasons.”

9. The learned counsel appearing for the writ petitioner would also rely on the following decisions, wherein also, challenge was with respect to unilateral cancellation of gift/settlement deed.

(i) (2012) 5 MLJ 169

(D.Mohan and another Vs. Sub Registrar, Registration Dept., Chennai and others)

“38 It will be for respondent No.1 or persons drawing their title from her to challenge the Gift Deed in the civil Court, but gift deed could not be revoked by way of cancellation deed, once the case did not fall within the exceptions, under Section 126 of the Transfer of Property Act.



W.P.(MD)No.21789 of 2021

WEB COPY

39 *The ratio of the judgments is that a person having no right in the property cannot get it cancelled by getting it registered. In the case of gift, the donor after executing the gift deed when it is accepted by the donee, is left with no interest in the property, therefore, it was not open to the respondent to get the cancellation deed registered, as she could have challenged it by filing civil suit and proving the allegations of fraud.*

40 *For the reasons stated hereinabove, registration of impugned deed of cancellation, cannot be sustained in law, being against the public policy.*

41 *The writ petitions are accordingly allowed. The registration deed of cancellation is ordered to be quashed. The subsequent settlement deed can be challenged by the petitioner in civil Court.”*

(ii) W.P.(MD)No.121 of 2013 dated 04.07.2014

(C.R.Gandhi and others Vs. The Inspector General of Registration, Santhome, Chennai and others)

“13.Further, in the judgment reported in 2014 (3) CTC 113 (D.V.Loganathan Vs. The Sub Registrar, Chennai and another) has held that the registration of cancellation of the settlement deed is against the public policy as it was not open to the Sub Registrar to register the cancellation



W.P.(MD)No.21789 of 2021

of the deed, when the settlement deed is unconditional and irrevocable. If at all the party who has executed the document is aggrieved by the settlement deed he could have very well approached the Civil Court to set it aside, but certainly not unilaterally cancel it by getting the deed of cancellation registered with the Sub Registrar. The cancellation deed and its registration, therefore, being without jurisdiction is liable to be set aside.

14.In yet another judgment reported in (2012) 1 MLJ 216 (K.A.Shanmugam and another Vs. Tamilarasi and others), this Court has held that mentioning of handing over of possession in settlement deed itself is sufficient to come to a conclusion that the settlement deed has been acted upon.

15.The dictum laid down in the above judgments are squarely applicable to the facts of this case. Though the learned counsel for the respondents submitted that as per Section 127 of the Transfer of Property Act, a gift deed can be revoked by way of a cancellation deed, if it falls within the exception under Section 126 of the Transfer Property Act, in my considered opinion, whether it falls within the exception under Section 126 of the Transfer of the Property Act or not is purely a matter of evidence. The same has to be adjudicated only before the Civil Court.



WEB COPY



W.P.(MD)No.21789 of 2021

The Registrar is not a competent person to register the unilateral cancellation deed by deciding the question whether it falls within the exception under Section 126 of the Transfer of Property Act, since he is not the competent authority to decide the disputed question of facts. Further, in my considered opinion, by executing a registered settlement deed in favour of 1st petitioner / settlee, the settlor/4th respondent herein had lost her right in the property. Unless the said right is restored by setting aside the settlement deed executed by the settlor in favour of the settlee by a competent Court, the Sub-Registrar is not competent to register the unilateral cancellation of settlement deed.”

(iii) W.P.No.41498 of 2016 dated 20.06.2018

(D.Janani Vs. The Inspector General of Registration, Santhome, Chennai and others)

“6.

16. In view of the fact that the unilateral cancellation of the settlement deed made by the first and second respondents is bad, this Court declares that the said cancellation of document, namely Deed of Cancellation of Settlement deed, registered as Document No.3328 of 2014, dated 10.11.2014, is illegal and in view of the same, the first and second respondents are directed to



WEB COPY



W.P.(MD)No.21789 of 2021

remove the entries in the Register and the subsequent transaction, namely settling the property in favour of the son of the third respondent, made pursuant to the unilateral cancellation of settlement deed, is also null and void. All the entries have got to be removed and this has got to be done within one month from the date of receipt of a copy of this order. This Court makes it clear that this order will not prevent the third respondent from approaching the Civil Court and establish her right over the property in question and if done, the Civil Court shall decide the matter without being influenced by any of the observations made in this writ petition touching on the merits of the matter. As this Court has held that the cancellation of settlement deed is illegal and without jurisdiction, and declared the same as null and void, if any suit is filed, the same has got to be decided by the Civil Court in accordance with law, including the issue of limitation. If the third respondent goes before appropriate forum with regard to the cancellation of settlement deed, which is the subject matter of this Writ Petition, this Court expects that the said civil forum to decide the matter as expeditiously as possible, from the date of initiation of such suit, and the matter



W.P.(MD)No.21789 of 2021

shall not be adjourned beyond seven working days at any point of time. The petitioner shall co-operate in the trial if such suit is filed.

7. In view of the legal principles settled in the Judgment cited supra, the unilateral cancellation of Settlement Deed and the subsequent execution of the Settlement Deed, are contrary to law and accordingly, the writ petition deserves to be considered.”

9. The learned counsel appearing for the second respondent would rely on the decision of this Court in the case of ***Suguna Vs. District Collector, Tirupur District and others*** reported in ***2023 (3) CWC 485***, wherein, the cancellation of settlement deed made under the provisions of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 was challenged and a learned Judge of this Court has confirmed the order passed by the Revenue Divisional Officer setting aside the settlement executed in favour the writ petitioner therein by the third respondent-mother.

10. It is pertinent to note that the learned Judge, who decided the case of ***Suguna*** above referred, has also decided the case of ***D.Janani***



W.P.(MD)No.21789 of 2021

above referred and specifically held that unilateral cancellation of settlement deed is contrary to law and writ petition deserves to be considered. The above decisions are squarely applicable to the case on hand. In the case on hand also, the second respondent has unilaterally executed the cancellation deed without the consent and knowledge of the writ petitioner. Considering the above and taking note of the legal position above referred, this Court has no hesitation to hold that the impugned deed of cancellation cannot legally be sustained and as such, the same is liable to be quashed.

11. In the result, this Writ Petition stands allowed and the impugned order passed by the first respondent dated 09.07.2015 is hereby quashed. It is clarified that it is open to the second respondent to challenge the gift deed in accordance with law before the civil Court, if so advised. Consequently, connected Miscellaneous Petition is closed. No costs.

25.06.2024

NCC :yes/No
Index :yes/No
Internet:yes/No
csm



W.P.(MD)No.21789 of 2021

WEB COPY

- To
1. The Sub Registrar,
Nainarkovil Sub Registrar Office,
Sivagangai Registration District,
Paramakudi Taluk,
Ramanathapuram District.



WEB COPY



W.P.(MD)No.21789 of 2021

K.MURALI SHANKAR,J.

csn

Pre-Delivery Order made in
W.P.(MD)No.21789 of 2021
and
W.M.P.(MD)No.18398 of 2021

Dated : 25.06.2024