



W.P.(MD) No.25362 of 2018

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 01.07.2024

CORAM

THE HON'BLE MR.JUSTICE C.SARAVANAN

W.P.(MD) No.25362 of 2018

T.Saravanan

... Petitioner

Vs.

1.The Inspector General of Registration,
No.100, Santhome High Road,
Chennai - 600 028.

2.The Sub Registrar,
Manavalakurichi Sub Registrar Office,
Mandaikadu,
Kanyakumari District - 629 252.

3.K.Thanka Nadar

4.T.Kalaimagal

5.T.Kalaiaarasi

... Respondents

Prayer: Writ Petition filed under Article 226 of Constitution of India for issuance of a Writ of Certiorarified Mandamus calling for the records relating to the unilateral Cancellation of Settlement Deed registered as Document No.191/2015 dated 09.02.2015 and subsequent Settlement Deed registered as Document No.825/2016 dated 16.06.2016 on the file of the second respondent and quashing the same as null and void and



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consequently directing the first and second respondents to remove the encumbrance entries of the unilateral Cancellation of Settlement Deed registered as Document No.191/2015 dated 09.02.2015 and the subsequent Settlement Deed registered as Document No.825/2016 dated 16.06.2016 from the “A” Register in the office of the second respondent Sub Registrar, Manavalakurichi.

For Petitioner : Mr.P.T.Ramesh Raja

For R1 & R2 : Mrs.D.Farjana Ghoushia
Special Government Pleader

For R3 to R5 : Mr.M.Mahaboob Fazil

ORDER

This Writ Petition has been filed for issuance of a Writ of Certiorarified Mandamus calling for the records relating to the unilateral Cancellation of Settlement Deed registered as Document No.191/2015 dated 09.02.2015 and subsequent Settlement Deed registered as Document No.825/2016 dated 16.06.2016 on the file of the second respondent and quashing the same as null and void and consequently directing the first and second respondents to remove the encumbrance entries of the unilateral Cancellation of Settlement Deed registered as Document No.191/2015 dated 09.02.2015 and the subsequent Settlement



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Deed registered as Document No.825/2016 dated 16.06.2016 from the

“A” Register in the office of the second respondent Sub Registrar,
Manavalakurichi.

2. The petitioner is the son of the third respondent who had executed a Settlement Deed dated 12.12.2013 registered as Doc.No.1908 of 2013 in favour of the petitioner. The third respondent thereafter unilaterally cancelled the Settlement Deed dated 12.12.2023 issued in favour of the petitioner, *vide* Deed of Cancellation dated 09.02.2015 registered as Doc.No.191 of 2015.

3. The learned counsel for the petitioner would submit that the unilateral cancellation of Settlement Deed is not permissible and that the first and second respondents cannot entertain such cancellation of Deeds. A reference was made to the decision of the Hon'ble Full Bench of this Court in ***Sasikala Vs. Revenue Divisional Officer cum Sub Collector***, 2022 SCC OnLine Mad 4343 : AIR 2022 Mad 323 : 2022 (5) CTC 257, wherein, in paragraphs 54 to 59, this Court has held as under:-



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“54. Hence, we have no hesitation to answer the issue by holding that the Sub-Registrar namely, the Registering Authority has no power to accept the deed of cancellation to nullify the deed of conveyance made earlier.

Regarding gift or settlement:

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



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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 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



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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.

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 v. Government of Andhra Pradesh, 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 OnLine 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.

(c) Such unilateral cancellation of sale deed or deed of conveyance cannot be accepted for registration.



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(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.

59. 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.”

4. It is submitted that the aforesaid view has also been followed by this Court in **Muthupandian Vs. The District Registrar, Tenkasi and**



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others, *vide* order dated 23.12.2022 in W.P.(MD) No.21895 of 2021.

Hence, he prayed for allowing this Writ Petition.

5. The learned counsel for the second respondent would submit that the third respondent wanted to settle the property in favour of his daughters as they had promised him to take care of his life and therefore, believing the words of his daughters, the third respondent had executed a Gift Deed dated 16.06.2016 registered as Doc.No.825 of 2016 gifting the property to the daughters.

6. The learned counsel for the second respondent would further submit that ordinarily, a Registering Authority has no power to cancel the Deed already registered by them. However, the Registering Authority can cancel the Gift Deed as presented by the individual with condition and the recitals in the Deeds and therefore, he rejected the request made by the petitioner to cancel the subsequent Deed executed by the third respondent in favour of the fourth and fifth respondents, who are the daughters of the third respondent and sisters of the petitioner.



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7. In para 8 of the counter, the second respondent has further stated that instead of taking care of the aged father, the third respondent herein, the petitioner has filed this Writ Petition, which will go to show the extent of affection.

8. It is further submitted that even though there is no power to cancel the document by the Registering Authority, once it is registered, this is a case of Settlement Deed executed by the father in favour of the son with an expectation that the son would take care of the father in the old-age. However, the petitioner has failed to do so and therefore, the father came forward with a Cancellation Deed dated 09.02.2015, which was registered as Doc.No.191 of 2015.

9. It is therefore submitted that the Sub Registrar has rightly rejected the request of the petitioner. It is further submitted that if at all the petitioner is aggrieved by the orders passed by the Sub Registrar cancelling the earlier Settlement Deed dated 12.12.2013 registered as Doc.No.1908 of 2013, it is open for the petitioner to approach the Civil Court.



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10. I have considered the submissions made by the learned counsel for the petitioner, learned Special Government Pleader for the first and second respondents and the learned counsel for the third to fifth respondents

11. The fact of the case is that the impugned Deed of Cancellation was executed by the third respondent on 09.02.2015 cancelling the earlier Settlement Deed dated 12.12.2013 executed in favour of the petitioner. Thereafter, the third respondent has settled the property in favour of the fourth and fifth respondents *vide* Settlement Deed dated 16.06.2016. The fourth and fifth respondents in turn settled the property again in favour of the third respondent on 27.09.2023.

12. In the light of the decision of the Full Bench of this Court in **Sasikala** case referred to supra, executions of Deeds dated 09.02.2015, 16.06.2016 and 27.09.2023 are *non est* in law. Therefore, the impugned Deeds are liable to be set aside and are accordingly set aside.

13. At the same time, it is noticed that the petitioner's father namely, the third respondent is the senior citizen aged about 77 years and is



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undergoing treatment for Coronary Artery Disease [Acute Coronary Syndrome]. Therefore, the petitioner being the son who has benefited from the Settlement Deed dated 12.12.2013 shall take care of the third respondent by providing shelter and maintenance to him, as otherwise, the petitioner could be liable to be proceeded under the provisions of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007.

14. As far as other other private respondents are concerned, it is left open for them to work out their remedy in the manner known to law.

15. In the result, this Writ Petition stands disposed of. No costs.

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Index: Yes/ No
Neutral Citation: Yes / No
Speaking Order / Non-Speaking Order

MM/JEN

Copy To:

1.The Inspector General of Registration,
No.100, Santhome High Road,
Chennai - 600 028.



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2.The Sub Registrar,
Manavalakurichi Sub Registrar Office,
Mandaikadu,
Kanyakumari District - 629 252.



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C.SARAVANAN, J.

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