



WP (MD) No. 938 of 2016

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 18.03.2024

CORAM:

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

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Eathe Father

... Petitioner

Vs

1.The Sub Registrar,
Sub Registrar Office,
Rameswaram,
Rameswaram Town & Taluk,
Ramanthapuram District.

2.Mookupoori Santhiyagu (Died),

3.Mariya Gunaseeli

... Respondents

(R3 is impleaded vide Court order dated 03.10.2023 in WMP(MD) No.12616 of 2023 in WP(MD) No.938 of 2016 by BPJ)

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India for issuance of a Writ of Declaration, declaring the cancellation deed registered by the first respondent in Document No. 2100/2012, dated 21.12.2012 as illegal, void and against the provision



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of Registration Act.

For petitioner : Mr.S.A.Ajmal Khan
For R1 : Mrs.D.Farjana Ghoushia
Special Government Pleader
For R2 & R3 : No appearance

ORDER

Seeking declaration, to declare the cancellation deed registered by the first respondent in Document No.2100/2012, dated 21.12.2012 as illegal and void, this writ petition was filed in the year 2016.

2.The case of the petitioner is that the second respondent has settled a property in S.No.135/4C, 136/3B1C to an extent of 10 cents to the villagers for the purpose of graveyard vide Settlement Deed in Document No.518 of 2001, dated 23.04.2001 and this petitioner was appointed as an administrator of the property. However, without the knowledge of this petitioner/the administrator and other villagers, the



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Gift Deed dated 23.04.2001 was cancelled on 21.12.2012. Therefore, the petitioner has filed this writ petition in the year 2016.

3.The learned counsel appearing for the petitioner submits that an unilateral cancellation is not permissible under the Law and the learned counsel has relied upon the decision rendered by the Full Bench of this Court reported in 2022 (5) CTC 357. He further submits that this Gift Deed, which has been executed in the year 2001 is sought to be cancelled in the year 2012 and that too unilaterally. Therefore, the learned counsel prays this Court that the cancellation Document No. 2100/2012, dated 21.12.2012 has to be declared as void.

4.The learned Special Government Pleader appearing for the first respondent by referring the counter affidavit filed on behalf of the Sub Registrar, Rameshwaram submits that the petitioner has to approach the appropriate civil Court to redress his grievance. The



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recitals of the Inam Settlement deed, dated 23.04.2001 reveals that the petitioner or his legal heirs have no independent entitlement over the said property and there is no specific recital that the possession of the property was handed over to the donees. The learned Government Advocate by referring the provision under Section 126 of the Transfer of Property Act submits that this provision 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 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.

5. When this writ petition is taken up for hearing today, there is no representation for the contesting respondents.

6. The Full Bench of this Court, while dealing with such a similar issue in the case of Sasikala Vs Revenue Divisional Officer cum



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Sub Collector, Devakottai, has held as follows:

56. A Full Bench of the Madras High Court in the case of Muppudathi Pillai v. Krishnaswami Pillai MANU/TN/0455/1959 : AIR 1960 Mad 1 elaborately discussed the provision of Section 39 (New Section 31) and held: 12. The principle is that such document though not necessary to be set aside may, if left outstanding, be a source of potential mischief. The jurisdiction under Section 39 is, therefore, a protective or a preventive one. It is not confined to a case of fraud, mistake, undue influence, etc. and as it has been stated it was to prevent a document to remain as a menace and danger to the party against whom under different circumstances it might have operated. A party against whom a claim under a document might be made is not bound to wait till the document is used against him. If that were so he might be in a disadvantageous position if the impugned document is sought to be used after the evidence attending its execution has disappeared. Section 39 embodies the principle by which he is



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allowed to anticipate the danger and institute a suit to cancel the document and to deliver it up to him. The principle of the relief is the same as in quieting actions

57. There is no dispute that a third party can claim title to the property against the purchaser who purchased the property for valuable consideration and came into possession of the same. But it is the Civil Court of competent jurisdiction to give such declaration in favour of the third party or a stranger.

58. It can also not be overlooked or ignored that a unilateral cancellation of a sale deed by registered instrument at the instance of the vendor only encourages fraud and is against public policy. But there are circumstances where a deed of cancellation presented by both the vendor and the purchaser for registration has to be accepted by the Registrar if other mandatory requirements are complied with. Hence, the vendor by the unilateral execution of the cancellation deed cannot annul a registered



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document duly executed by him as such an act of the vendor is opposed to public policy.

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.



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(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 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.

7. Considering the rival submissions made on either side and in the light of the above decision taken by the Full bench of this Court reported in 2022 (5) CTC 257, this Court is inclined to allow this writ petition.



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8. Accordingly, this writ petition is allowed and the cancellation deed registered by the first respondent in Document No. 2100/2012, dated 21.12.2012 is declared as illegal and void. No costs.

18.03.2024

NCC : Yes/No

Index : Yes/No

Internet: Yes

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To

The Sub Registrar,
Sub Registrar Office,
Rameswaram,
Rameswaram Town & Taluk,
Ramanathapuram District.



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B.PUGALENDHI, J.

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Order made in
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