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W.P.(MD)No.27606 of 2023



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 29.11.2024

CORAM:

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

W.P.(MD)No.27606 of 2023

and

W.M.P(MD)Nos.23710 & 23712 of 2023

Suseela

...Petitioner

-Vs-

1.The Sub-Registrar,
Gujiliamparai Sub Registrar Office,
Dindigul District.

2.Dhamodharan

...Respondents

Prayer : Writ Petition filed under Article 226 of Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus, to call for the records from the office of the 1st respondent with respect to the impugned registration of unilateral cancellation deed of Settlement Deed in Doc.No.675/2009 dated 27.04.2009 and quash the same and consequently direct the 1st respondent to remove the entry of encumbrance regarding the said document in Book No.1 of his office and pass such further or other orders as this Court.

For Petitioner : Mr.B.Azhagesh

For Respondents : Mr.S.P.Maharajan
Special Government Pleader for R1
Mr.S.Harish for R2



ORDER

This writ petition has been filed challenging the impugned registration of unilateral cancellation of settlement deed dated 27.04.2009, vide document No. 675 of 2009, on the file of the first respondent.

2.The petitioner is the husband of the second respondent. The second respondent has owned the property comprised in survey No.693/1 to an extent of 47 cents and the property comprised in S.No.693/2 to an extent of 27 cents and the property comprised in S.No.693/2 to an extent of 90 cents and survey No.711/2D to an extent of 2 acres 4 cents, survey No.711/2B to an extent of 12 ½ cents and survey No.711/2E to an extent of 2 cents situated at Vellodu Village, Vendasandur Taluk, Dindigul District. It was settled in favour of the petitioner by the settlement deed dated 14.07.2004. Thereafter, the revenue records are mutated in her favour. Out of wedlock, they gave birth to male child on 06.04.2006. Thereafter, there was misunderstanding between them and as such, they got separated. The second respondent has filed a divorce petition in H.M.O.P.No.68 of 2006 and the same was decreed in favour of the second respondent by judgment and decree dated 23.12.2008. After divorce, the second respondent has unilaterally cancelled the settlement deed which was executed by him in favour of the petitioner on 27.04.2009 and presented for registration before the first respondent. It was registered vide document No.675 of 2009 on the file of the first respondent.



3.The learned counsel appearing for the second respondent would submit that the petitioner has filed a suit in O.S.No.302 of 2010 on the file of the learned Additional District Munsif cum Judicial Magistrate Court, Vendasandur and the same was dismissed by the judgment and decree dated 04.11.2019. Therefore, she cannot maintain the present writ petition.

4.The learned counsel appearing for the second respondent further submits that the petitioner has already filed a suit and the same was dismissed in respect of the very same property. On perusal of the suit filed by the petitioner in O.S.No.302 of 2010, though it was filed in respect of the very same property, it was only for permanent injunction. The petitioner never question the unilateral cancellation the settlement deed.

5.Admittedly, the second respondent had executed the settlement deed in favour of the petitioner in respect of the subject property. After obtaining divorce, the second respondent without issuing any notice informed to the petitioner unilaterally executed the cancellation of the settlement deed vide registered document No.675 of 2009 dated 27.04.2009.

6.This issue has already been decided by the Hon'ble Full Bench of this Court in the case of ***Sasikala Vs. The Revenue Divisional Officer, cum Sub Collector, Devakottai and others*** reported in **2022(5) CTC 257**, wherein Paragraph No.44, it is held as follows:



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“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 MANU/SC/1267/2010 : (2010) 15 SCC 207 and the Full Bench of this Court in *Latif Estate Line India Ltd.*, case, reported in MANU/TN/0310/2011 : 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 MANU/SC/0615/2022 : (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 MANU/SC/0579/2022 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.

(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.”

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7.As per the said decision, such unilateral cancellation of sale deed or a deed of conveyance is wholly void and not est and does not operate to execute, assign, limit or extinguish any right, title or interest in the property and such unilateral cancellation of sale deed or deed of conveyance cannot be accepted for registration. Hence, the petitioner is entitled to succeed.

8.In view of the above, the unilateral cancellation of the settlement deed executed by the petitioner dated 27.04.2009 vide document No.675 of 2009 is hereby declared as null and void. The first respondent is directed to make entries in the encumbrance certificate in respect of the subject property. The second respondent cannot deal with the subject property.

9.With the above said directions, this writ petition stands allowed. No costs. Consequently, connected miscellaneous petitions are also closed.

29.11.2024

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

<https://www.mhc.tn.gov.in/judis>



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G.K.ILANTHIRAIYAN. J,

RJR

To

The Sub-Registrar,
Gujiliamparai Sub Registrar Office,
Dindigul District.

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