



W.P.(MD)No.18512 of 2024

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **09.01.2025**

CORAM:

THE HONOURABLE **MR.JUSTICE G.K.ILANTHIRAIYAN**

W.P.(MD)No.18512 of 2024

N.Pothirajan

... Petitioner

/Vs./

1. The Sub Registrar,
Theni,
Theni District.

2. Sadaiyan @ Arisadaiyan

3. E.Muthulakshmi

4. Ponnathal

5. Murugeswari

6. Velmurugan

7. Ramayee

8. Panja

9. Lakshmanan

... Respondents



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PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a Writ of declaration, to declare the unilateral cancellation of settlement deed executed by the second respondent vide Document No. 2627/2014 dated 21.04.2014 registered with the first respondent and the sale agreement executed by the second respondent in favour of the third respondent vide Document No.4547/2015 dated 07.07.2015 registered with the first respondent as null and void and consequently, to direct the first respondent to remove the respective entries from the encumbrance register.

For Petitioner : Mr.R.Venkateswaran
For R-1 : Mr.D.Sadiq Raja
Additional Government Pleader
For R-2 to R-9 : No appearance

ORDER

The writ petition has been filed challenging to declare the unilateral cancellation of settlement deed executed by the second respondent vide Document No.2628/2014 dated 21.04.2014 registered with the first respondent and the sale agreement vide Document No. 4547/2015 dated 07.07.2015 registered with the first respondent as null and void .



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2. The petitioner's parents had four sons. The second respondent is the eldest brother of the petitioner and owned a property comprised in S.No.445/1, measuring 3 acres 87 cents situated at Jangalpatti, Theni Taluk, Theni District and he divided the said property into four parts. On 08.12.2010, the second respondent has executed a settlement deed in favour of his son, his brother and the petitioner by way of three separate registered settlement deeds, vide Document No.12187/2010, 12188/2010 and 12189/2010 respectively, giving each 96 $\frac{3}{4}$ cents and the remaining one share of the property was sold out in favour of another brother through registered sale deed, vide Document No.12190/2010. The said settlement deed executed in favour of the petitioner was irrevocable one and on the same day, the possession of the property was handed over to the petitioner. While being so, on 21.04.2014, the second respondent unilaterally cancelled all the three settlement deeds and presented cancellation of settlement deed. Subsequently, he had also entered into an agreement for sale dated 07.07.2015 and registered a sale agreement, vide Document No.4547 of 2015 in favour of the third respondent. Now, the second respondent's whereabouts is not known and he is missing for the past nine years. Therefore, the petitioner has impleaded the legal



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heirs of the second respondent as respondents No.4 to 9 herein as parties in this writ petition.

3. Notice served on the respondents No.4 to 9 and their names were also printed in the cause list. However, no one appeared on behalf of them either by Counsel or by persons. In the meanwhile, the third respondent has also lodged a complaint before the Inspector of Police, Veerapandi Police Station, as against the petitioner and the second respondent alleging that they received an advance amount from the party for a sale consideration and had executed a sale agreement on 07.07.2015 and on the same date, the possession of the property was also handed over to the third respondent.

4. It is a settled law that the remunerated cancellation of settlement deed cannot be registered. It is relevant to the judgment passed by the Hon'ble Full Bench of this Court in the case of ***Latif Estate Line India Ltd Vs. Hadeeja Ammal and others*** reported in ***AIR 2011(Mad) 66*** and the same is followed by the Hon'ble Division Bench of this Court in W.A.No.108 of 2020 dated 24.01.2020, wherein it is held as follows:



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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 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 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 not improve the situation any further, in as much as the document is non-existent 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



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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, the filing of the writ petition and the grant of declaration on 10.08.2018 shall not be a disadvantage in that regard.

5. It is clear that the cancellation of unilateral cancellation of settlement deed 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 documents cannot create any encumbrance in the property already transferred. Therefore, unilateral of settlement deed cannot be accepted for registration.

6. However, the learned Counsel appearing for the petitioner would submit that he is ready and willing to settle the advance amount which was received by the petitioner from the third respondent.

7. In view of the same, unilateral cancellation of settlement deed executed by the second respondent, vide Document No.2627/2014 dated 21.04.2014 is declared as null and void and subsequently, the registered



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sale agreement, vide Document No.4547/2015 dated 07.07.2015 is declared as null and void. Accordingly, this Writ Petition is allowed. No costs.

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

09.01.2025

TO

The Sub Registrar,
Theni,
Theni District.



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G.K.ILANTHIRAIYAN, J.

jbr

Order made in
W.P.(MD)No.18512 of 2024

Dated:
09.01.2025