



W.P(MD)No.30540 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 07.01.2025

CORAM

THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

W.P(MD)No.30540 of 2024

Selvabhai

... Petitioner

Vs.

1.The District Registrar,
O/o. the District Registrar,
Kanyakumari,
Kanyakumari District.

2.The Sub Registrar,
O/o. the Sub Registrar Office,
Bhuthapandy,
Kanyakumari District.

3.Y. Francis

4. Y. Rajammal

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Mandamus, to declare the cancellation of Settlement deed dated 29.09.2010 executed by the Late. Jesili Nadachi in favour of the petitioner's husband and registered on the file of the 2nd respondent as Document No.4981 of 2010 as null and void within the period that may be stipulated by this Court.



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For Petitioner : Mr.A.Nawazkhan,
For M/s.Ajmal Associates.

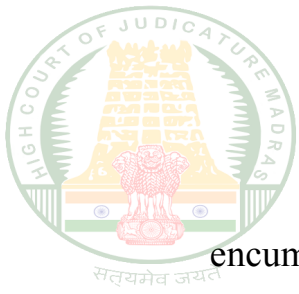
For Respondent : Mr.S.P.Maharajan,
Spl. Government Pleader for R1 & R2.
Mr.Vignesh Shanmugam for R3 & R4.

ORDER

This Writ Petition has been filed to declare the cancellation of Settlement deed dated 29.09.2010 executed by late.Jesili Nadachi in favour of the petitioner's husband and registered on the file of the second respondent as Document No.4981 of 2010 as null and void.

2.The petitioner is the wife of one late.Susai Micheal. The petitioner's mother-in-law namely, Jesili Nadachi owned property and the same was settled in favour of the petitioner's husband by way of registered settlement deed vide Document No.9985/2008 on 26.09.2008 before the second respondent. Thereafter, the petitioner's family members are in possession and enjoyment of the same. The petitioner's mother-in-law passed away on 21.08.2012 and the petitioner's husband passed away on 08.01.2018. Thereafter, the petitioner intended to settle the property in favour of her legal heirs. On verification of the

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encumbrance register, she came to know that her mother-in-law unilaterally cancelled the settlement deed executed in favour of her husband vide Document No.4981/2010 before the second respondent. The petitioner's husband was not put on notice before cancellation of the settlement deed executed in favour of her husband. Hence, the petitioner filed this writ petition.

3.Heard the learned counsel for the petitioner and the learned Special Government Pleader for the official respondents.

4.The issue raised in this writ petition is squarely covered by the decision of the Hon'ble Full Bench in W.P.(MD)Nos.6889 of 2020 etc batch, dated 02.09.2022. The Hon'ble Full Bench held as follows:-

“39.No transfer can be made in so far as it is opposed to the nature of interest affected thereby or for an unlawful object as per Section 6 of Transfer of Property Act. Only a person competent to contract and has a transferable right is competent to transfer such property. “Sale” is a transfer of ownership in exchange for a price paid or promised. In case of immovable property of the value of one hundred rupees and more, it can be made only by a registered instrument. Once a transfer is made by



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a registered instrument all the interest which the transferor is then capable of passing in the property is passed on forthwith to the transferee. After a deed of conveyance, the transferor has no transferable interest. The Transfer of Property Act does not permit the transferor to recall an instrument so as to divest the transferee's title. The Registration Act does not deal with unilateral cancellation of a sale deed . The Registration Act does not confer any power to registrar to cancel a document which had been registered as per the Act. By registration a legal sanctity is given to the conveyance. When the object of Registration is to ensure public to rely with confidence upon the statements contained in the registers maintained in the Registrar's office as a full and complete account of all transaction affecting title, permitting registrars to accept unilateral cancellation of sale deed or any other deed of conveyance (except revocation of gift as may be permitted in accordance with Section 126 of Transfer of Property Act or a Will) will be opposed to the object and purpose of Registration Act itself and contrary to the provision of Transfer of property Act. A person, after conveying all his right by a deed of conveyance, has no right to deal with the property again affecting, limiting or extinguishing the right or title of transfer for no consideration. When such deed of cancellation is presented, the deed of conveyance which had been registered earlier is referred to. It is not as if the registrar needs to prove further to find out whether the person executing the document has title. When a deed of cancellation is presented, the incompetency to transfer is admitted by the executant. The intention of the person



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presenting a document cancelling the registered document is fraudulent and the fraud is accomplished, when such document is registered. Registering Officer has power to refuse to register a document. A person may file an appeal before Registrar against an order refusing to register, except on the ground of denial of execution. Similarly, if the Sub-Registrar refuses to register on the ground of denial of execution, a person claiming under the document can apply to the Registrar to establish his right to have the document registered. After accepting the document for registration and registering the document, the Registrar has no power under the Registration Act to cancel the Registration. If a document cancelling the registered deed is accepted for registration by the registering authority, he intends to do something which he is not authorised under the Act and it is beyond his power under the Registration Act.

40.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.

41.Regarding gift or settlement: 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:



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*“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.”*

42. 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 will of donor as a gift revocable at the mere Will of the donor is void. The Subregistrar 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;



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(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.

43. 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 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.



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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 (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 On-line 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.

(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



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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.

5.In view of the above, the unilateral cancellation of deed registered vide Document No.4981/2010 on the file of the second respondent is declared as null and void. The writ petition is allowed accordingly. No costs.

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NCC : Yes/No
Index : Yes / No
Internet : Yes/ No
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G.K.ILANTHIRAIYAN, J.

ias

To:-

- 1.The District Registrar,
O/o. the District Registrar,
Kanyakumari,
Kanyakumari District.
- 2.The Sub Registrar,
O/o. the Sub Registrar Office,
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