



W.P(MD)No.31344 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 04.02.2025

CORAM

THE HONOURABLE MR.JUSTICE V.LAKSHMINARAYANAN

W.P(MD)No.31344 of 2024

and

W.M.P(MD)No.26241 of 2024

G.Jothimani

... Petitioner

Vs

1.The District Registrar,
Karaikudi District Registration Office,
Karaikudi, Sivagangai District.

2.The Sub Registrar,
Sub Registrar Office,
Thirupathur,
Sivagangai District.

3.A.Ganesan

... Respondents

PRAYER: Writ Petition filed under Article 226 of Constitution of India, to issue a Writ of Certiorarified Mandamus to call for the records relating to the impugned unilateral cancellation settlement deed registered as Document No.2963 of 2014 dated 28.10.2014 on the file of the second respondent and quash the same as illegal, void, non-est in the eye of law without jurisdiction and against the public policy and further directing the second respondent to remove the entries in respect of the said document concerned and consequential transactions from the concerned register.



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For Petitioner : M/s.L.Juliet Caroline
For RR 1 & 2 : Mr.R.Suresh Kumar
Additional Government Pleader
For R – 3 : Mr.K.G.Arun Kumar

ORDER

This Writ Petition challenges the unilateral cancellation of a settlement deed. The cancellation deed had been registered in Document No.2963 of 2014 dated 28.10.2014.

2. There is no dispute in the relationship between the petitioner and the third respondent. The third respondent is the father and the petitioner is his son. The third respondent is the owner of the property in Survey Nos.50/4 and 50/8 of Magipalanpatti Village, Thirupathur Taluk, Sivagangai District. He had purchased the same from two persons, namely, Gudan and Gopalan vide registered sale deed dated 03.10.2008 in Document No.2756 of 2008. The petitioner has other siblings.



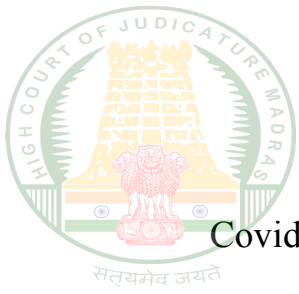
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3.The third respondent/father executed a settlement deed in favour of the petitioner in Document No.3324 of 2009 dated 17.11.2009.

The relevant portions of the document are as follows:

“நீ எனது மகன் ஆவாய் உன் மீது நான் வைத்துள்ள அன்பினாலும் பிரியத்தின் காரணமாகவும் நீ என்மீது கொண்டுள்ள பாசத்தின் அடிப்படையில் சமயோஜிதமாய் நீ என் தேவைகளை அறிந்து அதன்படி எனக்கு வேண்டிய நல்லபல உதவிகளை ஆவலோடு நிறைவேற்றி வருகிற உனக்கு உன் எதிர்காலத்தேவைகளுக்கு பிரயோஜனப் படும்படியான ஒரு ஏற்பாட்டினை நான் என் வாழ் நாட்களிலே செய்து வைத்துவிட வேண்டும் என்ற என் உள்ளத்தில் எழுந்துள்ள பேராவலை நிறைவேற்றிக் கொள்ளக்கருதி”

4.After execution of a document, disputes arose between the parties. Therefore, the third respondent/father cancelled the settlement deed by way of a registered cancellation deed in Document No.2963 of 2014 dated 28.10.2014. On coming to know of the cancellation, the writ petitioner presented O.S.No.71 of 2019 on the file of the Principal District Munsif Court at Thirupathur. This suit was dismissed for default on 20.11.2019. Subsequently, due to the onset of the pandemic caused by



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Covid-19, the petitioner could not take further steps to prosecute the suit.

Since the document continues to be on the file of the second respondent, the petitioner has come forward with the present Writ Petition.

5.The simple plea of the learned counsel for the petitioner is that as the settlement deed had been executed in the year 2009, it cannot be cancelled unilaterally in the year 2014. He relies upon the Judgment of a Full Bench of this Court in **M/S.Latif Estate Line India Ltd vs Mrs. Hadeeja Ammal and others, 2011 (2) CTC 1.**

6.The learned counsel appearing for the writ petitioner, on instructions, stated that it was not the intention of the writ petitioner to abandon the third respondent/father. He states that the writ petitioner will maintain the third respondent during his lifetime.

7.Per contra, the learned counsel appearing for the contesting third respondent points out that the Writ Petition is untenable on the following grounds:



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(i) That the suit had been dismissed for default in the year 2019 and this Writ Petition has been filed in the year 2024 and hence, it is hit by laches and

(ii) The suit having been dismissed for default, it operates as a decree against the writ petitioner and hence principles of *res judicata* will apply.

8.The learned Special Government Pleader states being the State authority it will abide by any orders passed by this Court.

9.I have carefully considered the submission on both sides.

10.The execution of the settlement deed by the third respondent in favour of the writ petitioner is not in dispute. In fact, it cannot be disputed either because unless and until the settlement deed is executed, the question of cancellation of the said document does not



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11.It is the simple plea of the writ petitioner that having executed a settlement deed, unilateral cancellation thereof comes within the teeth of the Judgment of this Court in **M/S.Latif Estate Line India Ltd vs Mrs. Hadeeja Ammal and others, 2011 (2) CTC 1**. On that score, I am entirely with the petitioner. Normally, on the execution of a settlement deed, there is a transfer of title. Once title has been transferred then, it cannot be divested from the decree, unless and until, there is another document of conveyance or a decree of a civil Court or an order of a competent authority empowered to order its cancellation. One party cannot unilaterally take the law into his own hands and set the clock back, without the support of a legally established authority or through the process of the civil Court.

12.The preliminary objection raised by the third respondent that there is a delay and laches in preferring this Writ Petition does not appeal to me. In order for laches or delay to apply, there should be a voluntary standing by, of actions being taken against the interest of a



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party and the parties so affected should have kept quiet. I cannot accuse the writ petitioner of having kept quiet, as he has immediately launched a suit, on coming to know of the document. The suit has been dismissed for default. The fact that the suit has been dismissed for default, does not mean that the document gains validity. If there is no power for the third respondent to cancel a document unilaterally, then, the issue of such a document continuing to be on the file of the second respondent does not arise.

13.The plea that the constructive *res judicata* applies on account of the suit being dismissed for default does not hold water either. For *res judicata* to apply, the suit or proceedings must have been 'heard and finally decided'. When the suit is dismissed for non-payment of batta/process fee, the suit is neither heard nor finally decided. Hence, the plea of *res judicata* also does not arise.

14.Insofar as the plea that the dismissal of the suit operates as the decree is concerned, I should immediately refer to Section 2(2) of the Code of Civil Procedure, 1908. Under Section 2(2), the term “decree” has been defined. It specifically states under Section 2(2)(b) that “any



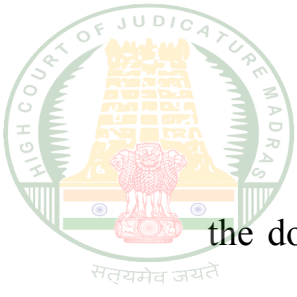
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order of dismissal for default" will not come within the definition of a decree. Therefore, that too does not assist the third respondent.

15.I am bound by the Judgment of the Full Bench and therefore, I have to hold that the cancellation of the document in Document No.2963 of 2014 dated 28.10.2014 is illegal, non-est and liable to be interfered with.

16.Considering the relationship between the parties, I cannot stop with merely allowing the Writ Petition. The process that had been adopted by the third respondent can be found fault with, but the right that has been given to the third respondent to get the document cancelled is always available under the provisions of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007.

17.Very recently, the Supreme Court dealt with the similar issue in ***Urmila Dixit Vs. Sunil Sharan Dixit and others*** in ***Civil Appeal No.10927 of 2024 dated 02.01.2025***. The Supreme Court held, in case



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the document of settlement shows that the same had been executed not only out of natural love and affection but on account of any consideration of maintenance, then, a senior citizen is certainly entitled to invoke Section 23 of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007.

18.The portion of the document dated 17.11.2009 shows that the document had been executed not only out of natural love and affection that the third respondent had for the petitioner, but also on account of the fact that the writ petitioner was maintaining and had assured continued maintenance of the third respondent. These are clear from the following words:

“நீ என் தேவைகளை அறிந்து அதன்படி
எனக்கு வேண்டிய நல்லபல உதவிகளை ஆவலோடு
நிறைவேற்றி வருகிற உனக்கு உன்
எதிர்காலத்தேவைகளுக்கு”

19.The appropriate remedy for the third respondent is to move the authorities under the said legislation. The third respondent,



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perhaps on some legal advice, decided to unilaterally cancel the document, when such a power had not been reserved by him under the document. This does not prevent him from approaching the authorities under the Maintenance and Welfare of Parents and Senior Citizens Act, 2007.

20. In the light of the above discussions:

(i) The Writ Petition is allowed. The document of unilateral cancellation settlement deed No.2963 of 2014 dated 28.10.2014 is set aside.

(ii) The second respondent shall record this order and make an appropriate entry in his records.

(iii) Liberty is granted to the third respondent to approach the jurisdictional authority under the protection of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 or jurisdictional civil Court for a declaration that the document which had been executed for maintenance could not be given effect since the writ petitioner had failed to maintain him. This a matter, which has to be agitated after tendering evidence, either before



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the authority or before the civil Court.

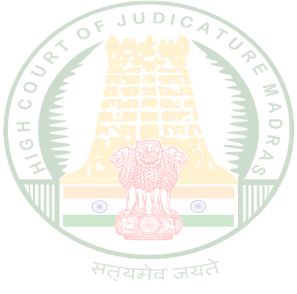
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(iv) The undertaking given by the writ petitioner to maintain the third respondent during the latter's lifetime is recorded.

21. Before I bring the curtains down on this case, I should point out that both sides agreed that the third respondent is in possession of the property. The third respondent will not be dispossessed by the writ petitioner, except otherwise in accordance with law. There shall be an order restraining the second respondent from registering any document of alienation for a period of six weeks to enable the third respondent to approach the appropriate authority or the civil Court. In case the third respondent does not invoke the jurisdiction of the authorities within the period specified, the embargo placed above will not operate. There shall be no order as to costs. Consequently, connected Miscellaneous Petition is closed.

04.02.2025

NCC : Yes / No
Index : Yes / No
Internet : Yes
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To

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Karaikudi District Registration Office,
Karaikudi, Sivagangai District.
- 2.The Sub Registrar,
Sub Registrar Office,
Thirupathur,
Sivagangai District.



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V.LAKSHMINARAYANAN, J.

ps

Order made in
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