

HONOURABLE SMT. JUSTICE V.SUJATHA

WRIT PETITION No.37118 of 2016

ORDER:

This writ petition is filed under Article 226 of the Constitution of India seeking the following relief:-

“....to issue Writ, Order or Direction especially one in the nature of Writ of Mandamus declaring the cancellation deed bearing document No.4110 of 2014 dt. 21-11-2014 executed by the 3rd respondent wherein they have cancelled the sale deed bearing document No.319 of 2007 dt. 20-01-2007 is illegal, arbitrary, violative of 300-A of the Constitution of India violative of principles of natural justice and contrary to the provisions of Registration Act, 1908 and the rules made there under and consequently set aside the same and pass such other order or orders as this Hon’ble Court may deem fit just and proper in the interest of justice....”

2. When the matter came up for hearing, the learned counsel for the petitioner submits that the *lis* in this Writ petition is squarely covered by the Judgment reported in **Haji Mohammed Ahmed Vs. State of Andhra Pradesh and others**¹ and

¹ 2012(2) ALD 230

Fazalullah Khan V. State of Andhra Pradesh, rep.by its District Registrar and others².

In **Haji Mohammed Ahmed Vs. State of Andhra Pradesh and others(Supra)**, learned Single Judge of this Court held as follows:

*“The Supreme Court, in **Thota Ganga Laxmi V. Government of A.P.(1)**, held that if any sale deed is required to be cancelled, the only remedy is by way of a civil suit for cancellation, but no cancellation deed can be unilaterally executed or registered. The Supreme Court, after referring to Rule 26(i)(k) of the Registration Rules, held that it is only when the earlier sale deed is cancelled by a competent court can a cancellation deed be registered that too after notice to the concerned parties; and unilateral cancellation of the sale deed as well as registration thereof, were wholly void, non-est and meaningless. The observation of the Supreme Court, aforementioned, made in the context of sale deeds would equally apply to unilateral cancellation of gift deeds also. Unilateral cancellation of the gift deed in the present case must there be and is declared to be void. It is made clear that this Order will not preclude the respondent from invoking the jurisdiction of the competent Civil Court for cancellation of the subject gift deed”.*

3. In similar circumstances, a Division Bench of the High Court for the State of Telangana in Writ

² 2012(2) ALT 728

Appeal No.611 of 2017, dated 23.03.2022 held as follows:

“Thus, having regard to the law laid down by the Supreme Court and provisions of the Act, in our opinion, whenever registered documents such as Development Agreement-cum-GPA, is sought to be cancelled, execution and registration of such a document/deed must be at the instance of both the parties i.e., bilaterally and not unilaterally. If a deed of cancellation is allowed to be registered without the knowledge and consent of other party to the deed/document, sought be cancelled, such registration would cause violation to the principles of natural justice and lead to unnecessary litigation, emanating therefrom. In any case, as stated earlier, in the absence of any provision specifically empowering the Registrar to entertain a document of cancellation for registration without the signatures of both the parties to the document, the deed cannot be entertained. Moreover, if the Registrars are allowed to entertain a deed of cancellation for registration without signatures of both the parties to the document sought to be cancelled, such power would tantamount to conferring the power to decide disputed questions between the parties. No party to the document would ever approach for cancellation of registered document unilaterally unless there is a dispute with the other party in respect of the subject matter of the document”.

4. In view of the settled principles of law referred above and having regard to the facts and circumstances of the case, as seen from the record, when the document is sought to be cancelled for execution and registration it must be at the instance of both parties but not by one party. In the instance case, since the impugned Sale Deed, which is sought to be cancelled, is only unilateral, but not by both parties of the earlier document, which is illegal and

contrary to the settled principles of law and, therefore, the unilateral registration of document cannot be permissible under law. In such circumstances, if the petitioner is aggrieved by the cancellation of such document, he may approach the competent Civil court for cancellation of such document.

5. In view of the above, the writ petition is allowed and the Cancellation Deed dated 21.11.2014 is hereby declared as null and void, leaving it open to the respondents to approach the competent Civil Court for cancellation of sale deed vide document No.319/2007, dated 16-12-2006 by raising all the contentions as raised herein. There shall be no order as to costs.

As a sequel thereto, miscellaneous petitions, if any, pending in this writ petition shall stand closed.

JUSTICE V.SUJATHA

Date : 21.12.2022
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