

O/o Inspector General of Registration,
Chennai-28.

Circular

No.52666/C1/2018, Date 29.11.2018

Sub : Cancellation of settlement deed – Unilateral
cancellation – registration of documents by
registering officer – reg

Generally Cancellation documents are executed by all the persons who had executed the principal documents which are purported to be cancelled. Only in the case of cancellation of power of attorney, such cancellation document could be executed by the Principal unilaterally. Settlement documents are normally executed by the 'Settlor' alone even though there is no prohibition for 'Settlee' to sign the settlement deed. In view of such prevailing practice, there was a presumption that there could be no legal impediment in registering a deed of 'Cancellation of Settlement' which has been unilaterally executed by the Settlor.

2) However in respect of validity of unilateral cancellation of settlement deeds by the Settlor and its registration in certain judicial pronouncements, it has been observed as follows:

- i) Hon'ble High Court in S.Palani vs S.Bharathi Dasan (Deceased) on 12 January, 2016 ordered as follows:

"21. This Court is also of the considered view that the Settlement Deed already came into force and even as per the

Settlement Deed, Saraswathi Ammal has no power to revoke the Settlement Deed unilaterally, since the right or title to the property already conveyed to the settles in Ex.P-1 = Ex.D-1. The decision of this Court reported in 2014(3) CTC 113 (D.V.Loganathan Vs. The Sub-Registrar, Office of the Sub-Registrar, Pallavaram, Chennai and another) relied on by the learned counsel for the defendants is squarely applicable to the facts of the present case. Once the Settlement Deed is executed by the settlor to the settles, if at all the party, who has executed the document, is aggrieved by any reason, he could have very well approached the Civil Court to set aside the same. But certainly, he could not unilaterally cancel the Settlement Deed by getting the deed of cancellation registered with the Sub-Registrar. Hence, the Cancellation Deed and registration without jurisdiction is liable to be set aside."

- ii) Hon'ble High Court in the case of (k) 2015 (2) CTC 465 (B.K.Rangachari Vs. L.V.Mohan) held as follows:

"10. From the above Judgments, it is clear that the Settlement Deed cannot be cancelled unless either one of the elements of fraud, misrepresentation, undue influence or coercion is present. Such revocation is also possible only through a Civil Court."

- iii) Further Hon'ble High Court in the case of (n) 2014 (3) CTC 113 (D.V.Loganathan Vs. The Sub-Registrar) quoting another judgment of the same court expressed its views as,

"6. In fact the registration of cancellation of the Settlement Deed is against the Public Policy as it was not open to the Sub-Registrar to register the cancellation of the Deed, when the

Settlement Deed is unconditional and irrevocable. If at all the party who has executed the document is aggrieved by the Settlement Deed, he could have very well approached the Civil Court to set it aside, but certainly could not unilaterally cancel it, by getting the Deed of Cancellation registered with the Sub-Registrar. The Cancellation Deed and its registration, therefore, being without jurisdiction, is liable to be set aside. In fact in the above unreported Judgment dated 1.3.2012 made in W.P.No.17983 of 2011 (cited supra), the learned Single Judge of this Court has held as follows:

*"10. On consideration, I find that this Writ Petition deserves to succeed, as per Section 156 of Transfer of Property Act, except for the condition stipulated therein, the Gift Deed is irrevocable. It is not disputed that the none of the condition entitling revoking of Gift Deed exists in this case, as the Gift Deed was irrevocable and unconditional, it was not open to Respondent No.2 to register the Cancellation Deed being opposed to the public policy. The impugned Order of registration, therefore, cannot be sustained in law, in view of the decision of the Hon'ble Full Bench of this Court and decision of the Hon'ble Kerala High Court in *Latif Estate Line India Limited Vs. Hadeeja Ammal*."*

For the reasons stated above the registration of impugned Deed of Cancellation therefore, cannot be sustained in law being against public policy."

- iv) Hon'ble High Court in W.P.No.7725 of 2015 P.A.G.Kumaran Vs Inspector General of Registration further ordered to remove

the entry of cancellation from the register. The operative portion of the judgment is as follows:

"In view of the fact that the unilateral cancellation of the settlement deed made by the first and second respondents is bad, this Court declares that the said cancellation of document, namely Deed of Cancellation of Settlement deed, registered as Document No.3328 of 2014, dated 10.11.2014, is illegal and in view of the same, the first and second respondents are directed to remove the entries in the Register and the subsequent transaction, namely settling the property in favour of the son of the third respondent, made pursuant to the unilateral cancellation of settlement deed, is also null and void."

- v) Hon'ble High Court in S.Sundararaman vs The Sub Registrar on 18 July, 2018 ordered as unilateral cancellation of settlement deed is impermissible. The operative portion of the judgment is as follows:

"4.This Court is of an opinion that the original settlement deed was executed in favour of the writ petitioner and consequently, the property described in the settlement deed had been transferred in the name of the writ petitioner. The petitioner became the absolute owner of the property. Thus, the property right conferred in favour of the writ petitioner cannot be cancelled unilaterally by the executor of the original settlement deed and the original executor cannot have any right to register any such cancellation deed in the absence of any specific covenant or agreement in the settlement deed. The executor of the settlement deed is incompetent to execute the cancellation

deed. The ownership in respect of the property has been already in favour of the settlee. Thus, the unilateral cancellation of settlement deed is impermissible and the said legal principles are decided by this Court..."

vi) Hon'ble High Court in N.Vijaya Baskar vs A.Gokul Anand on 10 October, 2018 in W.P.No.27342 of 2016 and W.M.P.Nos.23543 and 23544 of 2016 quashed a unilateral cancellation of settlement deed in view of the settled legal position.

vii) Hon'ble High Court in Apanan Banu(Minor) vs The Sub-Registrar on 4 September, 2018 in W.P.No.2897 of 2017 has said as follows

"5.In view of the fact that the unilateral cancellation of settlement deeds are impermissible under the Registration Act as well as the said legal principles are settled by the Full Bench of this Court, the present writ petition deserves consideration. Accordingly, the Deed of Cancellation of Settlement Deed dated 28.01.2016 executed by the 2nd Respondent and registered as Doc.No.713 of 2016 on the file of the 1st Respondent by cancelling the Settlement Deed dated 24.11.2010 executed by the 2nd Respondent in favour of the 1st and 2nd minor petitioners herein vide Doc.No.11810 of 2010 on the file of the 1st Respondent and again by cancelling the another Settlement Dated 05.11.2013 executed by the 2nd Respondent to and in favour of the 3rd Minor Petitioner herein and registered Doc.No.10547 of 2013 on the file of the 1st respondent herein and subsequent settlement deed dated 28.01.2016 executed by

the 2nd Respondent in favour of the 3rd Respondent registered as Doc.No.715 of 2016 on the file of the 1st Respondent are quashed."

viii) Further in the following cases also the Hon'ble High Court cancelled the registration of unilateral cancellation of settlement documents.

1. D.Janani vs The Inspector General of Registration in W.P.41498 of 2016 and W.M.P.No.2604 of 2017
2. E.Dhanasekaran vs The Inspector General of Registration in W.P.No.20575 of 2016 and W.M.P.No.17685 of 2016
3. Badrinarayanan vs The Joint Sub-Registrar Ambattur on 10 October, 2018 in W.P.No.24902 of 2016 and W.M.P.No.21272 of 2016
4. B.Velthiyagarajan vs The Joint Sub-Registrar on 9 March, 2015 in W.P (MD) No.11216 of 2014 and M.P (MD) No.1 of 2014

ix) Hon'ble High Court in Mr.P.Dineshkumar vs The Inspector General of Registration in W.P.No.22386 of 2015 and M.P.Nos.1 & 2 of 2015 has expressed its views as below:

"6.The dictum laid down in the above judgments are squarely applicable to the facts of this case. Though the learned counsel for the respondents submitted that as per Section 127 of the Transfer of Property Act, a settlement deed can be revoked by way of a cancellation deed, if it falls within the exception under Section 126 of the Transfer Property Act, in my considered opinion, whether it falls within the exception under Section 126 of the Transfer of the Property Act or not is purely a matter of

*evidence. The same has to be adjudicated only before the Civil Court. The Registrar is not a competent person to register the unilateral cancellation deed by deciding the question whether it falls within the exception under Section 126 of the Transfer of Property Act, since he is not the competent authority to decide the disputed question of facts. Further, in my considered opinion, by executing a registered settlement deed in favour of petitioners/settlees, the settlor/3rd respondent herein had lost his right in the property. Unless the said right is restored by setting aside the settlement deed executed by the settlor in favour of the settlees by a competent Court, **the Sub-Registrar is not competent to register the unilateral cancellation of settlement deed.**"*

- x) Madras High Court in the judgment reported in 2012 (5) MLJ 169 (D.Mohan and another Vs. Sub Registrar, Chennai and others) has held that in the case of gift, the donor after executing the gift deed when it is accepted by the donee, is left with no interest in the property, therefore, it was not open to the respondent to get the cancellation deed registered, as she could have challenged it by filing civil suit and proving the allegations of fraud. Further, a gift deed could not be revoked by way of cancellation deed, once the case did not fall within the exceptions, under Section 126 of the Transfer of Property Act and a person having no right in the property cannot get it cancelled by getting it registered.
- xi) Further, in the judgment reported in 2014 (3) CTC 113 (D.V.Loganathan Vs. The Sub Registrar, Chennai and another) has held that the registration of cancellation of the settlement deed is against the public policy as it was not open to the Sub Registrar to

register the cancellation of the deed, when the settlement deed is unconditional and irrevocable. If at all the party who has executed the document is aggrieved by the settlement deed he could have very well approached the Civil Court to set it aside, but certainly not unilaterally cancel it by getting the deed of cancellation registered with the Sub Registrar. The cancellation deed and its registration, therefore, being without jurisdiction is liable to be set aside.

- xii) In yet another judgment reported in (2012) 1 MLJ 216 (K.A. Shanmugam and another Vs. Tamilarasi and others), the Hon'ble High Court of Madras has held that mentioning of handing over of possession in settlement deed itself is sufficient to come to a conclusion that the settlement deed has been acted upon.

3) From a careful reading of all these judgments, it is seen that section 126 of the Transfer of Property Act, 1882 forms the basis for said verdicts. The extract of the said provision as follows:

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. Illustrations

(a) A gives a field to B, reserving to himself, with B's assent, the right to take back the field in case B and his descendants die before A. B dies without descendants in A's lifetime. A may take back the field.

(b) A gives a lakh of rupees to B, reserving to himself, with B's assent, the right to take back at pleasure Rs. 10,000 out of the lakh. The gift holds goods as to Rs. 90,000, but is void as to Rs. 10,000, which continue to belong to A.

Apart from the aforesaid judgments, Honourable Supreme Court's verdict rendered in Civil Appeal No. 10785 of 2018 (Arising out of SLP (C) No.35515 of 2017) is also noteworthy. The said judgment has been delivered relying upon Apex Court's judgments in 'Narmadaben Maganlal Thakker and Reninkuntla Rajamma Vs.K.Sarwanamma.

In the aforesaid judgment in an instance where a 'Donor' had executed a Gift deed imposing certain conditions to be fulfilled by the 'Donee', and which was subsequently cancelled unilaterally by the Donor, Honourable Supreme Court held that

'19. In the instant case, admittedly, the deed of transfer was executed for consideration and was in any case conditional subject to the condition that the donee would look after the petitioner and her husband and subject to the condition that the gift would take effect after the death of the donor. We are thus constrained to hold that there was no completed gift of the property in question by the appellant to the respondent and the appellant was within her right in cancelling the deed. '

4) Thus from the combined reading of all these judicial pronouncements it becomes apparent that any settlement deed

wherein no condition whatsoever has been imposed on the Settlee, and in such a case, unilateral cancellation of such settlement deed without consent of Settlee is against public policy declared in section 126 of the Transfer of Property Act, 1882.

At this juncture it is pertinent to mention that Rule 162-A of the Registration Rules framed under section 69 of the Registration Act, 1908 stipulates as follows:

162.A. No Registration Officer shall accept for registration any document or service agreement evidencing bonded labour or transaction constituting an offence under any law or opposed to public policy or morality.

5) In view of the legal position emerging from the aforesaid judgments, registering officers are hereby clarified as follows:

a) Any settlement deed wherein no condition whatsoever has been imposed on the Settlee, and if an unilateral revocation/cancellation of such settlement deed executed by the Settlor is presented for registration, registering officers shall not accept such unilateral revocation/cancellation deeds for registration and check slip shall be issued in this regard.

(எவ்வித நிபந்தனைகளும் இல்லாத ஏற்பாடு ஆவணங்களை எழுதிக் கொடுத்தவர் மட்டும் ரத்து செய்து ஆவணத்தைப் பதிவுக்கு தாக்கல் செய்யும் நிகழ்வுகளில் அவ்வாவணத்தை பதிவுக்கு ஏற்காமல் மறுப்புச் சீட்டு வழங்கவேண்டும்)

b) Such revocation deeds can be accepted for registration only if Settlee has joined in execution and registration of the revocation deed.

(மேற்குறிப்பிட்டவாறான ரத்து ஆவணங்களில் எழுதிப் பெற்றவரும் ஒப்பமிட்டிருந்து பதிவு அலுவலர் முன் தோன்றி கையொப்பமிட்டால் அவ்வாவணத்தைப் பதிவுக்கு ஏற்கலாம்.)

c) Any settlement deed wherein certain condition has been imposed on the Settlee, and if an unilateral revocation/cancellation of such settlement deed is executed by the Settlor clearly stating that Settlee has not fulfilled certain conditions imposed in the settlement deed, the same can be registered after ensuring that said conditions were specifically mentioned in the said Settlement deed.

(நிபந்தனைகளுடன் எழுதிக்கொடுக்கப்பட்ட ஏற்பாடு ஆவணங்களைப் பொறுத்து அந்த ஆவணத்தில் குறிப்பிடப்பட்டுள்ள நிபந்தனைகள் எழுதிப் பெற்றவரால் பூர்த்தி செய்யப்படவில்லை என்பதை தெளிவாக ரத்து ஆவணத்தில் குறிப்பிட்டு எழுதிக் கொடுத்தவர் மட்டும் அந்த ரத்து ஆவணத்தைப் பதிவுக்கு தாக்கல் செய்யும் நிகழ்வுகளில் முன் ஆவணத்தில் அந்த நிபந்தனைகள் உள்ளதை பரிசீலித்து உறுதி செய்து கொண்டு ரத்து ஆவணத்தை பதிவுக்கு ஏற்கலாம்)

sd/- 29.11.2018

Inspector General of Registration

Addl. Inspector General of Registration

(Stamp & Registration)

To

All Registering Officers.

All Deputy Inspector General of Registration.

All District Registrars (Admin)

Copy to

1. Senior PA to Hon'ble Minister for Commercial Taxes and Registration Department.
2. Principal Secretary to Government, Commercial Taxes and Registration Department.