

(2011) 11 AP CK 0155

In the Andhra Pradesh High Court

Case No : Writ Petition No. 22160 of 2011

Haji Mohammed Ahmed

APPELLANT

Vs

State of Andhra Pradesh and Others

RESPONDENT

Date of Decision : 24-11-2011

Acts Referred:

Constitution of India, 1950 — Article 226
Registration Rules, 1908 — Rule 26

Citation : (2012) 2 ALT 57

Hon'ble Judges : Ramesh Ranganathan, J

Bench : Single Bench

Advocate : Nazir Ahmed Khan, for the Appellant;

Judgement

Ramesh Ranganathan, J.—The action of the 2nd respondent in unilaterally cancelling the registered gift deed dated 8.7.1985 (document No. 466/85), by virtue of the cancellation deed dated 25.6.2011 (document No. 848/2011) is questioned in this Writ Petition as being arbitrary and illegal. The 3rd respondent is the petitioner's mother who had earlier gifted the subject property in his favour. On the ground that the said gift deed was cancelled unilaterally behind the petitioner's back, and without putting him on notice, the petitioner has invoked the jurisdiction of this Court under Article 226 of the Constitution of India. Despite notice having been served on the 3rd respondent on 10.9.2011, and proof of service having been filed on 19.9.2011, the 3rd respondent has not entered appearance either in person or through counsel necessitating this Writ Petition being disposed of at the stage of admission.

2. The Supreme Court, in Thota Ganga Laxmi v. Govt. of A.P. (1) Judgment in Civil Appeal No. 791 of 2007 and batch, 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 transactions. The observations 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 therefore 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. The Writ Petition is disposed of accordingly. No costs.