

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.02.2016

CORAM

THE HONOURABLE MR.JUSTICE R.SUBBIAH

W.P.No.10196 of 2014

R.Jeyan

... Petitioner

Vs.

1.The Sub-Registrar of Guduvanchery,
No.22/1, GST Road,
Nandhivaram,
Guduvanchery.

2.Selvi

... Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorari, to call for the records of the 1st respondent and to quash the registration of the Deed of Cancellation of Settlement registered as Document No.14956 of 2013, dated 01.11.2013, executed by the 2nd respondent as illegal, void and against law.

For Petitioner : Mr.V.Veluchamy

For respondents : Mr.P.Sanjay Gandhi,
Additional Government Pleader,
AGP (For R1)
Mr.S.R.Shenbaga Baabu (For2)

ORDER

This writ petition has been filed by the petitioner praying for issuance of a Writ of Certiorari, to call for the records of the 1st respondent and to quash the registration of the Deed of Cancellation of Settlement registered as Document No.14956 of 2013, dated 01.11.2013, executed by the 2nd respondent as illegal, void and against law.

2.In the affidavit filed in support of the writ petition, it has been averred by the petitioner as follows:-

The 2nd respondent is the mother of the petitioner herein. The 2nd respondent purchased a property measuring to an extent of 16 cents comprised in Survey

No.3/38, Kolapakkam Village, Chengalpattu Taluk on 27.9.1982 under a registered Sale Deed. After the purchase of the said property, the 2nd respondent was in exclusive possession and enjoyment of the same. Out of natural love and affection, without reserving any life interest, the 2nd respondent settled the said property in favour her son, the petitioner herein, under a registered Settlement Deed dated 19.05.2005 vide Doc.No.3663 of 2005 on the file of the Sub-Registrar, Guduvanchery (1st respondent herein). Subsequently, the 2nd respondent delivered the possession of the said property on the same day, to the petitioner. But, the during 2013, the 2nd respondent started to disturb the peaceful possession and enjoyment of the petitioner over the said property. Hence, the petitioner filed a suit in O.S.No.334 of 2013 on the file of the learned District Munsif, Chengalpattu, praying for the relief of permanent injunction restraining the 2nd respondent from interfering with his peaceful possession and enjoyment of the said property. During the pendency of the said suit, with an ulterior motive the 2nd respondent cancelled the settlement deed unilaterally in connivance with the first respondent under a Deed of Cancellation of Settlement dated 01.11.2013 registered as Doc.No.14956 of 2013 on the file of the 1st respondent. Hence, the petitioner has filed by the present writ petition for the relief as stated supra.

3.Heard both sides and perused the materials available on record.

4.Though very many contentions have been raised with regard to the validity of the settlement deed executed by the 2nd respondent, the crux of the issue involved in this writ petition is whether the 1st respondent is right in registering the unilateral cancellation of Settlement Deed. Hence, I am not dealing with the rival submissions made on both sides with regard to the allegations, because that is not necessary to decide the issue involved in this writ petition.

5.Here, in this case, it is seen that the unilateral cancellation deed was registered without notice to the petitioner. Further, in the settlement deed itself, it has been stated that the possession is handed over to the petitioner. Based on the same, mutations were also effected in the revenue records. In this regard, this Court is the view that it would be appropriate to look into the following decisions;

i)This 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.

ii) 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.

iii) In yet another judgment reported in (2012) 1 MLJ 216 (K.A. Shanmugam and another Vs. Tamilarasi and others), this Court 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.

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 of 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 petitioner/settlee, the settlor/2nd respondent herein had lost her right in the property. Unless the said right is restored by setting aside the settlement deed executed by the settlor in favour of the settlee by a competent Court, the Sub-Registrar is not competent to register the unilateral cancellation of settlement deed.

7.In view of the above, the deed of cancellation is ordered to be quashed.

This writ petition is accordingly allowed. No costs.

Sd/-
Assistant Registrar(CS-II)

//True Copy//

Sub Assistant Registrar

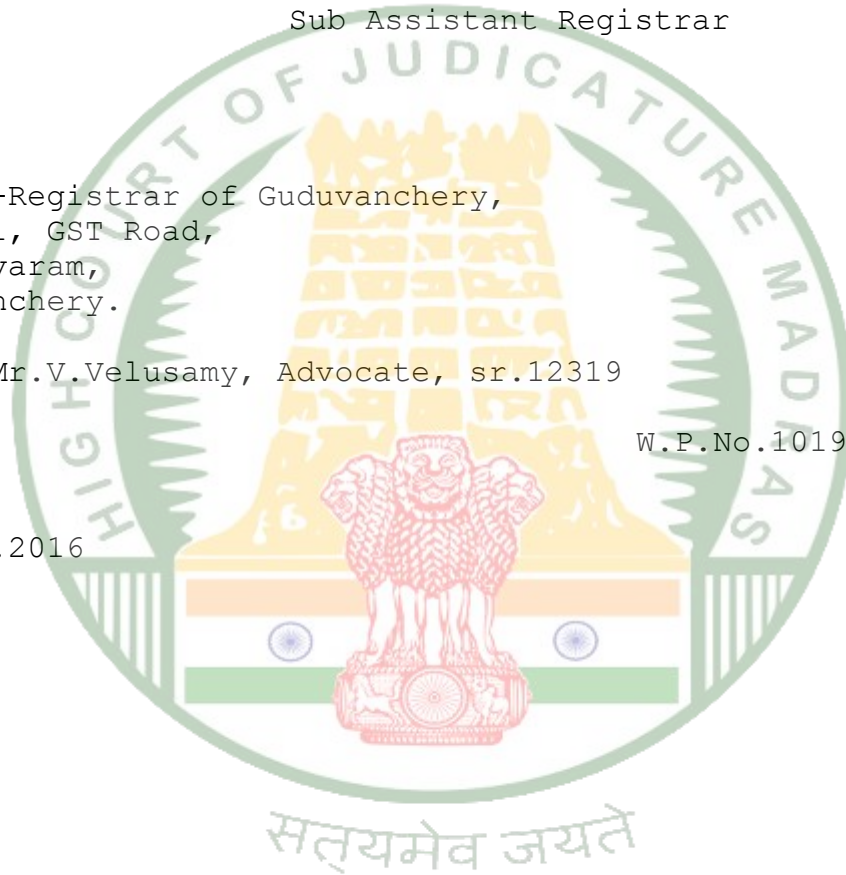
ssv

To
1.The Sub-Registrar of Guduvanchery,
No.22/1, GST Road,
Nandhivaram,
Guduvanchery.

+1 cc to Mr.V.Velusamy, Advocate, sr.12319

W.P.No.10196 of 2014

msm co
kra 11.03.2016



WEB COPY