

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.04.2016

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THE HONOURABLE MR. JUSTICE R.SUBBIAH

Writ Petition Nos.11036 and 11037 of 2016
and
W.M.P.Nos.9604 and 9605 of 2016

M.Thanikaivel Petitioner in WP.11036/2016

M.Prabakar Petitioner in WP.11037/2016

vs.

1.The Inspector General of Registration,
Santhome High Road,
Mylapore, Chennai 600 004.

2.The Sub Registrar,
Suramangalam,
Salem District.

3.Gurunadhi Ammal

4.M.Raghavan Respondents in both WPs

Writ petitions have been filed under Article 226 of the Constitution of India, praying for a Writ of Certiorarified mandamus calling for the records of the second respondent herein with regard to the registration of the unilateral cancellation of the settlement deeds vide cancellation deeds dated 20.06.2014 in Doc.Nos.3562 and 3561/2014 and the consequential registration of the settlement deed dated 20.08.2015 in Document No.4900 of 2015 and quash the same and consequently direct the second respondent to remove the entries in the encumbrance certificate with regard to the said two documents.

For Petitioners : Mrs.Dakshayani Reddy

For R1 & R2 : Mrs.P.Rajalakshmi, GA

For R3 : Mr.M.Easen

For R4 : No appearance

COMMON ORDER

The petitioners have filed the present writ petitions challenging the registration of the unilateral cancellation of their respective settlement deeds vide cancellation deeds dated 20.06.2014 bearing Document Nos.3561 and 3562 of 2014 on the file of the second respondent herein and the consequential registration of the settlement deed executed in favour of the fourth respondent by the third respondent dated 20.08.2015 bearing Document No.4900/2015 on the file of the second respondent herein. In these writ petitions, the petitioners have also sought for a direction to the second respondent to remove the entries of the unilateral cancellation of the settlement deeds from the encumbrance certificate.

2. The case of the petitioner in both the writ petitions is that the property situated in Mitta Survey No.215/2, Re-survey No.Ward C, Block 6, T.S.No.3, Punja Acre 0.63 at Alagapuram Pudur Village, Salem Taluk and District within the Sub Registration District of Suramangalam and Registration District of Salem, belonged to the third respondent herein by way of a registered sale deed bearing Document No.2821 executed in the year 1981. The petitioner in both the writ petitions and the fourth respondent herein are the brothers and the grandsons of the third respondent herein. Due to her old age and out of love and affection, the third respondent had executed two sale deeds dated 27.05.2013 bearing Document Nos.3572/2013 and 3574/2013 in respect of the part of the above said property, in favour of the petitioner in both the writ petitions. Thereafter, the third respondent had handed over the possession of the property along with all the documents as well as no objection letter for change of patta to the petitioners. From the date of settlement deeds, the petitioners have been in possession and enjoyment of their respective property. While so, the petitioners came to know that the third respondent has unilaterally cancelled the said Settlement Deeds executed in their favour by deeds of cancellation dated 20.06.2014 registered as Doc.Nos.3561 and 3562/2014 on the file of the second respondent. Subsequently, the third respondent has also executed a settlement deed in respect of her property in favour of the fourth respondent vide document No.4900 of 2015 dated 20.08.2015. Aggrieved over the same, the petitioners have filed the present writ petitions for the above stated relief.

3. Resisting the averments raised in the writ petitions, the third respondent has filed a separate counter affidavits dated 01.04.2016, interalia stating as follows:

The third respondent has purchased the property in the year 1981. As she is the absolute owner of the property, she has every right to create encumbrance over the same and to settle the property in favour of whomsoever, according to her wish.

Accordingly, she has executed settlement deeds in favour of the petitioners on 27.05.2013 and subsequently due to change of mind, she cancelled the same on 20.06.2014. Thereafter, out of love and affection towards the fourth respondent, who is her eldest grandson, she has executed a settlement deed in his favour on 20.08.2015. Therefore, no order is required to set aside the documents in question.

4. Learned counsel for the petitioners submitted that as per their settlement deeds, the third respondent has not reserved any right for cancellation of the same and that the property covered under the settlement deeds is absolutely transferred to the petitioners herein. Further, the learned counsel submitted that it is a well settled proposition of law that the settlement deed, which has been executed and under which, the absolute right to the property has been transferred to the beneficiary, cannot be cancelled unilaterally and the only remedy available is to approach the civil court. Learned counsel for the petitioner, in support of her contention, relied on the decision of this Court reported in 2014(3) CTC 113 (D.V.Loganathan v. The Sub Registrar, Pallavaram, Chennai and another).

5. Per contra, learned counsel for the third respondent reiterated the statements made in the counter affidavit.

6. Though notice has been served on the fourth respondent, he has not chosen to appear before this Court either in person or through his learned counsel.

7. Heard the learned counsel for the petitioner, learned Government Advocate for the respondents 1 and 2 and the learned counsel appearing for the third respondent and also perused the materials placed before this Court.

8. Considering the submissions made by all the parties and also perusing the materials available on record, I find that after the execution of the settlement deeds by the third respondent in favour of the petitioners, possession was handed over to the petitioners and all the documents pertaining to the property in question along with no objection letter for change of patta in the name of the petitioners have also been handed over to the petitioners. In such circumstances, the third respondent cannot unilaterally cancel the settlement deeds executed by her in favour of the petitioners.

9. In similar circumstances, the learned Single Judge of this court in the authority relied on by the learned counsel for the petitioners in 2014(3) CTC 113 (D.V.Loganathan v. The Sub Registrar, Pallavaram, Chennai and another), has categorically held that unilateral cancellation of registered settlement deed cannot be sustained in law, being against public policy. For better appreciation, the relevant paragraph of the

said decision is extracted hereunder:

"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 my considered view, the said observation is squarely applicable to the facts of the present case.

10. By applying the same herein, the registration of the cancellation deeds vide Document Nos.3561 and 3562/2014 dated 20.06.2014 on the file of the second respondent thereby cancelling the settlement deeds already executed by the third respondent in favour of the petitioners vide Doc.Nos.3572 and 3574 of 2013 dated 27.05.2013, are quashed. Consequently, the registration of the settlement deed dated 20.08.2015 bearing Document No.4900/2015 executed by the third respondent in favour of the fourth respondent is also quashed. Accordingly, both the writ petitions are allowed. However, the third respondent is at liberty to seek remedy before the competent civil court. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

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To

- 1.The Inspector General of Registration,
Santhome High Road,
Mylapore, Chennai 600 004.
- 2.The Sub Registrar,
Suramangalam, Salem District.

+1cc to M/s. Dakshayani Reddy, Advocate, S.R.No.

+1cc to the Government Pleader, S.R.No.23854

AD(CO)

EU(03/05/2016)

W.P.Nos.11036 and 11037 of 2016