

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.02.2016

CORAM

THE HONOURABLE MR.JUSTICE R.SUBBIAH

W.P.No.31183 of 2014
and
M.P.No.1 of 2014

P.Saravanan

... Petitioner

Vs.

1.The Sub-Registrar,
Omalur Sub-Registrar Office,
Omalur Taluk, Salem District.

2.K.Perumal

3.P.Rajupannadi

4.G.Elumalai

... Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus, calling for the records from the first respondent in registered Document No.1959 of 2009 cancellation of settlement deed dated 23.03.2009 and subsequent Document No.5918 of 2014 sale deed dated 30.07.2014 and Document No.7876 of 2014 Sale Agreement dated 13.10.2014 on the file of the first respondent to quash the same and to issue consequential direction to the first respondent to delete the entries that reflects the aforesaid document from the Encumbrance Certificate maintained by the first respondent herein.

For Petitioner : Mr.A.Esakkiappan

For respondents : Mrs.P.Rajalakshni, GA (For R1)
Mr.R.Jayapraksh (For R2 to R4)

ORDER

This writ petition has been filed by the petitioner praying for issuance of a writ of Certiorarified Mandamus, calling for the records of the 1st respondent pertaining to the registered Document No.1959 of 2009, Cancellation of Settlement Deed, dated 23.03.2009, and subsequent Documents No.5918 of 2014, Sale Deed dated 30.07.2014 and No.7876 of 2014 Sale Agreement dated 13.10.2014 on the file of the 1st respondent and to quash the same and for a consequential direction to the 1st respondent to

delete the entries in respect of the said documents, in records maintained by the 1st respondent herein.

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

The petitioner's father namely K.Perumal, 2nd respondent herein, purchased a property situated in Survey No.154/4, 154/4I and 154/5 Omalur Village and Taluk, Salem District in the year 1999 (Document No.3464/1999). Subsequently, the said property was handed over to the petitioner by way of Settlement Deed executed by the 2nd respondent in favour of the petitioner registered as Document No.1621 of 2008 on the file of the 1st respondent on 25.02.2008. From the date of execution of the said settlement deed, the petitioner is the owner of the said property. While so, without any information or without notice to the petitioner, all of a sudden, the said Settlement Deed dated 25.02.2008, Document No.1621 of 2008, was cancelled by the 2nd respondent and the said Cancellation of Settlement Deed was also registered as Document No.1959 of 2009 dated 23.03.2009 on the file of the 1st respondent. The unilateral cancellation of the Settlement Deed without notice to the petitioner by the 1st first respondent, Sub-Registrar, is contrary to the provisions of the Transfer of Property Act. After cancelling the Settlement Deed, the 2nd respondent had executed a sale deed in favour of the 3rd respondent, which was registered as Document No.5918 of 2014, dated 30.07.2014, on the file of the 1st respondent. Thereafter, the 3rd respondent entered a Sale Agreement with the 4th respondent on 13.10.2014 vide registered Document No.7876 of 2014 on the file of the 1st respondent. It is further stated by the petitioner that since some persons visited his property, he applied and obtained the Encumbrance Certificate. From the Encumbrance Certificate, the petitioner came to know about the cancellation of the settlement deed. According to the petitioner, the unilateral cancellation of the settlement deed without notice to the petitioner is contrary to the provisions of the Transfer of Property Act. In this regard, the petitioner has also given a representation dated 25.01.2016 to the 1st respondent requesting to delete the entries in respect of the Cancellation of Settlement Deed and subsequent sale deed and sale agreement. But, the petitioner's representation was not considered by the 1st respondent. Hence, the petitioner has come forward with the present writ petition before this Court.

3. I have carefully heard the learned counsel for the petitioner, the learned Government Advocate appearing for the 1st respondent and the learned counsel appearing for the private respondents and also perused the materials available on record.

4.At the time of argument, the learned counsel for the petitioner relied upon the judgment delivered by this Court in W.P.No.17983 of 2011, dated 01.03.2012, in the case of E.R.Jothieswari Vs. Srojini and others, and submitted that the registration of the cancellation of settlement deed is against the public policy as it was not open to the Sub-Registrar to register cancellation of deed and to say that the party aggrieved by the settlement deed could have approached the Civil Court to get it set aside.

5.However, it is submitted by the learned counsel for the petitioner that the petitioner has given a representation dated 25.01.2016 to the 1st respondent in this regard and if a direction is given to the 1st respondent to consider the said representation of the petitioner, it would suffice.

6.In view of the submission made by the learned counsel for the petitioner, without going into the merits of the claim made by the petitioner, this Court directs the 1st respondent to consider the petitioner's representation dated 25.01.2016 and pass appropriate orders, on merits and in accordance with law, within a period of twelve weeks from the date of receipt of a copy of this order.

With the above direction, the writ petition is disposed of. Consequently, connected Miscellaneous Petition is closed. No costs.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

To

The Sub-Registrar,
Omalur Sub-Registrar Office,
Omalur Taluk, Salem District.

+1cc to Mr.A.Esakkiappan, Advocate, S.R.No.10707
+1cc to Mr.R.Jayaprakash, Advocate, S.R.No.10746
+1cc to the Government Pleader, S.R.No.11023

W.P.No.31183 of 2014
and
M.P.No.1 of 2014

sld(CO)
srg(24/02/2016)