

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.03.2016

CORAM

THE HONOURABLE MR.JUSTICE R.SUBBIAH

W.P.No.12035 of 2015

and

M.P.No.1 of 2015

S.Renuka Petitioner

Vs.

1.The Sub-Registrar,
Ambattur Sub-Registrar's Office,
Ram Nagar, Ambattur,
Chennai-600 053.

2.R.Kannan Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus, to call for the records of documents pertaining to the registration of Doc.No.1545/2015 dated 05.02.2015 on the file of the 1st respondent in respect of the property in Door No.1/1, Plot No.1, Abiramipuram Abiramipuram Main Road, Pudur, Ambattur, Chennai-600 053, comprised in S.No.153/1 (Old No.14), S.No.153/1B in Old No.52, New No.21 Oragadam Village, ad-measuring 2720 square feet and super structure, thereby quash the same forthwith and to direct the 1st respondent to delete the entry of the said registration of revocation of settlement deed.

For Petitioner : Mr.V.Manohar
For Respondents : Mr.Durai Solaimalai,
AGP (For R1)
Mr.S.Xavier Felix (For R2)

ORDER

This writ petition has been filed by the petitioner praying for issuance of a Writ of Certiorarified Mandamus, calling for the records pertaining to the registration of revocation of settlement deed in Doc.No.1545/2015 dated 15.02.2015 on the file of the 1st respondent, in respect of the property in Door No.1/1, Plot No.1, Abiramipuram Abiramipuram

Main Road, Pudur, Ambattur, Chennai-600 053, comprised in S.No.153/1 (Old No.14), S.No.153/1B in Old No.52, New No.21 Oragadam Village, measuring 2720 square feet and super structure, and to quash the same and consequently, to direct the 1st respondent to delete the entry of the said registration of revocation of settlement deed.

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

2-1.The 2nd respondent is the husband of the petitioner herein and they got a son by name Ranjithkumar, now aged 19 years. The 2nd respondent had purchased a property in Old No.52, New No.21, Oragadam Village, Pudur, Abiramipuram, Abiramipuram Main Road, Door No.1/1 in S No.153/1 (Old No.14), S.No.153/1B, Plot No.1, measuring 2720 square feet, from one Thulukanam and thereafter, he has building a house in that property. Subsequently, the 2nd respondent settled the said property in favour of his wife viz., petitioner herein, under the Settlement Deed dated 02.08.2010 registered as Document No.6917/2010 on the file of the 1st respondent.

2-2.While the marriage between the petitioner and the 2nd respondent is in subsistence, the 2nd respondent developed illegal intimacy with another lady and started to live with her, which necessitated the petitioner herein to get separated from the 2nd respondent. Consequently, on mutual discussion, the petitioner got divorce from the 2nd respondent, by an order dated 22.10.2013 in H.M.O.P.No.182 of 2013 passed by the learned Sub-Ordinate Court at Poonamallee.

2-3.It is further stated by the petitioner that after the divorce, the petitioner is living in the said premises, which was settled in her favour by the 2nd respondent, along with her son. The Settlement Deed dated 02.08.2010 executed by the 2nd respondent was acted upon in all aspects. The tenants were inducted in the premises by the petitioner and she is collecting rent for their use. In fact, the property records pertaining to tax and electricity are all transferred in the name of the petitioner.

2-4.While so, in order to mobilize her financial resource on the subject property, the petitioner had applied for Encumbrance Certificate. From the Encumbrance Certificate, the petitioner came to know that the Settlement Deed dated 02.08.2010 executed by the 2nd respondent in favour of the petitioner has been revoked by him unilaterally vide Revocation of Settlement Deed dated 05.02.2015 which has been registered as Doc.No.1545/2015 on the file of the 1st respondent. The petitioner was not given any notice about the revocation of settlement deed by the respondents before registering the said document. Hence, petitioner has come forward with the present writ petition for the relief as

stated supra.

3.The 1st respondent has filed a counter, opposing the prayer of the petitioner.

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

5.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.

6.In the instant case, it is seen that the unilateral cancellation deed was registered without notice to the petitioner. Further, it is stated that pursuant to the settlement deed, the property records pertaining to tax and electricity in respect of the subject property are all transferred in the name of the petitioner and the petitioner is in possession and enjoyment of the subject property. In this regard, this Court is of 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 therein 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 (A. A. Chinnaiyan 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.

7.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 petitioner/settlee, the settlor/2nd 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 settlee by a competent Court, the Sub-Registrar is not competent to register the unilateral cancellation of settlement deed.

8.In view of the above, the impugned revocation of settlement deed dated 05.02.2015 is ordered to be quashed.

This writ petition is accordingly allowed as prayed for. Consequently, connected Miscellaneous Petition is closed. No costs.

[ssv]

Sd/-
Asst.Registrar

/true copy/
Sub Asst. Registrar

To

1.The Sub-Registrar,
Ambattur Sub-Registrar's Office,
Ram Nagar, Ambattur,
Chennai-600 053.

+ 1 cc to Mr.S.Xavier Felix, Advocate Sr 17828
+ 1 cc to The Govt.Pleader, Sr 17397
+ 2 ccs to Mr.V.Manohar, Advocate Sr 17243

KR/1/4/16

W.P.No.12035 of 2015
and
M.P.No.1 of 2015