

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 31.03.2016

CORAM

THE HONOURABLE MR.JUSTICE R.SUBBIAH

W.P.No.11565 of 2014
and
M.P.No.1 of 2014

A.Chinnachamy

... Petitioner

Vs.

1. The District Registrar,
Department of Registration,
Mannarpuram,
Tiruchirappalli.
2. The District Deputy Registrar,
Department of Registration,
Ariyalur, Ariyalur District.
3. The Sub-Registrar,
O/o.the Sub-Registrar,
Department of Registration,
Chettikulam,
Perambalur District.
4. A.Chellammal.
W/o.late Mr.Muthusamy Udaiyar,
2/1, Mettutheru,
Naranamangalam Village,
Aalanthur Taluk,
Perambalur District.

... 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 relating to the impugned registration of Cancellation Deed Doc.No.981/2014 dated 10.03.2014 on the file fo the 3rd respondent and to quash the same and consequently, to direct the 3rd respondent to delete the entries relating to the above said document from the 'A' Register maintained by the 3rd respondent.

For Petitioner : Mr.D.Shanmugaraja Sethupathi

For respondents : Mr.P.Sanjay Gandhi,
Additional Government Pleader

ORDER

This writ petition has been filed by the petitioner praying for issuance of a Writ of Certiorari, to call for the records pertaining to the impugned registration of Cancellation Deed vide Doc.No.981/2014 dated 10.03.2014 on the file of the 3rd respondent and to quash the same and consequently, to direct the 3rd respondent to delete the entries relating to the said document from the 'A' Register maintained by the 3rd respondent.

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

2-1.The petitioner is an agricultural coolie and the 4th respondent is the petitioner's elder sister. The 4th respondent had purchased agricultural punja lands in Survey No.309/14A measuring to an extent of 0.20 cents and Survey No.309/1 measuring to an extent of 4.32 acres, in the year 1979, by registering the Sale Deed. Subsequently, she had also obtained patta in her name vide Patta No.309 in respect of the said lands. After purchasing the said lands, the 4th respondent had been in possession and enjoyment of the same. Since there is no child for the 4th respondent and her husband Mr.Late Muthusamy Udaiyar, she had executed a Will dated 29.10.2013 in favour of the petitioner, bequeathing the said punja lands, out of love and affection. Subsequently, the 4th respondent had cancelled the said Will by executing a Cancellation Deed dated 03.12.2013, with an intention to execute a Settlement Deed in favour of the petitioner, as she was intending to handover the possession of the lands instantly. She had specifically stated in the Cancellation Deed that since the Will would come into force only after her demise, she has cancelled the Will. On the very same day ie., on 03.12.2013, the 4th respondent has voluntarily executed a Settlement Deed (Gift Deed) dated 03.12.2013 in favour of the petitioner in respect of the said lands and she had handed over the possession of the property to the petitioner. She also mentioned in the Settlement Deed that she shall not cancel the Settlement Deed and as such the Settlement Deed is irrevocable. Pursuant to the execution of the said Settlement Deed, the petitioner has made application to the concerned Tahsildar to change the patta in favour of the petitioner and accordingly, the patta was also changed in the petitioner's name. Further, necessary mutation was also made in the revenue records in favour of the petitioner in respect of the subject property. The petitioner has been doing agricultural operation in the said lands.

2-2.While so, the petitioner now came to know that the Settlement Deed dated 03.12.2013 was cancelled by the 4th

respondent through a Cancellation Deed dated 10.03.2014, and the same was registered by the 3rd respondent vide Doc.No.981/2014. According to the petitioner, since the 4th respondent is not legally entitled to execute any document in respect of the property, the 3rd respondent ought not to have registered the same. Hence, aggrieved over the Cancellation of the Settlement Deed, the petitioner has come forward with the present writ petition.

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 4th respondent, the crux of the issue involved in this writ petition is whether the 3rd 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) this Court 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 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/4th 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 impugned deed of cancellation is ordered to be quashed and the 3rd respondent is directed to delete the entries in 'A' Registrar, in respect of the said document. This writ petition is accordingly allowed as prayed for. Consequently, connected Miscellaneous Petition is closed. No costs.

Sd/-
Assistant Registrar (CS V)

//True Copy//

Sub Assistant Registrar

ssv

To

1. The District Registrar,
Department of Registration,
Mannarkuram, Tiruchirappalli.

2. The District Deputy Registrar,
Department of Registration,
Ariyalur, Ariyalur District.

3. The Sub-Registrar,
O/o.the Sub-Registrar,
Department of Registration,
Chettikulam,
Perambalur District.

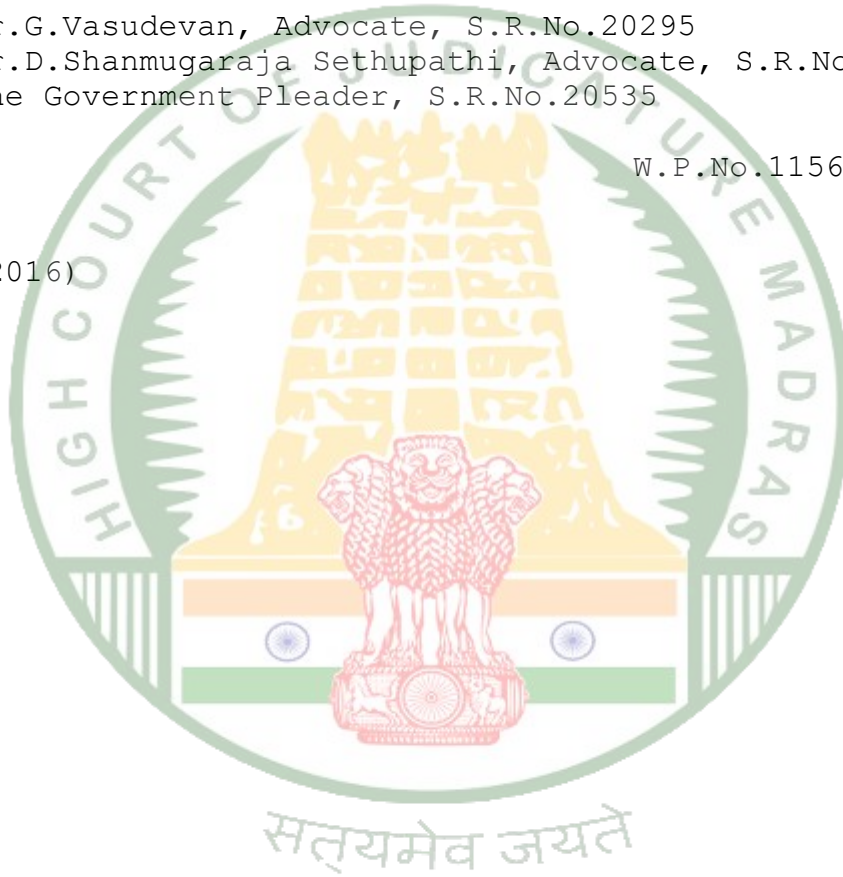
+lcc to Mr.G.Vasudevan, Advocate, S.R.No.20295

+lcc to Mr.D.Shanmugaraja Sethupathi, Advocate, S.R.No.20206

+lcc to the Government Pleader, S.R.No.20535

W.P.No.11565 of 2014

SVI (CO)
CA(25/04/2016)



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