

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.03.2016

CORAM

THE HONOURABLE MR.JUSTICE R.SUBBIAH

W.P.No.22386 of 2015

and

M.P.Nos.1 & 2 of 2015

- 1.P.Dineshkumar
- 2.P.Lakshmi Priya
- 3.P.Rekha
- 4.P.Porselvam
- 5.Minor D.Mohit Kumar
(rep.by his father P.Dineshkumar)
- 6.Minor D.Rohitkumar
(rep.by his father P.Dineshkumar)
- 7.Minor P.Prajan
(rep. by his mother P.Lakshmi Priya)
- 8.Minor K.Nikhil
(rep. by her mother P.Rekha)
- 9.Minor P.Kishant
(rep by his father P.Porselvam)
- 10.Minor P.Kishore
(rep by his father P.Porselvam) ... Petitioners

Vs.

1.The Inspector General of Registration,
Santhome High Road,
Chennai-600 028.

2.The Sub-Registrar,
Sub-Registrar's Office,
Madhavaram,
Chennai-600 051.

3.P.Pandian ... 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 from the 2nd respondent culminating in the cancellation of the Settlement Deed dated 19.11.2014 registered as Document No.6708 of 2014 in the office of Sub-Registrar, Madhavaram and to quash the same as illegal and consequently, to direct the 2nd respondent to

cancel the entries in the encumbrance certificate in the office of Sub-Registrar, Madhavaram.

For Petitioners : Mr.K.R.A.Muthukirushnan
For respondents : Mr.V.Jaya Prakash Narayanan,
Spl.GP
(For R1 & R2)
Mr.R.Ilanchizhian (For R3)

ORDER

This writ petition has been filed by the petitioner praying for issuance of a Writ of Certiorarified Mandamus, to call for the records from the 2nd respondent culminating in the cancellation of the Settlement Deed dated 19.11.2014 registered as Document No.6708 of 2014 in the office of Sub-Registrar, Madhavaram and to quash the same as illegal and consequently, to direct the 2nd respondent to cancel the entries in the encumbrance certificate in the office of Sub-Registrar, Madhavaram.

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

2-1.The 3rd respondent herein is the father of the petitioners 1 to 4 and grandfather of the petitioners 5 to 10. The third respondent executed a deed of settlement settling nine items of properties in favour of the petitioners 1 to 4. The said settlement deed was duly registered in the office of the Joint Sub-Registrar, Sembium vide Doc.No.1092 of 2008 on 15.02.2008. As per the recitals in the said settlement deed, the properties have been settled in favour of the petitioners 1 to 4 for life and after their life time, the petitioners 5 to 10 will have full power of alienation in respect of the properties mentioned in the settlement deed. Pursuant to the settlement deed, the third respondent has also handed over the possession of the properties to the petitioners.

2-2.While so, on 19.11.2014 without the consent of the petitioners, the 3rd respondent has unilaterally cancelled the settlement deed executed on 15.02.2008. The said deed of cancellation of settlement deed was registered in the office of the 2nd respondent on 19.11.2014 vide Doc.No.6708 of 2014. The petitioners came to know about the cancellation of the settlement deed only during the last week of June, 2015. Immediately, they have applied for the encumbrance certificate and found that encumbrance was made in respect of the properties which were settled in favour of the petitioners. Hence, the petitioners have come forward with the present writ petition before this Court for the relief as states 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 3rd respondent, the crux of the issue involved in this writ petition is whether the 2nd 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 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 petitioners/settlees, the settlor/3rd 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 settlees 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.

This writ petition is accordingly allowed. Consequently, connected Miscellaneous Petitions are closed. No costs.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

[ssv]

To

1.The Inspector General of Registration,
Santhome High Road,
Chennai-600 028.

2.The Sub-Registrar,
Sub-Registrar's Office,
Madhavaram,
Chennai-600 051.

+1cc to Mr.K.R.A.Muthukrishnan, Advocate, S.R.No.13643

SKV(CO)
EU(28/03/2016)

W.P.No.22386 of 2015
and
M.P.Nos.1 & 2 of 2015