

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.02.2016

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THE HONOURABLE MR. JUSTICE R.SUBBIAH

Writ Petition No.26037 of 2015
and
M.P.No.1 of 2015

V.B.Sriram

... Petitioner

Vs.

1. The Inspector General of Registration,
Santhome, Chennai 600 004.
2. The Sub Registrar,
No.50, Sundaravaradharaja Perumal Sannadhi Street,
Uthiramerur - 603 406.
3. V.K.Badri Narayanan

... Respondents

Writ petition has been filed under Article 226 of the Constitution of India, praying for a Writ of Certiorarified mandamus calling for the records pertaining to the unilaterally executed cancellation deed in Doc.No.3622/2015 dated 15.07.2015 on the file of the second respondent and quash the same and consequently directing the respondents 1 and 2 to remove the unilateral cancellation of Settlement Deed executed by the third respondent in Doc.No.3622/2015 from the encumbrance certificate of the land and building at Door No.16, Rayar street, Uthiramerur Village, Uthiramerur Town and Taluk, Kancheepuram District, within the Registration District of Chengalpet and Sub Registration District of Uthiramerur.

For Petitioner : M/s.M.Christella

For Respondents : Mr.K.H.Ravikumar (R3)

ORDER

The petitioner has filed the present writ petition challenging the cancellation of settlement deed, registered by the second respondent vide Doc.No.3622/2015 dated 15.07.2015, by which, the earlier settlement deed executed by the third respondent in favour of the petitioner vide Doc.No.2487 of 2009 dated 18.06.2009, was unilaterally cancelled. In this writ petition, the petitioner has also sought for a direction to

respondents 1 and 2 to remove the said unilateral cancellation of the settlement deed from the encumbrance certificate pertaining to the land and building at Door No.16, Rayar street, Uthiramerur Village, Uthiramerur Town and Taluk, Kancheepuram District, within the Registration District of Chengalpet and Sub Registration District of Uthiramerur.

2. It is the case of the petitioner that he is the absolute owner of the land and building at Door No.16, Rayar Street, Uthiramerur Village, Uthiramerur Town and Taluk, Kanchipuram District comprised in Old Natham S.No.878-286, New Natham Survey No.1559-26 within the Registration District of Chengalpet and Sub Registration District of Uthiramerur measuring an extent of 7543 sq.ft. (i.e., 701 sq. meter as per revenue records) by way of a Registered Deed of Settlement dated 18.06.2009 bearing Doc.No.2487 of 2009 on the file of the second respondent. The said settlement deed was executed by his father in favour of the petitioner. Thereafter, the petitioner was in possession and enjoyment of the property and patta has been transferred and taxes have also been assessed in the name of the petitioner. While so, the petitioner came to know that the third respondent has unilaterally cancelled the Settlement Deed executed in his favour by a deed of cancellation dated 15.07.2015 registered as Doc.No.3622/2015 on the file of the second respondent. Aggrieved over the same, the petitioner has filed the present writ petition for the above stated relief.

3. Resisting the averments raised in the writ petition, the third respondent filed a counter affidavit dated 4.2.2016, wherein, it has been stated as follows:

(i) The petitioner has filed a suit in O.S.No.96 of 2015 before the District Munsif, Uthiramerur for the same relief and has also filed another suit in O.S.No.44 of 2015 before the District Court, Chengalpet for partition of the properties. Without disclosing the said material facts, the petitioner has come up with the present writ petition.

(ii) The settlement deed dated 18.6.2009 in Doc.No.2487 of 2009 executed by the third respondent was a sham and nominal document for the purpose of availing bank loan to meet out the family expenditures. However, the petitioner, taking advantage of the same, was attempting to grab the entire property, which compelled the third respondent to cancel the said settlement deed on 15.07.2015. The settlement deed was not acted upon and the third respondent continues to be in possession of the said property till date.

(iii) The third respondent never intended to give the entire suit property absolutely to the petitioner. Further, the petitioner refused to obey the conditions agreed by him at the time of execution of the said settlement deed.

By stating so, the third respondent prayed for dismissal of this writ petition.

4. Learned counsel for the petitioner submitted that as per clause (1) of the settlement deed, the petitioner is to hold the property absolutely and forever with full powers of alienation without any let or hindrance, free from encumbrance and claims whatsoever. Accordingly, the petitioner was put in possession of the property and patta has been transferred and taxes have also been assessed in favour of the petitioner. When that being the position, the third respondent cannot have any right over the said property. It is further submitted that since the settlement deed was not conditional one and no power of revocation was retained by the third respondent, the third respondent has no right to unilaterally cancel it, even without notice to the petitioner. Learned counsel for the petitioner, in support of his 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. Heard the learned counsel for the petitioner and the learned counsel appearing for the third respondent and also perused the materials placed before this Court.

7. Considering the submissions made on either side and also perusing the materials available on record, I find that after the execution of the settlement deed by the third respondent in favour of the petitioner, possession was handed over to the petitioner and necessary modification has also been carried out in the revenue records pertaining to the subject matter of the property. In such circumstances, the third respondent cannot cancel the settlement deed executed by him.

8. In a similar circumstances, the learned Single Judge of this court in the authority relied on by the learned counsel for the petitioner 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.

9. By applying the same herein, the registration of the cancellation deed vide Document No.3622/2015 dated 15.07.2015 on the file of the second respondent thereby cancelling the settlement deed already executed by the third respondent in favour of the petitioner vide Doc.No.2487 of 2009 dated 18.6.2009, is quashed. Accordingly, the writ petition is allowed. However, the third respondent is at liberty to seek remedy before the competent civil court. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

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To

1. The Inspector General of Registration,
Santhome,
Chennai 600 004.
2. The Sub Registrar,
No.50, Sundaravaradharaja Perumal Sannadhi Street,
Uthiramerur - 603 406.

+1cc to M/s.M.Christella, Advocate, S.R.No.8293
+1cc to Mr.K.H.Ravikumar, Advocate, S.R.No.8204

W.P.No.26037 of 2015

PPA (CO)
CA(14/03/2016)