

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.04.2016

CORAM

THE HONOURABLE MR.JUSTICE R.SUBBIAH

W.P.No.17845 of 2014

& M.P.No.1 of 2014

V.Anbalagan

.. Petitioner

Vs.

1. The Sub-Registrar,
Office of the Sub-Registrar,
Perianaicken Palayam,
Coimbatore District.

2. D.Sivagami

.. Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Mandamus to direct the first respondent to declare that the deed of cancellation of settlement executed by the second respondent, dated 31.01.2013 registered as Document No.1163 of 2013 on the file of the first respondent, by cancelling the settlement deed, dated 06.03.2003 executed by the second respondent in favour of the petitioner, registered as Document No.1320 of 2003 on the file of the first respondent, is null and void and not binding upon the petitioner's possession over the property bearing site No.73, 'Soorya Complex', Ambiga Nagar, Thudialur Village, Perianayaken Palayam, Sub-Registration District, Coimbatore Registration District.

For Petitioner : Mr.B.Vijayakumar

For respondents : Mr.V.Jayaprakash Narayanan,
Spl.G.P. for R-1
Mr.D.Selvaraju

ORDER

This writ petition has been filed by the petitioner praying for issuance of a Writ of Mandamus to direct the first respondent to declare that the deed of cancellation of settlement executed by the second respondent, dated 31.01.2013 registered as Document No.1163 of 2013 on the file of the first respondent, by cancelling the settlement deed, dated 06.03.2003 executed by the second respondent in favour of the petitioner, registered as Document No.1320 of 2003 on the file of the first

respondent, is null and void and not binding upon the petitioner's possession over the property bearing site No.73, 'Soorya Complex', Ambiga Nagar, Thudialur Village, Perianayaken Palayam, Sub-Registration District, Coimbatore Registration District.

2. In the affidavit filed in support of the Writ Petition, it has been averred by the petitioner that the wife of the petitioner, who is the second respondent herein, executed a registered settlement deed, dated 06.03.2003, vide Document No.1320 of 2003 on the file of the first respondent, settling the above said property of an extent of 1350 Sq.Ft. The settlement was absolute and unconditional as the settlor (second respondent), out of love and affection towards the husband (writ petitioner), executed the said settlement deed. The petitioner got the plan approved with the authority concerned and constructed a complex by name "Soorya Complex", by obtaining term loan of a sum of Rs.10,00,000/- from the Union Bank of India in April 2003 and constructed ground floor and obtained further plan approval in 2004 and constructed first and second floors by obtaining another bank loan in the same bank as home loan for Rs.9,47,000/- . The construction of the building is totally an extent of 12,000 Sq.Ft. The petitioner has also effected mutation of Revenue Records and the property tax assessment also stands in his name and he has been regularly paying property tax, water tax and also paying for the electricity consumption bills. The petitioner has leased out the property to various tenants and he is paying income tax in respect of the rental income derived from the building. The first term loan has been fully paid and in respect of the second home loan, Rs.7 lakhs has to be paid, for which, the second respondent stood as guarantor. All the original documents are deposited in the Bank.

3. It is the further case of the petitioner that almost, after ten years, the petitioner came to know that his wife had cancelled the said settlement deed and she showed the Encumbrance Certificate indicating the said cancellation. The second respondent presented the deed of cancellation of settlement, dated 31.01.2013 to the first respondent, who registered the same, vide Document No.1163 of 2013. It is further stated by the petitioner that the settlement deed being unconditional and irrevocable as envisaged in the settlement deed itself, confers absolute title over the property to the settlee and the first respondent acted without jurisdiction, as the settlement had effected almost ten years back.

4. It is further stated by the petitioner that the second respondent-wife filed a petition for divorce against the petitioner in H.M.O.P.No.586 of 2014 before the Family Court, Coimbatore, in which, the petitioner received notice. The second

respondent has also filed a petition under Domestic Violence Act against the petitioner and prayed for protection order in her favour in respect of entering the place frequented by the petitioner. Taking advantage of the above cases and the cancellation deed of the settlement deed executed by her, she is causing disturbance of the peaceful possession and enjoyment of property by the petitioner and his tenants. Hence, the petitioner has filed the present writ petition for the relief stated supra.

5. In the counter affidavit filed by the second respondent, it is stated that she earlier settled the above said property in favour of her husband, the petitioner herein. The said property was given to her by her father in 1997 and out of love and affection, she effected the gift-settlement deed. Since her husband lost his belongings in 2002 in his business (photo-studio) due to theft, he was living with her at her house and was not earning. Though she settled the above said property in favour of her husband-writ petitioner, she retained the possession with her. In the years 2003 and 2004, she contributed for the additional construction and further construction of the first and second floors of the building in the property, by parting away with her jewels, savings and selling her landed properties. Her mother also contributed sale of her jewels and land. The alleged loan amount has been lavishly spent by the petitioner and it is wasted. It is further stated by her that out of love and affection, she made settlement in favour of her husband, through whom, there is one son.

6. It is further stated in the counter that as she fell sick and was struggling for life for about two years during 2002-2003 in Vellore CMC Hospital, and in order to make a provision for brining up their son, she settled the property in favour of the writ petitioner. Taking advantage of her immobility and health condition, the petitioner started borrowing loans and spent the same lavishly without taking care of the property and their son. Because of the above attitude of the petitioner, she intended to give the property to her son and hence, she registered a deed of cancellation of settlement, dated 31.01.2013. In order to avoid the legal complication, she has also filed a suit in O.S.No.574 of 2014 before the Sub-Court, Coimbatore seeking for a decree to declare that the said settlement deed effected in favour of the petitioner, is null and void. Since the very marriage between her and the petitioner has broken because of the cruel act of the petitioner and as he does not shower love and affection towards her and son, the marriage between her and the petitioner was dissolved by a decree of divorce granted in H.M.O.P.No.586 of 2014, dated 30.11.2015 on the file of the Family Court, Coimbatore. Therefore, the petitioner is not entitled to claim any right or title over the said property. Since the issue is sub-judice before the Sub-Court, the Writ Petition is liable to

be dismissed.

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

8. Though very many contentions have been raised with regard to the validity of the settlement deed executed by the second respondent, the crux of the issue involved in this Writ Petition is as to whether the first 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 they are not necessary to decide the issue involved in this Writ Petition.

9. In the instant case, it is seen that the unilateral cancellation deed was registered without even issuing 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 favour of the petitioner. In this regard, this Court is the view that it is appropriate to look into the following decisions:-

(a) 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.

(b) Further, in the judgment reported in 2014 (3) CTC 113 (D.V.Loganathan Vs. The Sub-Registrar 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.

(c) 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.

10. The dictum laid down in the above judgments, is squarely applicable to the facts of this case. Though the learned counsel for the second respondent 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 as to 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 second respondent herein/settlor 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.

11. It is stated by the learned counsel for the second respondent that the second respondent has already filed a suit before the Civil Court, in O.S.No.574 of 2014, which is pending before the Sub-Court, Coimbatore. The only apprehension expressed by the learned counsel for the petitioner is that if the settlement deed, dated 06.03.2003, executed earlier by the second respondent, itself is set aside by the Civil Court in the said suit, it would affect the right of the petitioner in respect of the property in question. Considering the above submissions made on both sides, it is hereby directed that the trial Court shall dispose of the said suit, on merits and in accordance with law, based on the oral and documentary evidence, uninfluenced by any of the observations made in this order. It is made clear that this order is passed only on the ground that unilateral cancellation of a settlement deed, is not legally sustainable, particularly when the suit is pending before Civil Court.

12. In view of what is stated above, the impugned deed of cancellation of the settlement deed, dated 31.01.2013, executed by the second respondent in Document No.1163 of 2013 on the file of the first respondent, is set aside. The Writ Petition is accordingly allowed, with the above observations and directions. No costs. The Miscellaneous Petition is closed.

-s/d-

Assistant Registrar (CS-IV)

True Copy

Sub-Assistant Registrar

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Copy to

1. The Subordinate Judge, Coimbatore.

2. The Sub-Registrar,
Office of the Sub-Registrar,
Perianaicken Palayam,
Coimbatore District.

+1 cc to M/s.B.Vijayakumar Advocate sr.22638

+ 1 cc to Mr.D.Selvaraju, Advocate Sr 22769 (13/6/16)

W.P.No.17845 of 2014

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