

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.04.2016

CORAM

THE HONOURABLE MR.JUSTICE R.SUBBIAH

W.P.No.30473 of 2015

and

M.P.No.1 of 2015

Nagajothi ... Petitioner

Vs.

1.The Joint-I Sub-Registrar,
Saidapet, Chennai.

2.G.Velusamy Nadar

3.V.Mariammal ... Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorari, to call for the records relating to the impugned deed of unilateral revocation of settlement deed in document No.1448/2013 on the file of the Joint I Sub-Registrar, Saidapet, 1st respondent, dated 15.02.2013 and to quash the same.

For Petitioner : Mr.M.A.R.Pragash

For respondents : Mr.V.Jayaprakash Narayanan, Spl. GP
(For R1)

Mr.M.Ravikumar (For R2 & R3)

ORDER

This writ petition has been filed by the petitioner praying to quash the Deed of Cancellation of Settlement registered as Doc.No.1448/2013 dated 15.02.2013 on the file of the 1st respondent.

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

2-1.The marriage between the petitioner and the son of the respondents 2 & 3 viz., Ashok Kumar took place on 27.10.2006 and out of the said marriage, a female baby by name Nithiksha was born on 18.09.2007. The 2nd respondent, who is the father-in-law of the petitioner, purchased a property in S.No.379/2C (New S.No.379/2C/2) to an extent of 6 cents (2688 sq.ft) from

one K.Rajamaniammal W/o.N.K.K.Krishnasamy by a registered Sale Deed dated 21.02.1982. Similarly, the 3rd respondent, who is the mother-in-law of the petitioner, purchased a property in S.No.379/2c to an extent of 7 cents (3403 sq.ft) of land from one M.Munirathnam W/o.K.Subbiah Chettiar by registered Sale Deed on 18.11.1989. After purchasing the said properties, the respondents 2 & 3 and their son Ashok Kumar were in absolute possession and enjoyment of the same. On 18.07.2011, the respondents 2 & 3 executed an Deed of Settlement in favour of their son Ashok Kumar in respect of the said properties. The said Settlement Deed dated 18.07.2011 is an absolute and irrevocable one. Pursuant to the execution of the Settlement Deed, the petitioner's husband applied and got the patta transferred in his name in respect of the properties; the petitioner and her husband were in possession of the said properties.

2-2.While so, on 07.01.2013, the petitioner's husband Ashok Kumar died due to cancer. After the demise of her husband, the petitioner and her child are in the possession of the said properties. While so, without the petitioner's knowledge and consent, the respondents 2 & 3 had executed a Deed of Revocation of Settlement on 15.02.2013, which has been registered as Doc.No.1448 of 2013 on the file of the 1st respondent; thereby the respondents 2 & 3 unilaterally cancelled the settlement deed. Aggrieved over the same, the petitioner has come forward with the present writ petition before this Court.

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 respondents 2 & 3, 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.

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's husband. 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's husband/settlee, the settlors/respondents 2 & 3

herein had lost their right in the property. Unless the said right is restored by setting aside the settlement deed executed by the settlors 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 Revocation of Settlement dated 15.02.2013 is ordered to be quashed.

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

s/d-

Assistant Registrar (CO)

True Copy

Sub-Assistant Registrar

ssv

To,

1. The Joint Sub-Registrar I,
Saidapet, Chennai.

+2 ccs to Mr. Ravikumar Advocate sr. 25172

+1 cc to Government pleader High Court Madras
sr 25047

W.P.No. 30473 of 2015
and

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