

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.04.2016

CORAM

THE HONOURABLE MR.JUSTICE R.SUBBIAH

W.P.No.24906 of 2010  
and  
M.P.No.1 of 2010

1.Srivalli  
2.S.Vikram

... Petitioners

Vs.

1.G.Venkatesh

2.The Sub-Registrar,  
Office of the Sub-Registrar,  
Ganapathy, Coimbatore.

... 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 entire records in connection with the Cancellation Deed dated 27.06.2007 executed by the 1<sup>st</sup> respondent and registered by the 2<sup>nd</sup> respondent registered as Document No.3688 of 2007 and to quash the same and consequently, to restrain the 1<sup>st</sup> respondent from in any manner dealing with the share of the petitioner's property at S.F.No.491/1, Vilankurichi Village, Ganapathy Sub-Registration District, Coimbatore Taluk.

For Petitioners : Mr.M.Sriram

For respondents : Mr.K.S.Narayanan (For R1)

Mr.V.Jayaprakash Narayanan, Spl GP  
(For R2)

ORDER

This writ petition has been filed by the petitioner, praying for issuance of a Writ of Certiorarified Mandamus, to call for the entire records pertaining to the Cancellation Deed dated 27.06.2007 executed by the 1<sup>st</sup> respondent, which was registered by the 2<sup>nd</sup> respondent as Document No.3688 of 2007, and to quash the same and consequently, to restrain the 1<sup>st</sup> respondent from in any manner dealing with the share of the petitioners' property at S.F.No.491/1, Villankurichi Village, Ganapathy Sub-Registration District, Coimbatore Taluk.

petition, it has been averred by the petitioner as follows:-

2-1.The 1<sup>st</sup> petitioner is the wife and 2<sup>nd</sup> petitioner is the son of one G.Sounderraj respectively. The said Sounderraj, along with his father Gobal and two brothers viz., one G.Venkatesh, (1<sup>st</sup> respondent herein) and one Mr.G.Ramkumar, constituting a joint Hindu family, had possessed the properties in Vilankurichi Village, Ganapathy Sub-Registration District, Coimbatore Taluk. There was a partition effected on 13.05.1979 among the co-parcenars and each were given properties and so far as S.F.No.491/1 is concerned, the entire extent of 1 acre 12 ½ cents was allotted to all of them equally. Though the other properties were allotted in the partition by metes and bounds, so far as S.F.No.491/1 is concerned, there was no division and each one was enjoying the property without actual and physical division.

2-2.While so, on 23.05.1998, the 2<sup>nd</sup> petitioner's grandfather died. Therefore, his share would be divided by the legal heirs viz., the 2<sup>nd</sup> petitioner's father, his two paternal uncles and grandmother Mrs.G.Bagyalakshmi. Therefore, with a view to give quietus and confer absolute right in respect of the said properties, the 2<sup>nd</sup> petitioner's father along with his two brothers and mother thought it fit to have a family arrangement. It was mutually agreed by them that the sons of Gopal would execute a Release Deed in respect of the shares of Gopal in favour of Mrs.G.Bagyalakshmi, their mother. So far as their individual 1/4<sup>th</sup> share is concerned, that was also to be gifted to their mother, so that she could enjoy the same. Accordingly, the 2<sup>nd</sup> petitioner's father and his two brothers jointly executed a registered Release Deed dated 17.02.2006 registered as Document No.1002 of 2006 on the file of the Sub-Registrar, Ganapathy to and in favour of grandmother Bagyalakshmi. So far as their independent 1/4<sup>th</sup> share is concerned, the 2<sup>nd</sup> petitioner's father under registered Gift/Settlement Deed dated 17.02.2006 registered as Doc.No.1003/2006 on the file of the Sub-Registrar, Ganapathy settled his share in favour of Bagyalakshmi. The 1<sup>st</sup> respondent executed a deed on the same day which was registered as Doc.No.1004 of 2006 and the another son Ramkumar also executed a Deed registered as Doc.No.1005 of 2006 on the same day, in favour of their mother Bagyalashmi. Thus, the 2<sup>nd</sup> petitioner's grandmother Bagyalakshmi became the absolute owner of the entire extent of 1 acre 12 ½ cents in S.F.No.491/1. The Gift/Settlement Deeds executed by the sons in favour of their mother is unconditional, with full rights to enjoy. In the very Deeds, a solemn undertaking was given to the effect that the same is irrevocable and no right to revoke has been reserved. Thus, the 2<sup>nd</sup> petitioner's grandmother Bagyalakshmi had become the owner of the entire extent of property.

2-3.The 2<sup>nd</sup> petitioner's grandmother Bagyalakshmi provided adequate funds for the 1<sup>st</sup> respondent as he wanted to purchase a property, on the specific understanding that he would not claim any share in the property owned by his mother Bagyalakshmi. Therefore, having become the absolute owner with full rights to enjoy alienation etc., the 2<sup>nd</sup> petitioner's grandmother settled the property in favour of the 2<sup>nd</sup> petitioner's father Sounderraj and his brother Ramkumar, by metes and bounds by a Deed of Settlement dated 20.02.2006 registered as Doc.No.1033 of 2006 on the file of the Sub-Registrar, Ganapathy. The 2<sup>nd</sup> petitioner's father Sounderraj took possession of the property allotted to him under the said Settlement Deed and was enjoying the same and by making construction and assessing it to tax etc.

2-4.While so, the 2<sup>nd</sup> petitioner's father was surprised to see some strangers trying to enter the property and on enquiry, they informed that they intend to purchase the property from the 1<sup>st</sup> respondent. Thereafter, on enquiry, the 2<sup>nd</sup> petitioner's father came to know that the 1<sup>st</sup> respondent without any authority whatsoever cancelled the Gift/Settlement Deed executed by him in favour of his mother Bagyalakshmi dated 17.02.2006. So far as the release deed executed in favour of the said Bagyalakshmi by her three sons (including the 1<sup>st</sup> respondent herein) was not altered nor changed or revoked by the 1<sup>st</sup> respondent.

2-5.In view of the fact that the 1<sup>st</sup> respondent started behaving in a strange manner by making attempts to sell the property, which was allotted to the 2<sup>nd</sup> petitioner's father under Settlement Deed dated 20.02.2006, the 2<sup>nd</sup> petitioner's father filed a suit in O.S.No.638 of 2008 on the file of the Additional District Judge, Coimbatore, for injunction restraining the 1<sup>st</sup> respondent and others from interfering with the possession of the 2<sup>nd</sup> petitioner's father.

2-6.It is further stated by the petitioners that the 1<sup>st</sup> respondent has unilaterally cancelled the Gift/Settlement Deed executed by him in favour of his mother without any notice, by Cancellation Deed dated 27.06.2007 and it was registered as Doc.No.3688 of 2007 on the file of the 2<sup>nd</sup> respondent. It is further stated by the petitioners that in respect of the subject property, the 2<sup>nd</sup> petitioner's grandmother Bagyalakshmi had executed a Settlement Deed on 20.02.2006 in favour of the 2<sup>nd</sup> petitioner's father, who in turn has executed a registered Settlement Deed in favour of the petitioners herein on 14.06.2010. The 1<sup>st</sup> respondent has no right or title over the subject property. Hence, the petitioners have come forward with the present writ petition challenging the Cancellation Deed dated 27.06.2007 executed by the 1<sup>st</sup> respondent.

3. When the matter is taken up for consideration, both the learned counsel for the petitioner as well as the learned counsel for the 1<sup>st</sup> respondent submitted that the matter has been settled between the parties and the suit in O.S.No.638 of 2008 which was filed by the 2<sup>nd</sup> petitioner's father in respect of the subject property before the learned Additional District Judge, Coimbatore, has also been withdrawn by the plaintiff i.e., the father of the 2<sup>nd</sup> petitioner. Thus, they sought for quashing the impugned Cancellation Deed.

4. Heard the learned Special Government Pleader appearing for the 2<sup>nd</sup> respondent also and perused the materials available on record.

5. In the case on hand, it is seen that the unilateral cancellation deed was registered without notice to the parties concerned. Further, in the settlement deed itself, it has been stated that the possession is handed over to the settlee by the settlor. In this regard, this Court is of 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. Further, in my considered opinion, by executing a registered settlement deed in favour of settlee, the settlor/1<sup>st</sup> 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 settlee by a competent Court, the Sub-Registrar is not competent to register the unilateral cancellation of settlement deed.

7.Further, it is represented on both sides, the dispute between the parties has been settled and the suit in O.S.No.638 of 2008 which was filed by the 2<sup>nd</sup> petitioner's father in respect of the subject property before the learned Additional District Judge, Coimbatore, was also withdrawn.

8.In view of the above, the impugned Cancellation Deed dated 27.06.2007 is ordered to be quashed. This writ petition is accordingly allowed as prayed for. Connected Miscellaneous Petition is closed. No costs.

Sd/-

Assistant Registrar(CS-III)

//True Copy//

Sub Assistant Registrar

ssv

To

1.The Sub-Registrar,  
Office of the Sub-Registrar,  
Ganapathy, Coimbatore.

1 cc to The Government Pleader, sr.21711  
1 cc to M/s.M.Sriram, Advocate, 21380

W.P.No.24906 of 2010

and

M.P.No.1 of 2010

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kra 24.05.2016

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