

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.04.2016

CORAM

THE HONOURABLE MR.JUSTICE R.SUBBIAH

W.P.No.5595 of 2016

Mr.R.V.Deenadayalan

... Petitioner

Vs.

1.The Sub-Registrar,
Office of the Sub-Registrar,
Velachery, Chennai-42.

2.Mrs.Saradha
3.Mr.V.Hari
4.Mr.V.Chittibabu
5.Mrs.Janaki
6.Mrs.Santhanalakshmi
7.Mrs.Baby
8.Mrs.Sumathy

... Respondents

(R2 to R8 impleaded as per order dt 28.03.2016
in W.M.P.6449/2016)

Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus, to quash the cancellation deed in Doc.No.1496/2009 dated 22.05.2009 with the consequential relief in the nature for deleting the entries to the said document from 'A' Register maintained by the 1st respondent, within a short date fixed by this Court.

For Petitioner : Ms.G.Sridevi

For respondents : Ms.P.Rajalakshmi, GA (For R1)
No appearance for R2 to R8

ORDER

This writ petition has been filed by the petitioner praying to quash the Deed of Cancellation of Settlement registered as Doc.No.1496 of 2009, dated 22.05.2009 on the file of the 1st respondent and consequently, to direct the 1st respondent to delete the entry made in the 'A' Register with regard to the said document.

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

2-1.The petitioner's father Vedachala Naicker was the absolute owner and in uninterrupted possession and enjoyment of the land measuring 1407 sq.ft comprised in S.No.71, Block Noll in Pillayar Koil Street, Madura Maduvankarai, situated with the Sub-Registration District of Velacherry. On 23.02.1996, the petitioner's father Vedachala Naicker executed a Deed of Settlement settling the said property in favour of the petitioner vide Doc.No.952/1996 registered on the file for the 1st respondent. The said Settlement Deed is an unconditional and irrevocable one. Pursuant to the execution of the said Settlement Deed, the petitioner has taken possession of the said property and he has been in possession and enjoyment of the same.

2-2.After settling the above said property in favour of the petitioner, the petitioner's father executed a Will vide Doc.No.43/1997, dated 27.10.1997, with regard to his other properties, bequeathing them to his daughters. In the said Will, the petitioner's father had also mentioned about the Settlement Deed executed in favour of the petitioner.

2-3.While so, on 05.03.2015, the petitioner's father died. After the demise of the petitioner's father, in order to avail the bank loan, when the petitioner applied for Encumbrance Certificate before the 1st respondent. To his shock and surprise, from the Encumbrance Certificate, the petitioner came to know that the Settlement Deed dated 23.02.1996 executed in favour of the petitioner was unilaterally cancelled by the petitioner's father and it was registered as Doc.No.1496 of 2009 dated 22.05.2009 on the file of the 1st respondent. Hence, the petitioner has come forward with the present writ petition before this Court for the relief as stated 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 petitioner's father, 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. Based on the same, mutations were also effected in the revenue records. 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. 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/settlee, the settlor/father of the petitioner 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. In view of the above, the impugned Deed of Cancellation of Settlement dated 22.05.2009 is ordered to be quashed, with a direction to the 1st respondent to delete the entry made in the 'A' Register in respect of the said Deed of Cancellation of Settlement.

This writ petition is accordingly allowed. No costs.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

To

1. The Sub-Registrar,
O/O The Sub Registrar, सत्यमेव जयते
Velacherry,
Chennai-42.

+1cc to the Government Pleader sr.26850
+1cc to Mr.G.Sridevi, Advocate Sr.26708

W.P.No.5595 of 2016

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srg 26/05/2016