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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 28.09.2016

CORAM:

THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN

Writ Petition(MD)No.9532 of 2013

and

M.P(MD)No.1 of 2013

Jimmy Lawrence

...Petitioner

Vs.

1.The District Registrar,
District Registrar Office,
Back side of SLB School,
Nagercoil - 1,
Kanyakumari District.

2.The Sub-Registrar,
Sub-Registrar Office,
Vadasery,
Nagercoil - 1,
Kanyakumari District.

3.Sundar Raj

4.Panneerselvam @ Pannerselvi

5.The Sub-Inspector of Police,
Vadasery Police Station,
Nagercoil, Kanyakumari District.

...Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorari, to call for the records relating to the impugned proceedings in Document No.2289/2011, dated 29.09.2011 executed by the respondents 3 and 4 and to quash the cancellation deed, dated 29.09.2011.

For Petitioner

: Mr.T.Selvakumaran

For RR 1, 2 & 5

: Mr.K.P.Krishna Doss

Government Advocate

For R4

: Mr.H.Thayumanaswamy

ORDER

The petitioner has filed the present Writ Petition challenging the unilateral cancellation of settlement deed, dated 29.09.2011 executed by the respondents 3 and 4.

2.According to the petitioner, the respondents 3 and 4 <https://hcservices.mca.gov.in/hcservices> parents and on 12.06.2009, they executed a settlement deed in favour of him and the same was also registered in the Sub-Registrar Office, Vadasery. Subsequently, the



respondents 3 and 4 unilaterally cancelled the settlement deed, dated 12.06.2009 and also registered the cancellation deed in Document No.2289 of 2011, dated 29.09.2011 on the file of the Sub-Registrar, Vadasery.

3. Further, according to the petitioner, at the time of execution of settlement deed, no condition was imposed and the respondents 3 and 4 cancelled the settlement deed unilaterally, after two years, after the execution of settlement deed, the respondents 3 and 4 also given possession of the property to the petitioner and the petitioner was taking steps to construct a house therein. At that time, without the knowledge of the petitioner, the respondents 3 and 4 unilaterally cancelled the settlement deed.

4. The main contention raised by the learned counsel for the petitioner is that the respondents 3 and 4, after executing the settlement deed and given possession to the petitioner, cannot unilaterally cancel the settlement deed, for which, they have no power.

5. The learned counsel for the petitioner has also relied upon the Judgment of this Court in *S.Ganesan Vs. Bharithirajan* reported in 2009 (5) CTC 558 and also another Judgment of this Court in *S.M.Syed Mohammed Buhari Vs. The Sub-Registrar (District Registrar Cadre) and others* reported in 2012 (4) CTC 138. He would also further relied upon the Full Bench Judgment of this Court in *M/s.Latif Estate Line India Limited Vs. Hadeeja Ammal and others* reported in AIR 2011 MADRAS 66 and unreported Judgment of this Court passed in *W.P(MD)Nos.10493 and 10535 of 2013, dated 05.08.2016*, in support of his contentions.

6. The learned counsel appearing for the respondents 3 and 4 submitted that the respondents 3 and 4 are the owners of the property to an extent of 19 cents and out of compulsion and unable to bear the cruelty caused by the petitioner, the respondents 3 and 4 executed a settlement deed, dated 12.06.2009 regarding 6-1/2 cents out of 19 cents belonging to them and after execution of settlement deed, the petitioner treated them cruelly and beaten the fourth respondent and she was also admitted in the Hospital and taken treatment. In the above circumstances, the respondents 3 and 4 cancelled the settlement deed, dated 12.06.2009 by way of executing cancellation deed, dated 29.09.2011. Thereafter, the petitioner has taken steps to encroach the property. Hence, the respondents 3 and 4 filed a suit in O.S.No.554 of 2011 on the file of the Principal District Munsif, Nagercoil, for permanent injunction and the said suit was decreed in favour of the respondents 3 and 4 and the above settlement deed was not executed out of affection and only due to the compulsion of the petitioner. In the above circumstances, they have cancelled the settlement deed and prayed for dismissal of the writ petition.



7. It is an admitted case that the respondents 3 and 4 executed a registered settlement deed in favour of the petitioner and they have also unilaterally cancelled the settlement deed by means of cancellation of settlement deed, dated 29.09.2011. Now, the question is whether the respondents 3 and 4 can cancel the settlement deed unilaterally without the knowledge of the petitioner.

8. The above issue is settled in number of Judgment of this Court stating that once a settlement deed is executed and acted upon, it cannot be cancelled unilaterally by one party and the only course open to the parties, who executed the settlement deed, has to approach the civil Court for seeking appropriate relief and the Sub-Registrar is not the competent to register the unilateral cancellation settlement deed.

9. In *M/s. Latif Estate Line India Limited Vs. Hadeeja Ammal and others* reported in AIR 2011 MADRAS 66, the Full Bench of this Court has decided as follows:-

"59. After giving our anxious consideration on the questions raised in the instant case, we come to the following conclusion:-

(i) A deed of cancellation of a sale unilaterally executed by the transferor does not create, assign, limit or extinguish any right, title or interest in the property and is of no effect. Such a document does not create any encumbrance in the property already transferred. Hence, such a deed of cancellation cannot be accepted for registration.

(ii) Once title to the property is vested in the transferee by the sale of the property, it cannot be divested upto the transferor by execution and registration of a deed of cancellation even with the consent of the parties. The proper course would be to re-convey the property by a deed of conveyance by the transferee in favour of the transferor.

(iii) Where a transfer is effected by way of sale with the condition that the title will pass on payment of consideration and such intention is clear from the recital in the deed, then such instrument or sale can be cancelled by a deed of cancellation with the consent of both the parties on the ground of non-payment of consideration. The reason is that in such a sale deed, admittedly, the title remained with the transferor.

(iv) In other cases, a complete and absolute sale can be cancelled at the instance of the transferor only by taking recourse to the civil Court by obtaining a decree of cancellation of sale deed on the ground *inter alia* of fraud or any other valid reasons."



10. The above said Full Bench Judgment has been followed recently by this Court in W.P(MD)Nos.10493 and 10535 of 2013, dated 05.08.2016, in which, a unilateral cancellation of settlement deed has been quashed.

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11. In view of the above settled proposition of law, the unilateral cancellation of settlement deed made by the respondents 3 and 4 is not valid in the eye of law. Hence, the above unilateral cancellation is liable to be set aside.

12. In the above circumstances, the impugned cancellation of settlement deed, dated 29.09.2011 is set aside and accordingly, this Writ Petition is allowed. The second respondent is directed to remove the encumbrance relating to the above said cancellation of settlement deed, dated 29.09.2011. No costs. Consequently, connected Miscellaneous Petition is also closed.

Sd/-

Assistant Registrar(T&P)

/True copy/

Sub Assistant Registrar(CS)

To

1. The District Registrar, District Registrar Office,
Back side of SLB School, Nagercoil - 1,
Kanyakumari District.

2. The Sub-Registrar, Sub-Registrar Office,
Vadasery, Nagercoil - 1, Kanyakumari District.

3. The Sub-Inspector of Police,
Vadasery Police Station,
Nagercoil, Kanyakumari District.

+1cc to Mr.T.Selvakumarn, Advocate in SR.56952

+1cc to Mr.H.Thayumanaswamy, Advocate in SR.56729

+1cc to the Special Government Pleader in SR.57495

W.P (MD) No.9532 of 2013
28.09.2016

ps

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