

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 31.01.2017

CORAM

THE HONOURABLE MR.JUSTICE B.RAJENDRAN

W.P.No.3853 of 2015

C.Kaliammal

..Petitioner

Versus

1. Joint Sub Registrar I,  
Saidapet, Chennai South  
No.9, Jeenias Road,  
Saidapet, Chennai - 600 015

2. Santhanam
3. Jayalakshmi
4. Amudha
5. C.Annamalai
6. Palani
7. C.Kumar

...Respondents

Petition filed under Article 226 of the Constitution of India to issue a Writ of Declaration to declare that the Deed of Cancellation of Settlement deed executed by late K.Chockalingam dated 12.01.2009 registered as Document No.117 of 2009 on the file of the 1<sup>st</sup> respondent purporting to cancel the settlement deed bearing document no.6238 of 2005 dated 02.09.2005 on the file of the 1<sup>st</sup> respondent executed by the late K.Chockalingam in favour of the petitioner herein, is null and void and not binding upon the petitioner.

For Petitioner : Mr. Hameed Ismail

For Respondents Mr.S.Rajeswaran  
Special Government Pleader for R1  
Mr.Ravikumar Paul for R3 and R7

## O R D E R

This Writ Petition has been filed praying to issue a Writ of Declaration to declare that the deed of cancellation of settlement deed executed by late K.Chockalingam is illegal.

2. According to the petitioner, the property was originally purchased by K.Chockalingam by registered document No.2859 of 1988 on 02.08.1988. Thereafter, the said Chockalingam had constructed house and shops in the subject property. He was married to one Deivanaiammal and the respondents 2 to 7 were the children born out of the wedlock between them. The said Deivanaiammal died on 07.05.1996. Thereafter, the said K.Chockalingam married the petitioner and their marriage was registered on 03.01.2003 under the Tamilnadu Hindu Marriage Registration Rules, 1967. After the marriage, K.Chockalingam, viz., husband of the petitioner executed settlement deed in favour of the petitioner in respect of the subject property and the relevant mutation took place in the revenue records and patta has been granted in her name. But the respondents 3 to 7 claim right under the Will dated 15.03.1996 executed by K.Chockalingam bequeathing the property in their favour. Therefore, the respondents 2 to 7 filed a Civil Suit in C.S.No.134 of 2006 to declare that the property is joint family property on basis of the Will dated 15.03.1996. The said K.Chockalingam, husband of the petitioner had disputed the same by filing written statement dated 12.04.2006.

3. It is the further case of the petitioner that the husband of the petitioner had stated in the said written statement, that after demise of his 1<sup>st</sup> wife, the respondents 2 to 7 wanted to grab the property. Thereafter, the petitioner has filed a suit in O.S.No.231 of 2010 against the respondents 2 to 7 to protect the possession and she has also obtained an order of temporary injunction. While the said suit, viz., O.S.No.231 of 2010 was pending, on 07.05.2010 at the age of 80 years, K.Chockalingam, viz., husband of the petitioner passed away and prior to his death, the respondents 2 to 7 have forcibly made her husband to execute a deed of cancellation of settlement deed on 12.01.2009 purportedly cancelling the settlement deed dated 02.09.2005. According to her, she had no knowledge of fraudulent cancellation of the settlement deed, since she was neither informed nor made as a party to the said cancellation deed. The settlement deed dated 02.09.2005 in her favour is unconditional and irrevocable.

4. The learned counsel for the petitioner would contend that in similar circumstances, this Court has held that unilateral cancellation is void and hence the petitioner has come forward with the present writ petition. In this connection the learned counsel for the petitioner would rely upon the Order passed by this Court in the case of (D.V.Loganathan V. The Sub-Registrar, Office of the Sub-Registrar, Pallavaram, Chennai) reported in 2014 (3) CTC 113

5. A detailed counter has been filed by the respondents 3 and 7. According to the respondents, the dispute is purely a civil dispute and therefore, the Writ Petition is not maintainable. Apart from that, C.S.No.134 of 2006 on the file of this Court was filed by the respondents 2 to 7 against the petitioner herein and their late father, to declare the property, which is the subject matter of settlement along with other properties as joint family property, and for a permanent injunction not to evict them and for other reliefs. The said suit is pending till date. Furthermore, they have also admitted that a suit was filed by the petitioner for permanent injunction in respect of the same property, in O.S.No.231 of 2010 on the file of learned Principal District Munsif, Poonamallee and it is also pending. The respondents 2 to 7 would also contend that earlier, the 3<sup>rd</sup>, 5<sup>th</sup> and 7<sup>th</sup> respondents had filed a suit in O.S.No.6285 of 1999 on the file of VI Assistant Judge, City Civil Court, Chennai against their father, namely, Chockalingam and the petitioner herein, seeking the relief of permanent injunction restraining their father, Chockalingam and the petitioner herein from alienating or disposing the property, which is the subject matter of the settlement deed. The said suit was decreed exparte on 07.08.2002. After executing the settlement deed in favour of the petitioner, father of the respondents 2 to 7 filed an application, viz., I.A.No.6879 of 2006 to set aside the exparte decree. The said application was dismissed. Hence, the decree for permanent injunction has become final. Therefore, when there is a decree operating against their father, namely, Chockalingam from executing settlement deed, the execution of settlement deed in the year 2005 is illegal and non-est in the eye of law.

6. Further, in the counter, the respondents 3 and 7 proceed to state that the property in question was purchased from and out of the income of the joint family and the property itself is owned by the joint family and the building was put up from the income of the business conducted by the joint family members. Therefore, according to them, their father, namely, Chockalingam, has no independent ownership of the property and it is only joint family property and hence they would contend that their father, could not execute the settlement deed. Besides this, the respondents 2 to 7 in their counter would even

deny the marriage of the petitioner with their father. In fact they would also contend that the petitioner was living with their father, Chockalingam, when the earlier marriage was subsisting and a revocation deed was also executed by their father after realising the fraud committed by the petitioner. The respondents 2 to 7 would further contend that the settlement deed is not acted upon by the petitioner and she was never in possession, whereas they are in possession of the property.

7. In the counter, the respondents 3 and 7 would further contend that on 30.09.2008 itself the petitioner took Rs.50,000/- and 60 sovereigns of gold and left the father of the petitioner. Therefore, their father, Chockalingam has executed cancellation deed on his own volition. Hence they would contend that the reported decision relied on by the petitioner in D.V.Loganathan's case mentioned supra is not relevant to the present case, as in that case, possession was handed over and the settlement deed was acted upon whereas it is not so in the present case. The respondents 2 to 7 would further add in their counter that they have also got sufficient documents to show that they are residing in the premises with their families. In one of the shops, the 3<sup>rd</sup> respondent is running a flour mill and the said property is named as "Jayalakshmi Flour Mill" and in another shop, the 3<sup>rd</sup> respondent's daughter is running diagnostic centre under the name and style "Sangeetha Diagnostic Centre" and this would clearly prove that settlement deed was not acted upon. Therefore the respondents 2 to 7 would pray for the dismissal of the Writ Petition.

8. Heard the learned counsel on either side and perused the documents placed on record. A perusal of the documents filed before this Court would reveal that the original settlement deed has been executed in the year 2005 and the cancellation took place in the year 2009 and the Writ Petition is filed in the year 2015. Earlier, C.S.No.134 of 2006 was filed in the year 2006 by the respondents 2 to 7 as against their father, Chockalingam and the petitioner herein for declaration of schedule mentioned property as joint family property and in that suit, the property which is the subject matter of dispute in this writ petition was shown as schedule of property, Though various arguments have been raised that injunction was granted or it was vacated, the fact remains that the suit is still pending. Similarly the suit in O.S.No.231 of 2010 is also pending. The question whether who is in possession of the property in dispute is the subject matter to be decided in the Civil Suit.

9. In this back ground it cannot be said that the settlement deed has been unilaterally cancelled or it is liable to be struck down. This Court in D.V.Loganathan's case

mentioned supra has categorically stated that when a document is unilaterally cancelled, especially the settlement deed, such document could not even be registered. But in the instant case, the facts are not similar to that of the decision mentioned supra and there are lot of differences between these cases.

10. The question which falls for consideration before this Court in this writ petition is whether the settlement deed was acted upon and who all are in possession of the subject property. Admittedly, the settlement deed was executed in the year 2005 subsequently, it has been cancelled in the year 2009, whereas the petitioner has not chosen to challenge the same till 2015. On the other hand, the suit has been filed by the respondents 2 to 7 in the year 2006, i.e., after the execution of the settlement deed, against the petitioner and their late father to declare the property which is the subject matter of settlement along with other properties as joint family properties and for a permanent injunction not to evict them. The said suit is pending adjudication. However, no steps have been taken by the petitioner till 2009. Even though the petitioner herein choose to file a suit in the year 2010, seeking for an injunction she has not chosen to set right the issue regarding cancellation of the deed, whereas for the first time, she had filed the present writ petition in the year 2015 seeking the prayer mentioned supra. Further, there are lots of dispute in between the parties which are all civil in nature.

11. Apart from the above, various discrepancies have been noted in the case of the petitioner and therefore the writ petition could not be entertained. Firstly, the original settlement deed was executed in the year 2005. Even in the year 2006, a suit was filed by the respondents 2 to 7 in which they have prayed for the relief of declaration to declare that the property, which is the subject matter of the settlement, is a joint family property. In the suit, they have also pointed out that in view of the order of interim injunction granted in O.S. No. 6285 of 1995, where there was an order of injunction granted restraining their father from alienating or encumbering the property, the deed of settlement itself cannot be executed especially when there is an injunction order is in force, restraining the father of the respondents 2 to 7 from alienating or encumbering the property. Further, it is pointed out that even the father of the respondents 2 to 7 himself attempted to vacate the order of injunction by filing an application and that was dismissed and the order of interim injunction has become final.

12. The next important point is the cancellation was made only in the year 2009, but the same is now questioned by way of this writ petition only in the year 2015. The inordinate delay

in questioning the settlement deed is not properly explained especially when the petitioner has also filed a suit in O.S. No. 231 of 2010 on the file of the District Munsif Court, Poonamallee for permanent injunction, which is pending, in which also, these points were not raised.

13. Thirdly, the decision relied on by the petitioner mentioned supra cannot be made applicable to the facts of this case as the facts are distinguishable. In the case relied on by the petitioner, the settlement itself has been acted upon and possession has been handed over. It is not so in this case. Therefore, there are marked differences between the facts of this case and the decision relied on by the petitioner.

14. Above all, in a title suit for declaration, where it is contended that the property covered under the settlement deed is a joint family property and such suit is pending, no order could be passed by this Court in this writ petition, at this stage as it will affect the trial in the suit. This is more so that the suit itself was filed after execution of the settlement deed. Though written statement has been filed stating that they have chosen to cancel the settlement deed in the year 2009 the petitioner has approached this Court much later. In such view of the matter, in the peculiar facts and circumstances of the case, this Court finds no reason to grant the relief of declaration sought for by the petitioner. Furthermore, even the marriage of the petitioner with the father of the respondents 2 to 7 is denied stating that the petitioner left their father even during his lifetime and living separately. These disputed questions of facts has to be dealt with only by the Civil Court by recording evidence of the parties, which is rebuttable.

15. Therefore in these facts and circumstances, the present Writ Petition cannot be said to be one which has been relied upon by this Court in the decision reported in 2014 (3) CTC 113) is not applicable to the facts and circumstances of the case. Further as civil suits are pending, parties are at liberty to approach the civil forum. In view of the above foregoings and taking note of the peculiarity of the case, this Writ Petition is dismissed. No costs.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1. Joint Sub Registrar I,  
Saidapet, Chennai South  
No.9, Jeenish Road,  
Saidapet, Chennai - 600 015

+1cc to Mr.Paul & Paul, Advocate, S.R.No.6009  
+1cc to Mr.Hammeed Ismail, Advocate, S.R.No.5782  
+1cc to the Government Pleader, S.R.No.6281

ad(CO)  
md(15/02/2017)

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