

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date of Reserve	13.07.2017
Date of Pronouncement	13.10.2017

WEB COPY

DATED : 13.10.2017

CORAM:

THE HON'BLE Mr.JUSTICE **K.KALYANASUNDARAM**

WP (MD) No.18927 of 2015

and

MP (MD) Nos.1 and 2 of 2015

G.Subbulakshmi

... Petitioner

Vs.

1. The Sub Registrar,
Vedasanthur,
Dindigul District.

2.Savudeeswari

3.Subburam

4.Rajalakshmi

5.Poongodi

6.Rukkumani

7.Jeyaraj

8.Maheswari

9.Vellaiyammal

... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, to call for the records of cancellation of settlement deed dated 09.05.2013 in document No.1453/2013 which was registered before the 1st respondent and quash the same as illegal and direct the 1st respondent to cancel the consequent entries in the encumbrance certificate.

For Petitioner : Mrs.G.Subbulakshmi
[Party in person]

For 1st Respondent : Mr.C.Selvaraj
Special Government Pleader

For R3 to R5 : No appearance

For R6 to R9 : Mr.J.Lawrance

**ORDER**

The petitioner seeks to quash cancellation of the settlement deed, dated 09.05.2013 registered as Document No.1453 of 2013 by the first respondent and for a direction to the first respondent to cancel the subsequent entries in the encumbrance certificate.

2. According to the petitioner, her father Rengasamy Gowder was the absolute owner of the property to an extent of 10 Acres and 94 Cents in patta Nos.956, 1050 and 1048, by virtue of a registered Will, dated 22.11.1989 and he was in possession and enjoyment of the properties and on 17.10.2012, by a registered settlement deed registered as document No.3096/2012, her father settled the entire properties in favour of the petitioner and she took possession of the property immediately. Later for changing the name in the revenue records, the respondents 3 to 8 offered to help her and also obtained the original settlement deed and Rs.15,000/- towards expenses. However, despite the petitioner's objection and to her shock and surprise that the settlement deed, dated 17.10.2012 was cancelled by way of cancellation deed, vide document No.1457/2013 and on that date, a sale deed was also executed in favour of the 9th respondent.

3. The further case of the petitioner is that she lodged a criminal complaint against the respondents 4, 7 and 9, which was registered in Crime No.101 of 2013 by the District Crime Branch, Dindigul and they were also charged in C.C.No.26 of 2014 on the file of the Judicial Magistrate No.II, Dindigul. As per the decision of the Hon'ble Apex Court and this court reported in 2014-3-CTC 113 (D.V.Loganathan vs. The Sub Registrar, Office of the Sub-Registrar, Pallavaram, Chennai-600 044 & another) and 2014 (4) CTC 572 (Renikuntla Rajamma (D) by Lrs. vs. K.Sarwanamma), cancellation of settlement deed cannot be registered and it is against the public policy.

4. In the counter, the first respondent has stated that the cancellation of settlement was registered by following the procedures laid down in the Registration Act and there is no provision in the Act, prohibiting the Registering Authority to register the deed of cancellation and in an identical case in Writ Appeal No.503 of 2010, this court rejected the writ appeal and the decision would squarely apply to the present case on hand.

5. In the counter filed by the 9th respondent, apart from denying the allegations made by the petitioner, it is specifically stated that the father of the petitioner is the absolute owner of the properties in Survey Nos.521/1, 525/2, 526/1, 526/3 to 526/7, 605/1, 652/2, 652/5, 650/3 in E.Chithur Village, Vedasandur Taluk, Dindigul District and that while availing loan from the Vedasandur Cooperative Primary Agricultural Rural Development Bank Limited,



he mortgaged the properties on 24.03.2002 by a registered deed under Document No.181 of 2002.

6.It is further stated that the mortgagor could not repay the loan amount and by believing the assurance given by the petitioner that she will discharge the entire loan amount, executed a gift deed on 17.10.2012, but due to her failure to keep up her promise, the settlor cancelled the gift deed. It is further stated that the petitioner's father sold the property to the 9th respondent and from and out of the sale proceeds, the entire bank loan amount was repaid and also discharged the other liabilities in O.S.No.8 of 2012 on the file of the Sub Court, Vedasanthur and the balance amount was disbursed to his legal-heirs.

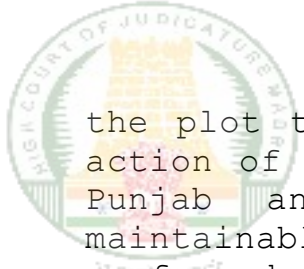
7.The 9th respondent further claims that since the date of his purchase I.e., on 09.05.2013, he has been in possession and enjoyment of the same and all the revenue records have been mutated in his name and he has been paying taxes to the authorities; that the petitioner has filed the suit in O.S.No.283 of 2013 before the District Munsif, Vedasanthur to declare the cancellation of the sale deed, dated 09.05.2013 as null and void and for declaration declaring that she is the owner of the property and for recovery of possession, which would prove that the petitioner was not in possession of the suit properties. Since, the petitioner already filed a civil suit, the present writ petition is not maintainable.

8.I have heard both sides and perused the materials available on record.

9.In the decision relied upon by the petitioner in **2014(4) CTC 572** (Renikuntla Rajamma D) by Lrs. vs. K.Sarwanamma), a question arose for consideration before the Hon'ble Supreme Court was whether a mere retention of right to use property during the life time to Donor would become the gift deed invalid. The Hon'ble Apex Court held that delivery of possession of the gifted property is not essential condition for completion of the valid gift. In the considered view of this court, the judgment has no application to the instant case.

10.A single Judge of this court in **2014(3) CTC 113** (D.V.Loganathan Vs. The Sub Registrar, Office of the Sub-Registrar, Pallavaram, Chennai), has held that unilateral cancellation of registered settlement deed, which was unconditional and irrevocable is against the public policy.

11.In **(2016)10 SCC 767** (Satya Pal Anand vs. State of Madhya Pradesh and others), a Cooperative Society cancelled the allotment of a plot made in favour of the member due to non-compliance of the conditions of allotment by a deed of extinguishment and sold



the plot to the 3rd party by a registered deed. Questioning the action of the Society, a writ was moved before the High Court of Punjab and Haryana, which came to be dismissed as not maintainable. Challenging the order, the unsuccessful petitioner preferred an appeal before the Hon'ble Supreme Court. The two Judges Bench had taken different views and hence, the matter was placed before the three Judges Bench. The three Judges Bench held that the aggrieved party can challenge the cancellation and validity of the documents before the civil court. The relevant paragraphs would run thus:-

"25. It is a well-established position that the remedy of writ under Article 226 of the Constitution of India is extraordinary and discretionary. In exercise of writ jurisdiction, the High Court cannot be oblivious to the conduct of the party invoking that remedy. The fact that the party may have several remedies for the same cause of action, he must elect his remedy and cannot be permitted to indulge in multiplicity of actions. The exercise of discretion to issue a writ is a matter of granting equitable relief. It is a remedy in equity. In the present case, the High Court declined to interfere at the instance of the appellant having noticed the above clinching facts. No fault can be found with the approach of the High Court in refusing to exercise its writ jurisdiction because of the conduct of the appellant in pursuing multiple proceedings for the same relief and also because the appellant had an alternative and efficacious statutory remedy to which he has already resorted to. This view of the High Court has found favour with **Dipak Misra, J.** We respectfully agree with that view."

26. The other view of V. Gopala Gowda, J. however, is that it was the duty of the High Court to answer the matters in issue because of the unilateral registration of the extinguishment deed by the Society without authority and a nullity. Ordinarily, if the party had not resorted to any other remedy provided by law and had straightway approached the High Court to question the action of the statutory Authority of registering a document improperly and in particular in disregard of the prescribed procedure, that would stand on a different footing. In the present case, however, the appellant not only entered into a compromise deed



with the Society and the subsequent purchaser but also resorted to statutory remedy. Having entered into a compromise deed, it is doubtful whether the appellant can be heard to complain about the irregularity in the registration of the extinguishment deed, if any. It is noticed that the appellant has not disputed the execution of the compromise deed, nor has he paid any heed to the notice given by the other party to refund the amount accepted by him in furtherance of the compromise deed. No court can be party to a speculative litigation much less the High Court in exercise of writ jurisdiction. Having said this it must necessarily follow that the writ petition filed by the appellant deserved to be dismissed, as was rightly dismissed by the High Court.

27. As the writ petition is liable to be dismissed with liberty to the appellant to pursue other statutory remedy already invoked by him, examining any other contention at his instance would be awarding premium to a litigant who does not deserve such indulgence. The fact whether the compromise deed entered into by the appellant was voluntary and at his own volition or under duress, is essentially a question of fact. That cannot be adjudicated in writ jurisdiction. Depending on the answer thereto, the other issues may become relevant and would arise for consideration. The only relief that can be granted and which has already been clarified by the High Court in the impugned judgment, is to keep all questions open to enable the appellant to pursue the statutory remedy already invoked by him. It is open to the appellant to contend in those proceedings that the extinguishment deed could not have been unilaterally executed by the Society. That plea can be examined by the statutory forum provided for that purpose.

12. In similar facts, a Division Bench of this court in **W.A. (MD) No. 503 of 2010, dated 27.08.2010** [R.Chinnaiah @ Kasi vs. The Secretary to Government, Registration Department, Secretariat, Chennai and 6 others], held as follows:-

"6. In our opinion, the Writ Petition involving disputed questions cannot be entertained. Whether the cancellation of gift deed was made due to fraud or not is a matter to be established in a Civil Court. Consequently, the Registrar is also not competent to go into the question as to whether



fraud has been played or not when it is disputed. Even in the Full Bench Judgment of the Andhra Pradesh High Court relied on by the learned counsel for the appellant, the majority (2:1), has categorically held that, in matter like this, Writ is not maintainable. In fact, the said judgment is against the submission of the learned counsel for the appellant."

13. In the instant case, it is not in dispute that the original owner Rengasamy Gowder, the father of the writ petitioner had mortgaged the property in dispute in favour of Vendasandur Co-operative Primary Agricultural Rural Development Bank Limited, while availing financial assistance on 24.03.2002. It is equally not disputed that the original owner executed a gift deed in favour of the petitioner, on 17.10.2012, but later on 09.05.2013, cancelled the settlement deed on the grounds that the settlee did not keep up her words, he continued to be in possession of the property and the patta was also standing in his name and there is no necessity to settle the property to the petitioner.

14. A perusal of the typed set of papers produced by the 9th respondent would show that after cancellation of the settlement deed on 09.05.2013, on the same day, the property was sold to the 9th respondent by a registered document for a sum of Rs.29,15,000/-. It further reveals that on 10.05.2013, the settlor repaid Rs.18,47,258/- to discharge the loan amount and after settlement of the entire dues, the Co-operative Society executed a receipt for discharging the mortgage deed, on 13.05.2015.

15. Indisputably, the brothers and sisters of the petitioner viz., Subburam, Jayaraj, Rajalakshmi, Poongodi, Rukkumani and Maheswari joined with their father and executed a sale deed in favour of the 9th respondent herein. The suit in O.S.No.285 of 2013 was instituted by the petitioner before the District Munsif Court, Vendasandur against her father, brothers and sisters and 9th respondent herein to declare the cancellation deed and the sale deed as null and for declaration of her title over the property and for recovery of possession.

16. It is to be seen that in the plaint, except stating that on the date of settlement deed, the property was handed over to her and the defendants 1 to 7 occupied the property on 02.08.2013, no materials have been placed in support of her case. Further, it is also to be seen that the petitioner having rightly approached the competent civil court in the year 2013, allowed the suit to be dismissed on 30.09.2015 and filed the present writ petition on 14.10.2015.

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17. It is the case of the private respondents that the settlement deed was not acted upon and in view of the failure of



the settlee to comply with the condition as agreed, the gift deed was cancelled and immediately the properties were sold to discharge the loan amount. The mortgage deed, cancellation deed, receipt for payment of Rs.18,47,258/- and the discharge letter issued by the Co-operative Bank support the case of the respondents. Further, they claim to be *bona fide* purchasers and have been in possession and enjoyment of the properties in dispute for the past four years. It is not the case of the petitioner that after cancellation of settlement deed, the settlee has been illegally enjoying the properties.

18. In view of the latest judgment of the Hon'ble Supreme Court and the unreported decision of the Division Bench of this court referred above, with great respect, I am not able to follow the decision of the learned single Judge of this court cited *supra*.

19. In the light of the facts of this case and the law laid down by the Supreme court in **Satya Pal Anand's** case, I am of the considered view that the disputed question of facts can be properly adjudicated only on appreciation of evidence by the competent civil court and the present writ petition is not maintainable.

20. For the reasons stated above, the writ petition fails and the same is **dismissed** as not maintainable. However, with liberty to the petitioner to establish her right before the competent civil court in the manner known to law. It is needless to say that the above observations have been made only for the disposal of the writ petition and the civil court shall decide the issues on merits and in accordance with law. No costs. Consequently, connected Miscellaneous petitions are closed.

Sd/-

Assistant Registrar(RTI)

/True Copy/

Sub Assistant Registrar

To

The Sub Registrar,
Vedasanthur,
Dindigul District.

+ 1 cc TO Mr.J.Lawrance , Advocate in SR No. 82827
+1cc to The Special Government Pleader in SR.No.83145

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W.P (MD) .No.18927 of 2015

13.10.2017