



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 09.10.2017

CORAM:

THE HONOURABLE MR. JUSTICE R. MAHADEVAN

W.P (MD) No. 12371 of 2017

and

W.M.P (MD) No. 9519 of 2017

R. Balaji

... Petitioner

Vs.

1. The Sub Registrar (Joint - I)

Madurai South, Madurai.

2. Mrs. Radha

3. Mrs. Mohana Priya

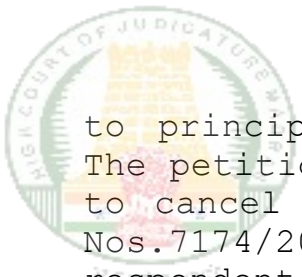
... Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari calling for the records of the first respondent pertaining to the cancellation deed dated 11.11.2014, vide Document No. 7169/2014 executed unilaterally by the second respondent cancelling the settlement deed dated 02.11.2006 bearing Document No. 7198/2006 in respect of the property comprised in Door No. 13, East Street, Anuppanady, Madurai, quash the same as the same is arbitrary, contrary to principles of natural justice, opposed to public policy and consequently directing the first respondent to cancel the settlement deeds dated 11.11.2014 bearing document Nos. 7174/2014, 7175/2014 unilaterally executed by the second respondent.

For Petitioner	: Mr. M. S. Senthil Kumar
For R1	: Mr. J. Gunaseelan Muthiah, Government Advocate
For R2	: No Appearance

ORDER

This writ petition has been filed, seeking to call for the records of the first respondent pertaining to the cancellation deed dated 11.11.2014, vide Document No. 7169/2014 executed unilaterally by the second respondent cancelling the settlement deed dated 02.11.2006 bearing Document No. 7198/2006 in respect of the property comprised in Door No. 13, East Street, Anuppanady, Madurai and to quash the same, as the same is arbitrary, contrary



to principles of natural justice and opposed to public policy. The petitioner also sought for a direction to the first respondent to cancel the settlement deeds dated 11.11.2014 bearing document Nos.7174/2014, 7175/2014 unilaterally executed by the second respondent.

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2. Heard the learned counsel appearing on either side.

3. It is the case of the petitioner that the second respondent is the mother of the petitioner and she had executed a settlement deed in his favour vide Document No.7198/2006 dated 02.11.2006 and he enjoyed the property in a peaceful manner. While being so, the petitioner applied for Encumbrance Certificate for obtaining a Bank loan. All of a sudden, the second respondent has unilaterally cancelled the Settlement deed dated 02.11.2006, vide cancellation deed dated 11.11.2014 and executed two settlement deeds in favour of the petitioner as well as the third respondent vide document Nos.7174, 7175/2014 dated 11.11.2014 respectively, which constrained him to give a representation dated 12.06.2017 to the first respondent to cancel those deeds. Finding no action, the petitioner has come before this Court with the above said prayer.

4. Heard the learned Counsel appearing for the petitioner and the learned Government Advocate appearing for the first respondent.

5. This Court, while dealing with the similar issue in the case of **S.Lingeshwaran vs. The Sub Registrar, Purasawalkam, Chennai and others, in W.P.(MD)No.21825 of 2014**, had passed an order dated 20.02.2015, wherein, it is held as follows:

"..... 9. The issues which falls for consideration are, after execution of settlement deed, the settlor loses all rights over the same, she cannot unilaterally execute a cancellation deed without notice to the petitioner and the third respondent. Whether the first respondent has jurisdiction to register such a document. The said issue has been considered in the earlier decision of this Court (Madurai Bench) in the case of C.R.BANDHI & OTHERS V. 1. THE INSPECTOR GENERAL OF REGISTRATION, SANTHOME, CHENNAI-4 & OTHERS in W.P. (MD)No.121 of 2013 dated 04.07.2014, in the said decision, this Court held that 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 authority to decide the disputed question of facts. The operative portion of the order reads as follows:



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"11. Here, in this case, it is seen that the unilateral cancellation deed was registered without notice to the petitioners. Further, in the settlement deed itself, it has been stated that the possession is handed over to the donee vi., first petitioner. Based on the same, mutations were also effected in the revenue records. In this regard, this Court is the view that it would be appropriate to look into the following decisions;

12. 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 exception, 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.

13. Further, in the judgment reported in 2014 (3) CTC 113 (D.V.Loganathan Vs. The Sub Registrar, Chennai and another) 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



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14. In yet another judgment reported in (2012) 1 MLJ 216 (K.A.Shanmugam and another v. Tamlarasi 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.

15. 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 gift 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 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 1st petitioner /settlee, the settlor/4th respondent herein had lost her 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.

16. In view of the above, the deed of cancellation is ordered to be quashed and the subsequent order in the appeal dated 23.7.2012 is also quashed."

10. The aforesaid decision would be squarely applicable to the facts of the present case. Following the above said decision, the writ petition is allowed and the impugned deed of cancellation dated 08.05.2014 and the consequential settlement deed, dated 07.07.2014



are held to be invalid. However, it is open to the respondents 2, 4 and 5 to approach the Civil Court for appropriate relief if they so desire. No costs."

6. Following the same, this writ petition is allowed. The impugned deed of cancellation and the consequential settlement deeds dated 11.11.2014, being invalid, are hereby set aside. However, it is open to the respondents 2 and 3 to approach the Civil Court for appropriate relief, if so advised. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(Writs)

/True Copy/

Sub Assistant Registrar

To:

The Sub Registrar (Joint - I)
Madurai South, Madurai.

+ 1 cc TO Mr.M.S.Senthil kumar , Advocate in SR No. 82244
+1cc to The Special Government Pleader in SR.No.82091

rm

AE/KP/SAR2/24.10.2017/5P/4C

W.P (MD) No.12371 of 2017
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