

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.07.2018

CORAM

THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.9386 of 2017

and

W.M.P.No. 10355 of 2017

S.Sundararaman .. Petitioner

Vs

1. The Sub Registrar
Office of the Sub Registrar
Konnur, Chennai-600 079.

2. Mrs.Nirmala ... Respondents

PRAYER : Petitions filed under Article 226 of the Constitution of India to issue of Writs of Certiorari, to call for the records in Cancellation deed in Doc.No.1772 of 2012 dated 30.04.2012 executed by the second respondent on the file of the first respondent and quash the same.

For Petitioner : Mr.Nandha Kumar

For Respondents : Mr.P.P.Purushothaman, GA
for R1

No appearance, for R2

O R D E R

The cancellation deed dated 30.04.2012, in respect of settlement deed already executed in favour of the writ petitioner is under challenge in this writ petition.

2.The learned counsel appearing for the writ petitioner made a submission that the property at plot No.173 in survey No.202, situated at Konnur Village was originally purchased by the maternal grandfather of the writ petitioner Mrs.Ramachandra Agasthy, vide sale deed dated 24.09.1965, in Doc.No.3948 of 1965. The grandfather of the writ petitioner passed away on 08.07.1979, and the grandmother Smt.R.Lakshmi also expired on 05.04.2002. The mother of the writ petitioner being the only

legal heir became the absolute owner of the property, and after the Marriage, the writ petitioner also was living with his parents in the said house, and the mother of the writ petitioner Mrs.Nirmala, executed a settlement deed in favour of the writ petitioner in Doc.No.596 of 2012 dated 17.02.2012. After, the execution of the settlement deed the writ petitioner had raised personal loan from the Bank and there after constructed a portion of the house on the vacant land and is living with his wife and large in the portion constructed by him.

3.The Mother of the writ petitioner had executed the cancellation deed dated 30.04.2012 in Doc.No.177 of 2012, which is impugned in the present writ petition. The petitioner states that unilateral cancellation of the settlement deed is impermissible and invalid. There was no such condition or otherwise in the settlement deed to cancel the same and therefore, the original settlement deed executed holds good and already the title had been conferred in favour of the writ petitioner. In the absence of any specific condition regarding the cancellation settlement deed, the authorities ought not to have register the cancellation deed, which is in violation of the provisions of the Registration Act.

4.This Court is of an opinion that the original settlement deed was executed in favour of the writ petitioner and consequently, the property described in the settlement deed had been transferred in the name of the writ petitioner. The petitioner became the absolute owner of the property. Thus, the property right conferred in favour of the writ petitioner cannot be cancelled unilaterally by the executor of the original settlement deed and the original executor cannot have any right to register any such cancellation deed in the absence of any specific covenant or agreement in the settlement deed. The executor of the settlement deed is incompetent to execute the cancellation deed. The ownership in respect of the property has been already in favour of the settlee. Thus, the unilateral cancellation of settlement deed is impermissible and the said legal principles are decided by this Court and the same is extracted hereunder:

"5.This Court has settled the legal principles in the matter of cancellation of Settlement Deed executed in the case of P.A.G.Kumaran Vs. Inspector General of Registration, dated 31.07.2017 reported in 2017 (2) CWC 796 and the relevant paragraph Nos.13 to 16 are extracted below:

"13. According to the learned counsel for the petitioner, it is not only based on the judgment of the Apex Court reported in 2014 (4) CTC 572 (SC) (cited supra) that this

Court has rendered a finding with regard to the cancellation of settlement deed, in W.P.No.6230 and 6231 of 2011 (cited supra), but also referring to the judgment of the Full Bench of this Court reported in 2011 (2) CTC 1 (cited supra) to show that when once the property is settled, it cannot be over-ruled or ignored that a unilateral cancellation at the instance of the person who has settled the property, can be cancelled, unless and otherwise it establishes fraud or against the public policy.

14. Though it has been vociferously contended by the learned counsel for the third respondent that the deed of cancellation can be done by the respondents 1 and 2 and in view of the judgment of the Full Bench of this Court reported in 2011 (2) CTC 1 (cited supra), as could be seen from paragraphs quoted therein above, it is no doubt true that the Writ Petition is maintainable, provided there are no disputed questions of fact. In this case, there is clear evidence to show that there are disputed questions of facts, namely that after the property has been settled in favour of the petitioner, under the guise of family dispute, the registration of the property was sought to be cancelled.

15. Though it is not in dispute that the property was purchased by the third respondent, as admitted by the petitioner, there is subsequent development which led to the settlement of the property in favour of the petitioner by the third respondent. Naturally, to avoid any stamp duty, such registration has taken place between the husband and wife and when the dispute arose, it comes to light as to under what circumstances, the property has been settled in favour of one person by the spouse. Since, as narrated by the third respondent in the counter that there are disputed questions of facts, the matter has got to be resolved only before the civil forum. This Court cannot render any finding based on the

disputed questions of fact, as the parties will have to let in evidence.

16. In view of the fact that the unilateral cancellation of the settlement deed made by the first and second respondents is bad, this Court declares that the said cancellation of document, namely Deed of Cancellation of Settlement deed, registered as Document No.3328 of 2014, dated 10.11.2014, is illegal and in view of the same, the first and second respondents are directed to remove the entries in the Register and the subsequent transaction, namely settling the property in favour of the son of the third respondent, made pursuant to the unilateral cancellation of settlement deed, is also null and void. All the entries have got to be removed and this has got to be done within one month from the date of receipt of a copy of this order. This Court makes it clear that this order will not prevent the third respondent from approaching the Civil Court and establish her right over the property in question and if done, the Civil Court shall decide the matter without being influenced by any of the observations made in this writ petition touching on the merits of the matter. As this Court has held that the cancellation of settlement deed is illegal and without jurisdiction, and declared the same as null and void, if any suit is filed, the same has got to be decided by the Civil Court in accordance with law, including the issue of limitation. If the third respondent goes before appropriate forum with regard to the cancellation of settlement deed, which is the subject matter of this Writ Petition, this Court expects that the said civil forum to decide the matter as expeditiously as possible, from the date of initiation of such suit, and the matter shall not be adjourned beyond seven working days at any point of time. The petitioner shall co-operate in the trial if such suit is filed."

5. Accordingly the impugned cancellation deed executed in 30.04.2012, registered in Doc.No.1772 of 2012, before the Sub Registrar, Office of the Sub Registrar, Konnur, Chennai-600 079 is quashed.

6. Accordingly the writ petition stands allowed. However, there is no order as to costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-V)

//True Copy//

Sub Assistant Registrar

stm/nmm

To

1. The Sub Registrar
Office of the Sub Registrar
Konnur, Chennai-600 079.

+1cc to Mr.T.NIRMALESWAR, Advocate, S.R.No. 47930

+1cc to the Government Pleader, S.R.No.48067

W.P.No.9386 of 2017

TR(31/07/2018)

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