

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.08.2018

CORAM

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

W.P.No.10919 of 2017

and

WMP No.11882 of 2017

1.Mrs.Saranya

2.Mr.Vijaya Narayanan

..Petitioners

Vs.

1.The Inspector General of Registration,
Santhome High Road,
Chennai-600 004.

2.The Sub Registrar,
Royapuram,
Chennai-600 013.

3.Mr.Kanniyan

3.Mrs.Gowri

5.Ms.Satya Jothi

6.Mr.Ganesh Ram

.. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus , calling for the records relating to unilateral cancellation of settlement deed in Document No.30/2009 dt.06.01.2009 and subsequent settlement deed in Document No.963/2017 dt.31.03.2017 on the file of the Second Respondent and quash the same and consequently direct the First and Second respondents to remove the encumbrance entries of the unilateral cancellation of settlement deed Document in No.30/2009 dt.06.01.2009 and the subsequent settlement deed in Document No.963/2017 dt.31.3.2017 from the "A" Register in the office of the Sub-Registrar, Royapuram in connection with a land and building bearing Door New No.1, old No.291, Irusappa Maistry First Street, New Washermenpet, Chennai-600 081. Comprised in Survey No.4108/2 of Tondiarpet Village measuring an extent of 1218 Sq.Ft within time stipulated by this Court.

For Petitioner : Mr.V.Lakshminarayanan
for M/s.I.Abdul Basith

For Respondents: Mr.T.M.Pappiah for R 1 & 2
Special Government Pleader

Mr.David George for R 3 to 6

O R D E R

The unilateral cancellation of settlement deed in Document No.30/2008 dated 06.01.2009 and the subsequent settlement deed in Document No.963 of 2017 dated 31.03.2017, on the file of the second respondent is sought to be quashed in the present writ petition. Further direction is sought for to remove the encumbrance entries in respect of the unilateral cancellation of settlement deed and make necessary entries in this regard.

2.The learned counsel appearing on behalf of the writ petitioners made a submission that the first and second petitioners are wife and husband, the third and fourth respondents are parents of the second petitioner. The fifth and sixth respondents are grand children of the third and fourth respondent. The property bearing Door New No.1, old No.29/1, Irusappa Maistry First Street, New Washermenpet, Chennai-600081 comprised in Survey No.4108/2 of Tondiarpet Village measuring an extent of 1218 Sq.Ft was settled in favour of the second petitioner by way of an irrevocable deed of settlement dated 25.02.2008 by the third and fourth respondents in the present writ petition. The said settlement deed has been registered as Document No.635 of 2008 before the Office of the Sub Registrar, Royapuram. The settlement deed was accepted by the respective parties and acted upon and accordingly, the second petitioner became the absolute owner of the property. The original document was handed over to the second petitioner and the second petitioner is in possession of the property described. The said settlement deed was signed by the second petitioner as a Settle. Thus, the second petitioner is the absolute owner and in possession and enjoyment of the said property.

3.Surprisingly, the Settlees viz; the third and fourth respondents cancelled the settlement deed unilaterally even without issuing any notice to the writ petitioner. Such a registration done by the Sub Registrar is in violation of the provisions of the Registration Act unilateral cancellation of settlement deed registration cannot be entertained by the sub Registrar, in view of the fact that a title of the property has already been transferred in the name of the second writ petitioner and without their consent there cannot be any further registration of cancellation of settlement deed. Thus, the writ petitioners are constrained to move the present writ petition in setting aside the unilateral cancellation of the settlement deed registered in favour of the second petitioner. The issues involved are similar to that of the issues decided in W.P.No.41498 of 2016 dated 20.06.2018, and the relevant paragraphs are extracted herein under:

4.The learned counsel relied on the Judgment of this Court

dated 23.04.2018, passed in W.P.Nos.15624 and 15625 of 2014. The legal principles, in this regard, in respect of the unilateral cancellation of the Settlement Deed has been considered by this Court in the earlier Judgment and the operative portion of the Judgment is extracted herein under:-

"3.The grievances of the writ petitioner is that the second respondent without any right or authority, on 10.03.2014 under document No.2129 of 2014 and on 19.03.2014 under Document No.571 of 2014 canceled the said settlement deeds executed by the second respondent in the office of the first respondent, which is contrary to law and this Court has elaborately adjudicated the matter and decided such unilateral cancellation is null and void. In this regard, the learned counsel for the writ petitioner cited the judgment delivered in the case of P.A.G.Kumaran Vs. Inspector General of Registration, dated 31.07.2017 reported in 2017 (2) CWC 796. 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. In view of the legal principles settled in the Judgment cited supra, the unilateral cancellation of Settlement Deed and the subsequent execution of the Settlement Deed, are contrary to law and accordingly, the writ petition deserves to be considered.

6. In view of the legal principles settled by this Court, in the matter of the unilateral cancellation of settlement deed, the present writ petition deserves to be considered. Accordingly, the cancellation of settlement deed in Document No.30/2009 dt.06.01.2009, and the subsequent settlement deed in Document No.963/2017 dt.31.03.2017, on the file of the Second Respondent are quashed, and the second respondent is directed to correct the entries in the encumbrance register and in all other records. The writ petition stands allowed. There shall be no order as to costs. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS VI)

//True copy//

Sub Assistant Registrar

KP

To

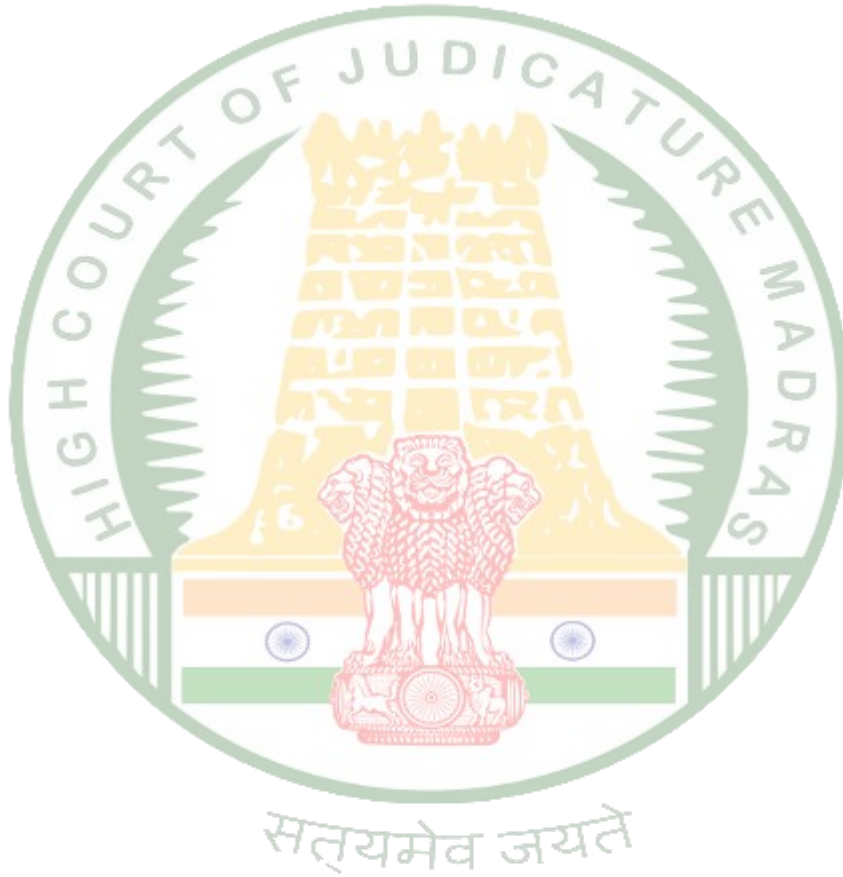
1. The Inspector General of Registration,
Santhome High Road,
Chennai-600 004.

2.The Sub Registrar,
Royapuram,
Chennai-600 013.

+1cc to Mr.I.abdul Basith, Advocate SR.No.55133
+1cc to Government Pleader SR.No.55333

W.P.No.10919 of 2017

GN(28/08/2018)



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