

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.11.2018

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA

W.P.No.20023 of 2016 and
W.M.P. No.17259 of 2016

T.Thegaleesan

.. Petitioner

-vs-

1.The Joint Sub Registrar No.1,
Villupuram.

2.Kamala @ Muniyammal

3.T.Thiyagarajan

.. Respondents

Petition filed under Article 226 of the Constitution of India, praying for the issue of a Writ of Certiorarified Mandamus, calling for the records of the 1st respondent in respect of Document bearing No.2161/2012 dated 27.08.2012 the cancellation deed of the settlement, in respect of the property in Survey No.13, 1200 sq.ft. within the boundaries stated there in Door No.750 at Ka Kuppam village, Villupuram Taluk, registered by the first respondent and thereby quash the same and thereby direct the first respondent to make necessary entry in Book - I in respect of any orders that may be passed by this Court.

For Petitioner :: Mr.N.Suresh

For Respondents :: Mr.T.M.Pappiah,
Special Government Pleader
for R1

No appearance for R2 and R3

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ORDER

This writ petition has been filed challenging the correctness of the registration of the cancellation deed dated 27.08.2012.

2.Learned counsel appearing for the petitioner submitted that the petitioner and the third respondent are the sons of the

second respondent, who has executed a Settlement Deed on 23.09.2011 in favour of the third respondent and thereupon, the third respondent was in peaceful possession and enjoyment of the property thereof. Thereafter, the third respondent executed an irrevocable Settlement Deed of the suit property on 30.09.2011. By virtue of the above Settlement Deed executed by the third respondent in favour of the petitioner, the petitioner has taken over the peaceful possession and enjoyment of the property. Subsequently, the electricity service connection and the property tax are transferred in favour of the petitioner. While so, the second respondent, the mother of the petitioner and the third respondent unilaterally, without put on notice the petitioner, executed a cancellation of the Settlement Deed dated on 27.08.2012. Learned counsel for the petitioner would further submit that the said Cancellation Deed is running contra to the ratio laid down by the Hon'ble Full Bench of this Court in the case of *Latif Estate Line India Ltd. vs. Hadeeja Ammal and others* reported in 2011 (2) CTC 1. It is necessary to refer paras 59 and 60, which are given as under:

"59. After giving our anxious consideration on the questions raised in the instant case, we come to the following conclusion:

(i) A Deed of Cancellation of a sale unilaterally executed by the transferor does not create, assign, limit or extinguish any right, title or interest in the property and is of no effect. Such a document does not create any encumbrance in the property already transferred. Hence, such a Deed of Cancellation cannot be accepted for registration.

(ii) Once title to the property is vested in the transferee by the sale of the property, it cannot be divested unto the transferor by execution and registration of a Deed of Cancellation even with the consent of the parties. The proper course would be to re-convey the property by a deed of conveyance by the transferee in favour of the transferor.

(iii) Where a transfer is effected by way of sale with the condition that title will pass on payment of consideration and such intention is clear from the recital in the deed, then such instrument or sale can be cancelled by a Deed of Cancellation with the consent of both the parties on the ground of non-payment of consideration. The reason is that in such a Sale Deed, admittedly, the title remained with the transferor.

(iv) In other cases, a complete and absolute sale can be cancelled at the instance of the transferor only by taking recourse to the Civil Court by obtaining a decree of cancellation of Sale Deed on the ground inter alia of fraud or any other valid reasons.

60.Having regard to the conclusions arrived at as aforesaid, the questions referred are answered accordingly. The Appeals are referred back to the concerned Court for deciding the cases on merits."

3.Learned counsel for the petitioner further submitted that as a similar deed of cancellation of a sale unilaterally executed by a transferor does not create, assign, limit or extinguish any right, title or interest in the property, this writ petition deserves to be allowed. Again referring to another order dated 07.06.2012 made in W.P. Nos.17182 of 2011 and 5046 of 2012 (D.Mohan vs. Sub Registrar), learned counsel for the petitioner submitted that this Court allowed the above writ petition and quashed the registration deed of cancellation following the above Full Bench judgment.

4.Learned Special Government Pleader appearing for the first respondent agreed to the submission made by the learned counsel for the petitioner.

5.Since the third respondent has executed an irrevocable settlement deed of the suit property on 30.09.2011 and the physical possession of the property has also been taken over by the petitioner, without putting the petitioner on notice, executing a cancellation of settlement deed, in the light of the Full Bench Judgment stated supra, is invalid. Thus, in view of the above settled legal position, this writ petition stands allowed. The Settlement Deed of cancellation dated 27.08.2012 is quashed. Consequently, connected W.M.P. is closed. No costs.

Sd/-
Assistant Registrar (CS-IV)

//True copy//

Sub Assistant Registrar

vga
To

The Joint Sub Registrar No.1,Villupuram.

+1cc to Mr.N.Suresh, Advocate SR.No.79313

+1cc to Government Pleader SR.No.80097

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W.M.P. No.17259 of 2016

SJ(CO)
GMY(14/12/2018)