

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 23.10.2018
CORAM
THE HONOURABLE MR. JUSTICE R.MAHADEVAN

W.P.No.30480 of 2015

P.Pavanammal

..Petitioner

Vs

The Sub-Registrar,
Thiyagadurugam,
Thiyagadurugam Village,
Kallakurichi Taluk,
Villupuram District.

.. Respondent

Writ Petition filed under Article 226 of the Constitution of India, praying to issue a writ of certiorarified mandamus, to call for the records of the respondent vide impugned order viz., Check Slip dated 02.09.2015 and further direct the respondent to register the settlement deed dated 01.09.2015.

For Petitioner : M/s.S.Sithirai Anandam

For Respondent : Mr.P.P.Purusothaman
Additional Government Pleader

O R D E R

The prayer sought for in this writ petition is to quash the order dated 02.09.2015 passed by the respondent and consequently direct the respondent to register the settlement deed dated 01.09.2015 executed by the petitioner.

2.According to the learned counsel for the petitioner, the petitioner purchased the property in Survey No.57/10, Vadathorasalur Village, Thiyagadurugam, Villupuram District from one Mannangatti and others, vide Document No.893 of 1987 dated 10.06.1987. Since then she has been in possession and enjoyment of the same. While so, the petitioner executed a settlement deed dated 01.09.2015 in favour of her grand children born to her daughter Lakshmi. When the settlement deed was presented for registration, it was returned by the respondent by passing an order of return stating that the property, which is the subject matter of the settlement deed dated 01.09.2015 has been settled by one Palani, Son of the petitioner in favour of his sons by a settlement deed dated 16.08.2012 and when there is an encumbrance subsisting, the settlement deed could not be registered. Therefore, the petitioner has come before this Court with this writ petition.

3. Upon notice, the respondent filed a detailed counter affidavit stating that the petitioner earlier executed two settlement deeds in favour of her two sons viz., P.Narayanan and P.Palani through Doc.Nos.923/2006 and 924/2006, respectively dated 19.05.2006. Subsequently, the petitioner cancelled the said settlement deeds dated 19.05.2006 by way of cancellation deeds dated 04.06.2012 bearing Doc.Nos.1726/2012 and 1727/2012. It is further stated therein that the said P.Palani, who is son of the petitioner, registered a settlement deed in favour of (1) Narasimman (Minor) (2) Jainkumar (Minor) (3) Renuga (guardian of minors) through Doc.No.2593/2012 on 16.08.2012 and the said settlement deed is operating as an encumbrance in the property. Therefore, the respondent is justified in returning the settlement deed dated 01.09.2015 executed in favour of her grand children born to her daughter Lakshmi.

4. Heard both sides and perused the records.

5. At the outset, this Court finds no error or infirmity in the order impugned herein. It is a settled law that when once the property is settled, it cannot be cancelled unilaterally at the instance of the person, who has settled it, unless and otherwise, there is an element of fraud or the settlement is against the public policy. As such, the petitioner, after transfer of title in favour of her sons by executing settlement deeds, has no right or authority to cancel those settlement deeds unilaterally, without the knowledge of the settlees. Hence, the subsequent settlement deed executed by one of her sons in favour of his two sons and wife, holds good and operates as an encumbrance in respect of the property in question, thereby estopping the petitioner from settling it in favour of her daughter's grandchildren.

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

"..... 9. The issues, which fall 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 competent authority to decide the disputed question of facts. The operative portion of the order reads as follows:

"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 aside.

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

7. In the light of the aforesaid legal proposition, the order dated 02.09.2015 passed by the respondent, which is very well perfect in law, warrants no interference by this Court.

8. Accordingly, this writ petition stands disposed of, leaving it open to the petitioner to seek appropriate remedy before the competent Civil Court. No costs.

Sd/-

Assistant Registrar (CS)

//True Copy//

Sub Assistant Registrar

ms/rk

To
The Sub-Registrar,
Thiyagadurugam,
Thiyagadurugam Village,
Kallakurichi Taluk,
Villupuram District.

+1cc to M/s.S.Sithirai Anandam , Advocate SR.No. 71974

+1 CC TO GOVERNMENT PLEADER SR.NO. 73046

W.P.No.30480 of 2015

A.SK(11/02/2019)