

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.08.2018

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.20907 of 2017

and

W.M.P.Nos.21790 to 21792 of 2017

and

W.M.P.No.5076 of 2018

S.Dominic Xavio ...Petitioner

Vs.

1.The Sub-Registrar,
Joint-II Sub-Registration Office,
Chengalpattu.

2.S.Immanuvel ... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, to issue an order, direction or writ in the nature of writ of declaration, declaring the cancellation of settlement deed registered by the 1st respondent in Document No.5587 of 2017 dated 22.06.2017 as illegal, void and against the provisions of Registration Act.

For Petitioner : Mr.M.Dharani Dharan

For Respondents : Mr.P.P.Purushothaman,
Government Advocate, for R1
Mr.R.Saravana Kumar for R2

O R D E R

The relief sought for in this writ petition is for a declaration to declare the cancellation of settlement deed registered by 1st respondent in Document No.5587 of 2017 dated 22.06.2017 as illegal, void and against the provisions of Registration Act.

2.The affidavit filed in support of the writ petition states that the petitioner is the brother of the 2nd respondent and the petitioner and 2nd respondent are the joint owners of the property bearing No.38, H.I.G, MGR Salai, N.H-I, Maraimalai Nagar - 603 209, situated at Katankulathur Village. The 2nd

respondent executed a settlement deed in favour of the writ petitioner in Document No. 4413 of 2013 dated 10.04.2013. Accordingly, the title of the property has been transferred in the name of the writ petitioner and the writ petitioner became the absolute owner of the property. Subsequently, the 2nd respondent, without any consent, unilaterally cancelled the settlement deed by executing the Document No.5587 of 2017 dated 22.06.2017.

3.The contention of the writ petitioner is that the settlement deed originally executed by 2nd respondent in favour of the writ petitioner, transferred the title in favour of the writ petitioner. Thus, the 2nd respondent has no locus standi to execute any cancellation of deed of settlement as he has no title in respect of the property at all. Furthermore, the original deed of settlement was irrevocable and the writ petitioner has not given any consent for any such cancellation. Thus, the very registration of the cancellation deed is in violation of the provisions of the Registration Act.

4.The Hon'ble Full Bench of this Court has considered the same issue 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 paragraphs.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 respect of the unilateral cancellation of the settlement deed, the present writ petition deserve to be considered.

6. Accordingly, the cancellation of settlement deed registered by the 1st respondent in Document No.5587 of 2017 dated 22.06.2017 is quashed and the writ petition stands allowed. No costs. Consequently, connected Miscellaneous Petitions are also closed.

Sd/-
Assistant Registrar (CS VIII)

//True Copy//

Sub Assistant Registrar

mbi/kakS

To

The Sub-Registrar,
Joint-II Sub-Registration Office,
Chengalpattu.

+2cc to Mr.M.Dharani Dharan, Advocate SR.59149
+1cc to the Government Advocate Sr.60607

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