

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.12.2018

CORAM

THE HONOURABLE Mrs. JUSTICE PUSHPA SATHYANARAYANA

W.P. No.35046 of 2015

and

M.P.Nos. 1 & 2 of 2015

N. Vijaya Basker

.. Petitioner

Vs.

1. N.Asokan

2. A.Jayalakshmi

3. A.Anitha

4. A.Gokul Anand

5. M.A.Thiagarajan

6. The Sub-Registrar,
No.3, Joint Sub-Registrar Office (Salem West),
Shankar Nagar,
Salem - 636 007.

7. N.Govindammal

8. N.Kalaiselvi

.. Respondents

PRAYER : Writ Petitions filed Under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus to call for the records of the 6th respondent relating to the unilateral registration of the cancellation of the settlement deed dated 14.08.2013 registered as document No.2021/2013 and subsequent registration of settlement deed dated 14.08.2013 registered as Document No.2022/2013 made in Book No.1 with the 6th respondent, ie., the Sub Registrar, No.3, Joint Sub-Registrar Officer, Salem West, SAlem and quash the same and consequently direct the sixth respondent to delete the entries of the cancellation of settlement deed dated 14.08.2013 registered as Document No.2021 of 2013 and subsequent registration of settlement deed dted 14.08.2013 registered as

Document No.2022 of 2013 made in Book No.1 with sixth respondent, the Sub Registrar, No.3, Joint Sub-Registrar Office, Salem West, Salem District.

For Petitioner : Mr.N. Anand
For Respondent-1 : Mr.V.Udayakumar
For Respondents 2 and 4: Mr.S.Kumaresan
For Respondent-5 : No Appearance
For Respondent-6 : Mr.T.M.Pappiah,
Special Government Pleader
For Respondents 7 and 8: Mr. V.Katturani

O R D E R

The prayer sought for in this Writ Petition is for issuance of a Writ of Certiorarified Mandamus calling for the records of the sixth respondent relating to the unilateral registration of the cancellation of the settlement deed dated 14.08.2013 registered as document No.2021/2013 and subsequent registration of settlement deed dated 14.08.2013 registered as Document No.2022/2013 made in Book No.1 with the sixth respondent and quash the same.

2. The case of the petitioner is that one P.Nalliappan, who is the grandfather of the petitioner, had purchased the petition mentioned properties in the year 1985. Thereafter, the said Nalliappan executed a gift Settlement Deed vide Doc.NO.311/2006 dated 20.02.2006 in favour of his daughters/respondents 7 and 8 herein and handed over the possession of the property to them by changing patta, chitta and Adangal into their names. Subsequently, the first respondent, who is the brother of respondents 7 and 8 and the second respondent, who is the wife of the first respondent, executed a sale deed in favour of their daughter by undervaluing the property and kept the registered sale deed dated 14.09.2007 as pending document. Hence, the respondents 7 and 8 and their father P.Nalliappan had filed a suit in O.S.No.1091 /2008 on the file of the District Munsif, Salem for declaration and permanent injunction against the respondents 1, 2, 6 and the petitioner and the same was decreed on 11.07.2017. During the pendency of the suit, due to ill-health and old age, the seventh

respondent, who is the mother of the petitioner, executed a settlement Deed on 27.09.2012 vide Document No.2119/2012 in favour of the petitioner in respect of her share. Subsequently, on 14.08.2013, the respondents 1 to 4 took the said P.Nalliappan, who was aged about 92 years and not in a sound state of mind, to the sixth respondent office with a view to create further encumbrance over the property and got executed a cancellation of the Gift Settlement vide Doc.No.2021/2013 and registered a settlement deed in favour of the fourth respondent vide Doc.No.2022/2013. In the mean while, on 15.07.2014, the said P.Nalliappan died. The cancellation deed dated 14.08.2013 executed with the sixth respondent is now under challenge in this Writ Petition, as the unilateral cancellation is impermissible in law.

3. Heard both sides.

4. When the Settlement Deed is unconditional and irrevocable, the unilateral cancellation is being opposed to the public policy. In the event, the executant of the Settlement Deed is aggrieved by the same for having executed under coercion or undue influence, it is for him or her to approach the Civil Court to set aside the same and cannot unilaterally cancel it by way of deed of cancellation.

5. A Deed of Cancellation of a Settlement Deed unilaterally executed by the transferor does not create assign, limit or extinguish any right, title or interest in the property, which has already been transferred. Therefore, the sixth respondent also ought not to have entertained the registration of the Cancellation Deed. Immediately after the Settlement Deed is executed, the settlee/transferee becomes the absolute owner, as the property vest with the settlee and the same cannot be divested by the Cancellation Deed, even with consent of the parties. Perhaps, the proper way to re-convey the property is by a deed of conveyance by the transferee in favour of the transferor. Any such transfer by way of sale or settlement deed can be cancelled at the instance of the transferor only taking re-course to the Civil Court.

6. Learned Special Government Pleader appearing for the sixth respondent also conceded that if it is an unilateral cancellation of the Settlement Deed, the same is liable to be set aside.

7. In view of the above discussion, the Writ Petition is allowed and the impugned deed of cancellation dated 14.08.2013 and the consequential Settlement Deed dated 14.08.2013 are held to be invalid. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

mrp

To

The Sub-Registrar,
No.3, Joint Sub-Registrar Office (Salem West),
Shankar Nagar,
Salem - 636 007.

+1 cc to M/s.N.Anand, Advocate Sr.No.82782
+1 cc to The Government Pleader, Sr.No.83620

W.P. No.35046 of 2015

CP(CO)
CSL/28.12.2018