

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :10.10.2018

CORAM

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

W.P.No.24902 of 2016

and

W.M.P.No21272 of 2016

Badrinarayanan

..Petitioner

vs

1.The Joint Sub-Registrar Ambattur
Madras, 600 053.

2.G.Madhuravalli

3.S.Preethi

4.G.Ambujavalli

5.G.Indra

6.G.Ramadevi

7.G.Vasumathi

.. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, to call for the records on the file of the 1st respondent under documents No.1752/2014 and No.1753/2014 and dated 10.02.2014 and quash the same as illegal, incompetent and without jurisdiction.

For Petitioner : Mr.V.Raghavachari

For Respondents: Mr.P.P.Purushothaman, GA for R1

Mr.S.Vijayakumar for R2 to R7

O R D E R

The deed of cancellation of settlement executed by the mother of the petitioner in Document No.1752/2014 and No.1753/2014 dated 10.02.2014 are under challenge in this writ petition.

2.The learned counsel for the writ petitioner made a submission that he is the absolute owner of the property situated at Door No.7, High School Street, Secretariat Colony, Venkatapuram, Ambattur, Madras - 600 053. The said property was settled in the name of the writ petitioner by his mother / 2nd respondent. The 2nd respondent / mother executed the deed of settlement on 13.06.2013 without any condition to revoke the settlement. Thus, the property in question was transferred in favour of the writ petitioner and the writ petitioner became the absolute owner of the property.

3.The grievance of the writ petitioner is that the settlement deed executed by the mother of the writ petitioner / 2nd respondent was cancelled by executing a deed of cancellation on 10.02.2014. Such a execution of cancellation deed is impermissible under the provisions of the Registration Act. Further, in the absence of any condition in the settlement deed, the writ petitioner acquire title over the property pursuant to the settlement deed executed in his favour on 13.06.2013. Thus, the 2nd respondent has no locus standi to execute the cancellation deed on 10.02.2014.

4.The learned counsel for the writ petitioner made a submission that the 2nd respondent cancelled the settlement deed at the instigation of the sisters of the writ petitioners, who all are the respondents in the present writ petition. In respect of the cancellation of deed of settlement, this Court has passed an order in W.P.No.10919 of 2017 dated 10.08.2018 and the relevant paragraphs are extracted hereunder:

"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."

5. Accordingly, the cancellation of settlement deed in Document Nos. 1752/2014 and No.1753/2014 and dated 10.02.2014

are quashed and the writ petition stands allowed. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

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Sd/-
Assistant Registrar (CS-VI)

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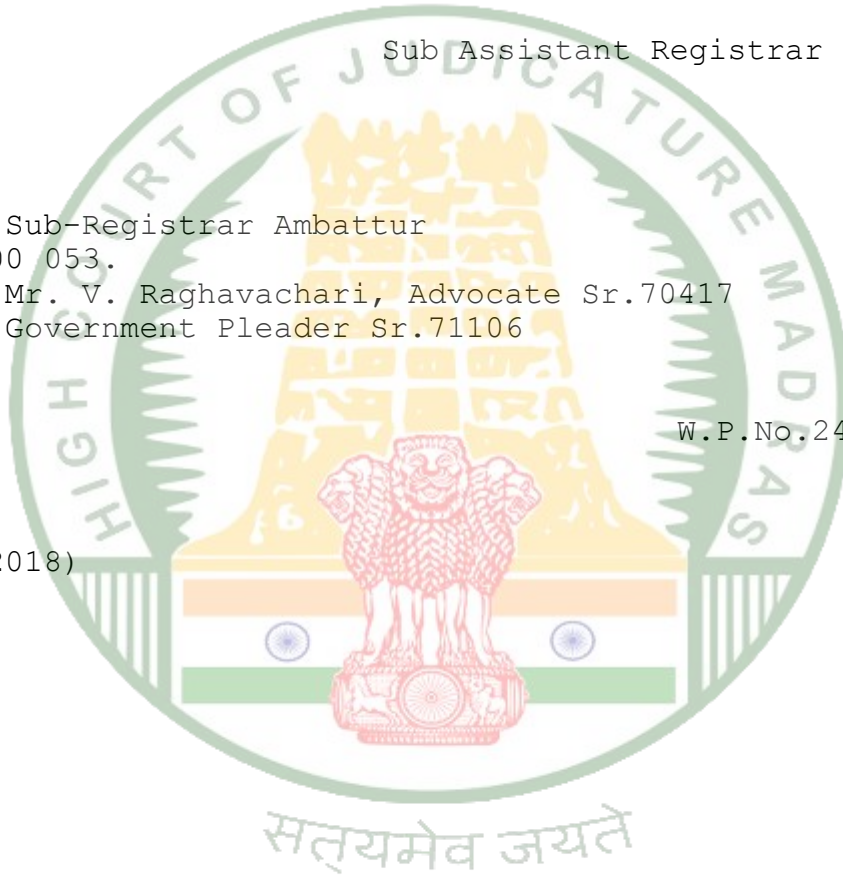
Sub Assistant Registrar

To

The Joint Sub-Registrar Ambattur
Madras, 600 053.
+ 1 cc to Mr. V. Raghavachari, Advocate Sr.70417
+ 1 cc to Government Pleader Sr.71106

W.P.No.24902 of 2016

(CS-VI)
EU (29/10/2018)



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