

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 10-10-2018

CORAM

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

W.P.No.27342 of 2016

And

W.M.P.Nos.23543 and 23544 of 2016

N.Vijaya Baskar

.. Petitioner

..Vs..

1.A.Gokul Anand

2.N.Asokan

3.N.Govindammal

4.P.Kalaiselvi

5.S.P.Gopiraj

6.The Sub-Registrar,
Edappadi Sub-Registrar Office,
Edappadi Taluk,
Salem District.

.. Respondents

PRAYER : Writ Petition filed Under Article 226 of the Constitution of India praying to issue 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 1.8.2013 registered as Document No.3960 of 2013 in the office of the sixth respondent i.e., the Sub-Registrar, Edappadi Sub-Registrar Office, Salem District and to quash the same and consequently direct the sixth respondent to delete the entries of the cancellation of Settlement Deed dated 1.8.2013 registered as Document No.3960 of 2013 with the sixth respondent, Sub-Registrar, Edappadi Sub-Registrar Office, Salem District.

For Petitioner

: Mr.N.Anand

For Respondents-3to 5

: Mr.S.Periyasamy

For Respondent-6 : Mr.P.P.Purushothaman,
Government Advocate.
For Respondents-1&2 : No Appearance

O R D E R

The unilateral registration of the cancellation of the Settlement Deed dated 1.8.2013 registered as Document No.3960 of 2013 on the file of the sixth respondent i.e., the Sub-Registrar, Edappadi Sub-Registrar Office, Salem District, is under challenge in this writ petition.

2. The learned counsel for the writ petitioner made a submission that the grandfather of the writ petitioner Mr. Late P.Nalliyappan executed a Settlement Deed in favour of the writ petitioner and the fifth respondent on 28.5.2008. The Settlement Deed executed by the grandfather of the writ petitioner is an irrevocable one and there is no condition, whatsoever, for cancelling the Settlement Deed. Accordingly, the writ petitioner and the fifth respondent became the absolute owner of the property transferred in their favour by virtue of the Settlement Deed executed.

3. The grievance of the writ petitioner is that the said Settlement Deed executed in the year 2008, was cancelled unilaterally by the Settlor on 1.8.2013 in Document No.3960 of 2013. In view of the fact that the unilateral cancellation of Settlement Deed is impermissible on the ground that the writ petitioner and the fifth respondent were conferred with the title pursuant to the execution of the Settlement Deed under the provisions of the Registration Act. After transfer of title in favour of the writ petitioner and the fifth respondent, the Settlor has no right to cancel the Settlement Deed executed in the absence of any specific covenant in the Deed of Settlement.

4. The settled legal position was settled by the Hon'ble Full Bench of this Court in the case of Latif Estate Line India Ltd vs. Hadeeja Ammal [(2011) 2 MLJ 569 (FB)]. Following the abovesaid judgment, this Court also passed an order in WP No.15624 of 2014 decided on 23.4.2018 and the relevant paragraph-3 is extracted hereunder:-

"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 settled legal position, the relief sought for by the writ petitioner in the present writ petition is to be considered. Accordingly, the impugned cancellation Deed dated 1.8.2013, registered as Document No.3960 of 2013 on the file of the sixth respondent, is quashed

6. Accordingly, the writ petition stands allowed. However, there shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS V)

//True Copy//

Sub Assistant Registrar

Svn

To

The Sub-Registrar,
Edappadi Sub-Registrar Office,
Edappadi Taluk,
Salem District.

+1cc to Mr.N.Anand, Advocate, S.R.No.70406

+1cc to the Government Pleader, S.R.No.71107

WP No.27342 of 2016

SS(CO)
GSP(12/11/2018)

WEB COPY