

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :23.04.2018

CORAM :

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

W.P.Nos.15624 & 15625 of 2014

and

M.P.Nos.1 & 1 of 2014

Mr.B.Nagarajan

...Petitioner in both WPs

Vs.

1.The Joint-I Sub Registrar

Officer of the Sub Registrar

Chengalput.

...1st Respondent in WP.No.15624/14

1.The Joint-II Sub Registrar

Officer of the Sub Registrar

Tiruvannamalai

...1st Respondent in WP.No.15625/14

2.Mrs.N.Kasthuribai

W/o. Mr.B.Nagarajan

No.25/9, L.G.G.S.Nagar

Polur Road, Tiruvannamalai Town

Tiruvannamalai District

...2nd Respondent in both WPs

Prayer in W.P.No.15624/2014 : Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus, to declare that the Deed of Cancellation of Settlement Deed executed by the 2nd respondent herein dated 19.03.2014, registered as Document No.571/2014 on the file of the 1st respondent by canceling the Settlement Deed dated 11.12.2013 executed by the 2nd respondent in favour of the petitioner as Document No.2698 of 2013 on the file of the 1st respondent herein is null and void and not binding upon the petitioner's possession over the property being a vacant land situate at No.246, Vedanarayanapuram Village, Chengalput Taluk, Chengalput District, comprised in Old Survey No.83/1 (part), New Survey Nos.83/20 and 83/2C2, now Survey No.83/1A2, bearing Patta No.899, Plot Nos.47 and 52, admeasuring in all a total extent of 6200 Sq.ft., or thereabouts.

Prayer in W.P.No.15625/2014 : Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus, to declare that the Deed of Cancellation of Settlement Deed executed by the 2nd respondent herein dated 10.03.2014,

registered as Document No.2129/2014 on the file of the 1st respondent by canceling the Settlement Deed dated 04.12.2009 executed by the 2nd respondent in favour of the petitioner as Document No.9878 of 2009 on the file of the 1st respondent herein is null and void and not binding upon the petitioner's possession over the property being house, ground and premises, bearing Plot No.14, Veenus Nagar, Nochimalai Village and Post, Tiruvannamalai Taluk, Tiruvannamalai District, comprised in Survey No.59/7, measuring an extent of 4400 sq ft or thereabouts.

For Petitioner : Mr.K.V.Babu [in both WPs]
For Respondents : Mr.M.Thamizharasan [For R1]
Government Advocate
No appearance [For R2]

C O M M O N O R D E R

The relief sought for in these writ petitions are to declare that the Deed of Cancellation of Settlement Deed executed by the 2nd respondent herein dated 19.03.2014, registered as Document No.571/2014 on the file of the 1st respondent by canceling the Settlement Deed dated 11.12.2013 executed by the 2nd respondent in favour of the petitioner as Document No.2698 of 2013 on the file of the 1st respondent herein is null and void and not binding upon the petitioner's possession over the property being a vacant land situate at No.246, Vedanarayanapuram Village, Chengalput Taluk, Chengalput District, comprised in Old Survey No.83/1 (part), New Survey Nos.83/20 and 83/2C2, now Survey No.83/1A2, bearing Patta No.899, Plot Nos.47 and 52, admeasuring in all a total extent of 6200 Sq.ft., or thereabouts and to declare that the Deed of Cancellation of Settlement Deed executed by the 2nd respondent herein dated 10.03.2014, registered as Document No.2129/2014 on the file of the 1st respondent by canceling the Settlement Deed dated 04.12.2009 executed by the 2nd respondent in favour of the petitioner as Document No.9878 of 2009 on the file of the 1st respondent herein is null and void and not binding upon the petitioner's possession over the property being house, ground and premises, bearing Plot No.14, Veenus Nagar, Nochimalai Village and Post, Tiruvannamalai Taluk, Tiruvannamalai District, comprised in Survey No.59/7, measuring an extent of 4400 sq ft or thereabouts.

2.The learned counsel appearing on behalf of the writ petitioner states that the writ petitioner was employed in the Tamilnadu State Police and was retired as Additional Superintendent of Police. The second respondent in these writ petitions is none other than the wife of the writ petitioner. The second respondent/wife of the writ petitioner executed

Settlement Deeds dated 04.12.2009 and 11.12.2013 against the writ petitioner vide document Nos. 9878 of 2009 and 2698 of 2013 in the office of the first respondent in respect of the property, situated at No.246, Vedanarayanapuram Village, Chengalput Taluk, Chengalput District, comprised in Old Survey No.83/1 (part), New Survey Nos.83/20 and 83/2C2, now Survey No.83/1A2, bearing Patta No.899, Plot Nos.47 and 52, admeasuring in all a total extent of 6200 Sq.ft. and the second property, Plot No.14, Veenus Nagar, Nochimalai Village and Post, Tiruvannamalai Taluk, Tiruvannamalai District, comprised in Survey No.59/7, measuring an extent of 4400 sq ft, respectively.

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."

4. In view of the settled legal principles in respect of the unilateral cancellation of the settlement deeds the present writ petitions deserve consideration. Accordingly, the cancellation deeds executed by the second respondent in the office of the first respondent, vide document Nos.571 & 2129 of 2014 dated 19.03.2014 and 10.03.2014, respectively, are quashed and the writ petitions are allowed. Accordingly, the first respondent is directed to effect necessary entries in the records. Consequently, connected miscellaneous petitions are closed. However, there is no order as to costs.

msv/m

Sd/-

Assistant Registrar(Cs VIII)

//True Copy//

Sub Assistant Registrar

To

1.The Joint-I Sub Registrar
Officer of the Sub Registrar
Chengalput.

2.The Joint-II Sub Registrar
Office of the Sub Registrar
Thiruvannamalai

+lcc to Government Pleader Sr.No.30320

+lcc to Mr.K.V.Babu, Advocate Sr.No.29896

+lcc to Mr.K.V.Babu, Advocate Sr.No.29897(23/05/2018)

NRJK(CO)

sm:16.5.2018

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