

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 08.03.2018
Delivered on : 28.06.2018

CORAM:

THE HON'BLE MR.JUSTICE K.K.SASIDHARAN
AND
THE HON'BLE MR.JUSTICE P.VELMURUGAN

W.A No.1283 of 2012 and
M.P.No.1 of 2012

S.M.Syed Mohammed Buhari ...Appellant

Vs

1.The Sub Registrar
District Registrar Cadre
Triplicane, Chennai.

2.S.M.M.Mohideen

3.S.M.S.Mohammed Mohideen

...Respondents

Prayer:- Writ Appeal filed under clause 15 of the Letter Patent against the order dated 09.12.2011 made in W.P.No.18051 of 2011. Writ petition filed under Article 226 of the constitution of India to issue a writ of declaration, declaring the revocation deed registered by 1st respondent in Document No.781 of 2011 dt 18.7.2011 and consequential settlement deed registered as Document No. 802 of 2011 dt 22.7.2011 as illegal void and against the Provisions of Transfer of Property Act and Registration Act

For Appellant : Mr.K.M.Vijayan
Senior Counsel for
M/s.K.M.Vijayan Associates

For Respondents: Mr.V.Anandhamoorthy,
Addl.Govt.Pleader for R1
Mr.V.Lakshminarayanan
for R2 and R3

J U D G M E N T

K.K. SASIDHARAN, J.

Introductory

The maintainability of a writ petition under Article 226 of the Constitution of India to declare the cancellation of a Settlement Deed executed by a Mahomedan as null and void, is the core issue involved in this intra court appeal.

The Facts summarised

2. The second respondent (hereinafter referred to as the "Settlor") executed a Settlement Deed dated 11 August 2004 in favour of the appellant in relation to his property, which is the subject matter of the present litigation. The Settlement Deed was registered before the Sub-Registrar, Triplicane vide Document No.1045 of 2004.

3. The settlor subsequently cancelled the Settlement and executed a Revocation Deed dated 18 July 2011 and it was registered as Document No.781 of 2011 on the file of the Sub-Registrar, Triplicane.

4. Thereafter, the subject property was settled in favour of the third respondent. The Settlement Deed dated 22 July 2011 was registered as Document No.802 of 2011 on the file of Sub-Registrar, Triplicane.

5. The appellant filed a writ petition in W.P.No.18051 of 2011 for a declaration that the Cancellation Deed and the subsequent Settlement Deed are illegal and void.

6. The learned single Judge dismissed the writ petition with an observation that the remedy is only to approach the Civil Court. The present appeal is directed against the said order.

Submissions

7. The learned Senior Counsel for the appellant contended that there is a clear statement in the Settlement Deed that possession of the settled property was given to the appellant. Therefore, it was not open to the Settlor to cancel the Settlement deed unilaterally. The learned Senior Counsel placed reliance on a Full Bench Judgment in M/s.Latif Estate Line India Ltd., v. Mrs.Hadeeja Ammal and other [2011 (2) CTC 1] to canvass the point that writ petition is maintainable to declare the unilateral cancellation of Settlement Deed as null and void.

8. The learned counsel for the respondents 2 and 3 contended that essential conditions of a valid settlement was not satisfied in the subject case, as there was no delivery of possession of property. According to the learned counsel, since there is an issue with regard to the validity of the settlement made originally, the proper course is only to file a suit for declaration.

Discussion

9. The Settlor executed a Settlement Deed in favour of the appellant and it was registered before the Sub-Registrar. There is a statement in the Settlement Deed dated 11 August 2004 that Settlor has put the Settlee in possession of the property. There is also a statement that the Settlee has accepted the settlement. The Settlor reserved his life interest in the property.

10. The Settlor in the Deed of Revocation dated 18 July 2011 stated that the Settlement Deed was not acted upon and he has been taking the usufructs from the property. There was no mutation of revenue records pursuant to the settlement in favour of the Settlee.

11. The appellant has come up with a contention that there was delivery of possession, which is disputed by the Settlor.

12. The question therefore is whether it would be possible for this Court to decide as to whether there was a valid settlement in favour of the Settlee as contemplated by the Mahomedan Law.

The Concept of Gift under Mahomedan Law

13. Hiba or Gift under the Mahomedan Law is a transfer of property with immediate effect given without consideration by the Donor to the Donee and acceptance of the same by the Donor. In order to qualify it as a gift, three essential conditions must be satisfied. They are:-

- a) Declaration of Gift by the donor,
- b) Acceptance of the gift expressly or by implication, by or on behalf of the donee,
- c) Delivery of possession of the subject of the gift by the donor to the donee.

14. There is no need for a written document to validate the gift. Similarly, there is no requirement to register the Gift Deed for its validity. In case, a challenge is made, the registration of document could be projected as a valid piece of evidence.

15. Insofar as Mohamedan Law is concerned, mutation is not an absolute proof to prove the delivery of possession. Similarly, the absence of mutation cannot be cited to canvass that there was no delivery of possession in case there is proof to prove the factum of the third ingredient of a valid gift.

16. The appellant is banking upon the recitals in the Settlement Deed to prove delivery of possession.

17. Though there is evidence to prove the declaration of gift and its acceptance, there is no independent evidence to prove the delivery of possession of the property. The Settlor has disputed the contention regarding delivery of possession. The reservation of life interest and taking usufructs from the property are the defences taken by the Settlor to contend that there was no valid gift.

18. It is not in dispute that in the Gift Deed, there is a recital regarding delivery of possession. The recitals in the deed only raised a rebuttable presumption. It would not be possible in a writ petition to decide this issue on the basis of the affidavit and the counter affidavit.

19. The contention taken by the learned Senior Counsel for the appellant by placing reliance on the provisions of the Transfer of Property Act has no relevance in view of Section 2 of the Act, which provides that nothing contained in the second Chapter relating to transfer of property by act of party would affect the rule of Muhammadan law.

20. The issue in *Latif Estate* (cited supra) was regarding the validity of a deed of cancellation of sale made unilaterally by the vendor. The Full Bench answered the reference by stating that a complete and absolute sale can be cancelled at the instance of a transferor only by taking recourse to the Civil Court.

21. In the subject case, there is a dispute with regard to the validity of the Settlement Deed. The transfer of title itself is in dispute. However, in *Latif Estate*, there was transfer of title consequent to the execution of sale deed. It was only under such circumstances, the Full Bench observed that subsequent cancellation deed executed unilaterally cannot be accepted for registration.

22. When the factum of delivery of possession and transfer of title are in dispute, the remedy is not a writ petition under Article 226 of the Constitution. The aggrieved must approach the jurisdictional Civil Court to declare the validity of the impugned transaction. The appellant must plead and prove that the Settlement Deed executed in his favour satisfies the essential ingredients of a valid gift under the Mahomedan Law. The forum for giving such declaration is only the Civil Court. We are therefore of the view that the learned single Judge was correct in dismissing the writ petition.

23. In the upshot, we dismiss the intra court appeal without liability to pay costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (CS-VII)

//True Copy//

Sub Assistant Registrar

To

The Sub Registrar
District Registrar Cadre
Triplicane, Chennai.

+ 1 cc to M/s. K.M. Vijayan Associates Sr.41275

W.A No.1283 of 2012

BS (CO)
EU (17/07/2018)



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