

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :30.08.2018

CORAM

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

W.P.No.27517 of 2017

and

WMP.Nos.29413 and 29414 of 2017

1. Dr.A.B.Selvarangan

2. S.Balasubramani ... Petitioners

Vs

1. The Sub Registrar,
Kundrathur Sub - Registrar Office,
Kundrathur, Chennai - 69.

2. Dr.S.Selvakumar ... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying for an issuance of Writ of Certiorarified Mandamus calling for the records relating to the unilaterally executed Deed of Cancellation of Settlement Deed registered in Document No.15111/2015 dt 16.09.2015 on the file of the 1st respondent and quash the same and consequently direct the 1st respondent to remove the entries in respect of the documents concerned from the concerned Registers and consequential transactions with respect to the property to the extent of 49 Cents situated at No.92, Velappanchavadi, Part of Numbai Village, (Saidapet Taluk, Chengai District), presently Ambattur Taluk, Thiruvallur District within the Registration District of South Chennai, Sub-Registration District of Kundrathur comprised in part of old S.Nos.54/2 & 54/5, present S.No.93/2 (part) as per Patta Survey No.93/2C.

For Petitioners : Mr.S.Kamadevan
for Mr.K.Maheswaran
For Respondent No.1 : Mr.P.P.Purushothaman
Government Advocate
For Respondent No.2 : Mr.A.Ganesan

O R D E R

The relief sought for in this Writ Petition is calling for the records relating to the unilaterally executed deed of Cancellation of Settlement Deed registered in Document No.15111 of 2015 dated 16.09.2015 on the file of the 1st respondent.

2. The Learned counsel appearing for the Writ Petitioners states that the 2nd respondent executed a Settlement Deed in favour of the 1st Writ Petitioner Dr.A.B.Selvarangan vide Document No.1138 of 2002 dated 23.03.2001. Pursuant to the execution of the Settlement Deed, the 1st Writ Petitioner became the owner of the property and the title was transferred in the name of the 1st Writ Petitioner. Consequently, the 1st Writ Petitioner executed another Settlement Deed in favour of the 2nd Writ Petitioner. After a lapse of 14 years from the date of the execution of the Settlement Deed by the 2nd respondent, the same was cancelled unilaterally without even on the consent of the Writ Petitioner by the 2nd respondent.

3. The learned counsel for the petitioners states that the 2nd respondent has no locus standi to execute such cancellation of Settlement Deed in view of the provisions of the Registration Act. Once a Settlement Deed is executed, the title has to be transferred in favour of the setlee and therefore, the settlor has no right to cancel the document unless a consent is obtained or it is specified in the document itself. Admittedly, the Original Settlement Deed executed was not revocable and therefore, the subsequent Cancellation Deed is unacceptable.

4. The very same issue has already been considered by this Court and this Court has settled the legal principles in the matter of cancellation of Settlement Deed executed in the case of P.A.G.Kumaran Vs. Inspector General of Registration, dated 31.07.2017, reported in 2017 (2) CWC 796 and 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 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 said legal principles, the impugned cancellation of Settlement Deed, registered in Document No.15111 of 2015 dated 16.09.2015, is quashed.

6. Accordingly the Writ Petition stands allowed. If any of the parties are aggrieved, it is left open to adjudicate the disputes before the competent Civil Court of Law. However, there is no order as to costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (CS-VIII)

// True Copy//

Sub Assistant Registrar

ay/gbi

To

The Sub Registrar,
Kundrathur Sub - Registrar Office,
Kundrathur, Chennai - 69.

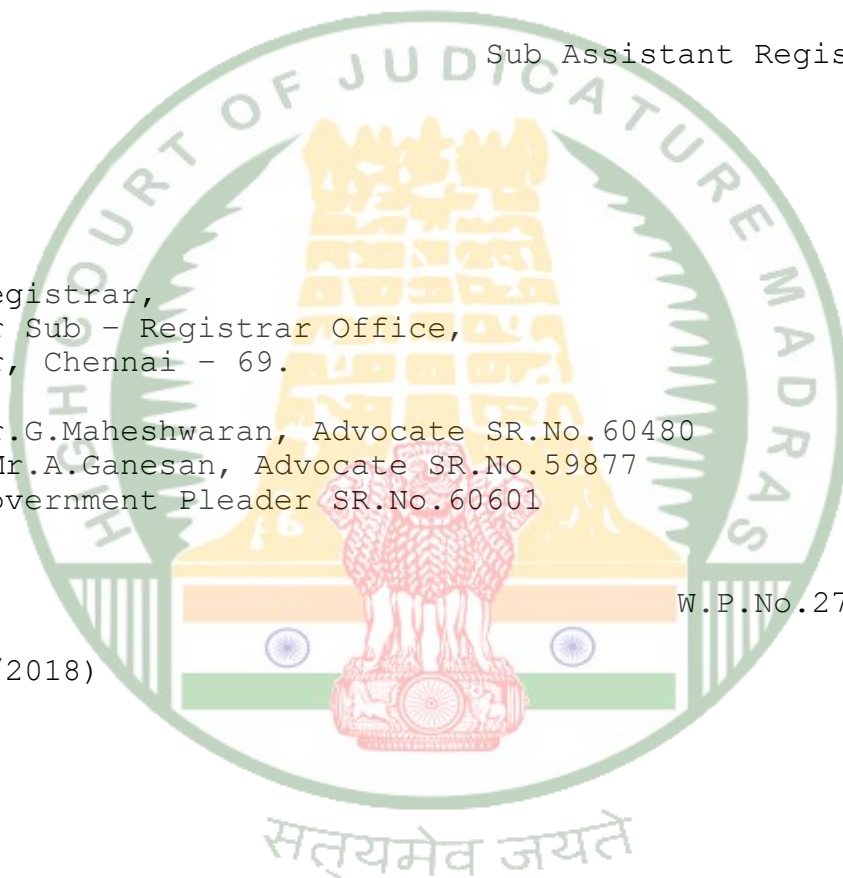
+1cc to Mr.G.Maheshwaran, Advocate SR.No.60480

+2ccs to Mr.A.Ganesan, Advocate SR.No.59877

+1cc to Government Pleader SR.No.60601

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CA (CO)
RMP (20/09/2018)



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