

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.07.2018

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA

W.P.No.31270 of 2015 and
M.P.No.1 of 2015

V.Gopalasami

.. Petitioner

Vs.

1.The Inspector General of Registration,
100, Santhome High Road,
Chennai - 600 028.

2.The District Registrar, Chennai South,
(Administration), No.9, Jenis Road,
Saidapet, Chennai - 600 015.

3.The Sub Registrar,
Pammal Sub Registrar Office,
Chennai - 600 044.

4.Latha Udhayakumar

5.K.Udhayakumar

... Respondents

Petition under Article 226 of the Constitution of India, praying for the issue of a Writ of Mandamus, directing the respondents 1 to 3 to conduct an enquiry and initiate prosecution against the respondents 4 & 5 and their associates under Section 281 to 283 of the Registration Act, 1908 for the creation of a fraudulent Settlement Deed dated 10.04.2015 (Doc.No.2802/2015) in respect of the house site Nos.2 & 3 measuring 2000 sq.ft., each comprised in New S.No.3/1A2B and 3/1A2C respectively located in Gerugambakkam Village, Sriperumbudur Taluk, Kanchipuram District by considering the petitioner's representation dated 09.09.2015.

For Petitioner : Mr.N.Manokaran

For Respondents : Mr.T.M.Pappiah,

Special Government Pleader (R1 to R3)

Ms.G.Sukumari (R4 & R5)

O R D E R

The petitioner is an octogenarian. According to the learned

counsel for the petitioner, the petitioner at the verge of his retirement had invested all his earning and savings and purchased house site No.3 measuring 2000 sq.ft., comprised in S.No.3/1A2 located in Gerugambakkam Village, Sriperumbudur Taluk, Kanchipuram District under a registered Sale Deed dated 02.01.1989 from one K.R.Gangatharan.

2.While so, the 4th respondent, who is the wife of the 5th respondent, purchased an extent of 89 cents in S.No.3/2A from one S.Duraisamy Reddiar, his son D.Srinivasan and his grand son Ganesh Babu under a registered Sale Deed dated 30.06.1986. Thereafter, she had disposed of the said property to 3rd parties and hence, the 4th respondent does not have any extent of land in S.No.3/2A. The respondents 4 & 5 have entered into a Deed of Settlement dated 10.04.2015 by creating forged document, bearing Doc.No.2802 of 2015. When the 4th respondent has already sold her 89 cents to 3rd parties, she does not have any right or title over the subject matter house site Nos.2 & 3 bearing S.No.3/1A2 purchased by the petitioner and his son-in-law under Sale Deeds dated 02.01.1989 and 28.12.1988 respectively.

3.After coming to know of the fraudulent Settlement Deed dated 10.04.2015, a criminal complaint has been lodged for forgery under Sections 463 and 470 IPC. Aggrieved by the alienation of property made by the respondents 4 & 5, the petitioner has given a complaint to initiate criminal action against the respondents 4 & 5 under Sections 81 to 83 of the Registration Act. Finally, the petitioner has been advised to approach this Court seeking for mandamus to direct the respondents 1 to 3 to conduct an enquiry and initiate prosecution against the respondents 4 & 5 and their associates under Section 81 to 83 of the Registration Act, 1908 for the creation of a fraudulent Settlement Deed dated 10.04.2015.

4.Mr.N.Manokaran, learned counsel appearing for the petitioner submitted that during the pendency of the Writ Petition, the 4th respondent has filed a counter affidavit admitting the case of the petitioner that the alienation of the lands covered in S.No.3/1A2 has been made inadvertently without any criminal conspiracy. In the counter affidavit, the respondents 4 & 5 have further agreed to undo the wrong committed by them and they have also executed a Cancellation Deed bearing Doc.No.734 of 2016, which was also accepted by the Sub Registrar, Pammal on 05.02.2016.

5.The learned counsel for the petitioner submitted that in view of the fact that the petitioner and the respondents 4 & 5 have settled the matter amicably by executing a Cancellation Deed dated 05.02.2016, which was also accepted by the Sub Registrar, Pammal, and in view of the stand taken by the

respondents 4 & 5 in their counter affidavit, the Writ Petition may be closed.

6.The relevant portion of the counter affidavit filed by the 4th respondent is extracted hereunder:

"4.I submit that after going through the recitals therein, the writ petitioner has appraised the fact that the factum of unilateral cancellation of the settlement deed dated 10.4.2015 and the recitals that the ownership and possession have been retained by me even after the execution of the deed of cancellation dated 5.2.2016 would create further complication in future. Therefore, pursuant to the terms agreed at the time of compromise entered prior to the registration of the cancellation of the settlement deed, I file this affidavit of undertaking to the following effect:

i)We assure that we have no right, title, or claim over the house site Nos.2 and 3 measuring 2000 sq.ft each comprised in new S.No.3/1A2B and 3/1A2C Patta Nos.594 and 595, situated at No.57, Gurugambakkam Village, Sriperumbudur Taluk, Kancheepuram District.

ii)I have inadvertently executed the above said settlement deed dated 10.4.2015, registered as Document No.2802 of 2015 in the office of the Sub Registrar, Pammal in the name of my husband/5th respondent in respect of the aforesaid two house sites over which, I did not have any title.

iii)We undertake in view of the deed of cancellation dated 5.2.2016 registered as Document No.734 of 2016 in the office of the Sub Registrar, Pammal, we re-assure the title of the writ petitioner and his son in law Mr.P.Mohanavelu over the house site Nos.3 and 2 measuring 2000 sq.ft each purchased by them under a sale deeds dated 2.1.1989, Document No.8 of 1980 and 28.12.1988, Document No.4245 of 1988 respectively.

iv)We reiterate that the usual recitals incorporated in the deed of unilateral cancellation dated 5.2.2016 pertaining to retention on the possession would no way impeach the title of the writ petitioner and his son in law Mr.P.Mohanavelu over the properties covered under the above said two sale deeds.

v)In view of this affidavit of undertaking, the writ petitioner and his son in law Mr.P.Mohanavelu are at liberty to treat the subject matter properties as that of their own without any dispute as to their title at our instance."

7.Mr.T.M.Pappiah, learned Special Government Pleader appearing for the respondents 1 to 3 also submitted that the Cancellation Deed was already accepted by the Sub Registrar.

8.In the light of the above, the Writ Petition stands closed. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(Audit)

//True Copy//

Sub Assistant Registrar

va

To

1.The Inspector General of Registration,
100, Santhome High Road,
Chennai - 600 028.

2.The District Registrar, Chennai South,
(Administration), No.9, Jenis Road,
Saidapet, Chennai - 600 015.

3.The Sub Registrar,
Pammal Sub Registrar Office,
Chennai - 600 044.

+1cc to Mr.G.Sukumari, Advocate, S.R.No.46686

+1cc to the Government Pleader, S.R.No.47573

सत्यमेव जयते

W.P.No.31270 of 2015 and
M.P.No.1 of 2015

RJ(CO)
GSP(30/07/2018)

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