

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 23.10.2018

CORAM
THE HONOURABLE MR.JUSTICE R.MAHADEVAN

W.P.No.23744 of 2018 and
W.M.P.No.27700 of 2018

L.Balaji

... Petitioner

Vs

1.The Sub Registrar,
Thiruvottiyur Registration Office,
22, Market Lane, Kaladipet,
Chennai 600 019.

2.R.Mahesh Kumar ... Respondents

PRAYER : Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, to call for the records of the first respondent pertaining to the deed of cancellation of settlement dated 25.09.2008 vide Document No.8875/2008 dated 25.09.2008 executed unilaterally by the 2nd respondent cancelling the settlement deed dated 23.05.2007 bearing Document No.6052 of 2007 in respect of 1/5th undivided share of the immovable property being vacant nanja land measuring an extent of 1.62 acres made up of 0.89 acres in S.No.15/2, 050 acres in S.No.15/3 and 0.23 acres in S.No.15/1, Sadayankuppam Village, Ambattur Taluk, Thiruvallur District within the sub-registration district of Thiruvottiyur and quash the same and further direct the first respondent to delete the entry of settlement cancellation deed in document No.8875/2008 dated 25.09.2008 from the encumbrance certificate.

For Petitioner : Mr.L.Murali Krishnan

For Respondents : Mr.T.M.Pappiah,
Special Government Pleader for R1

: Mr.R.Sivaraman for R2

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O R D E R

The petitioner has come up with this writ petition to call for the records of the first respondent pertaining to the deed of cancellation of settlement dated 25.09.2008 vide Document No.8875/2008, executed unilaterally by the 2nd respondent cancelling the settlement deed dated 23.05.2007 bearing Document No.6052 of 2007 and quash the same and for consequential relief.

2. According to the learned counsel for the petitioner, the petitioner along with his father and his uncles viz., R.Kanagavel, R.Mahesh Kumar, the second respondent herein and R.Srinivasan, have purchased a property situated in Sadayankuppam Village, Ambattur Taluk, Thiruvallur District on 13.10.1997 and the same was registered as Document No.3141 of 1998, on the file of the first respondent. Subsequent to the purchase, the second respondent along with R.Srinivasan executed a deed of settlement in Document No.6052 of 2007 on 23.05.2007 in favour of the petitioner and the same is irrevocable.

3. While matter stood thus, when the petitioner applied for encumbrance certificate in the year 2018, he came to know that the second respondent has unilaterally cancelled the settlement deed executed jointly by him and R.Srinivasan and the first respondent has registered such unilateral cancellation of settlement deed, which is absolutely wrong and illegal as per the judgments of this Court. Hence, the petitioner is before this Court by this writ petition.

4. This Court, while dealing with the similar issue in the case of S.Lingeshwaran vs. The Sub Registrar, Purasawalkam, Chennai and others, in W.P.(MD)No.21825 of 2014, had passed an order dated 20.02.2015, wherein, it is held as follows:

"..... 9. The issues which falls for consideration are, after execution of settlement deed, the settlor loses all rights over the same, she cannot unilaterally execute a cancellation deed without notice to the petitioner and the third respondent. Whether the first respondent has jurisdiction to register such a document. The said issue has been considered in the earlier decision of this Court (Madurai Bench) in the case of C.R.BANDHI & OTHERS Vs. 1. THE INSPECTOR GENERAL OF REGISTRATION, SANTHOME, CHENNAI-4 & OTHERS in W.P.(MD)No.121 of 2013 dated 04.07.2014, in the said decision, this Court held that the Registrar is not a competent person to register the unilateral cancellation deed by deciding the question whether it falls within the exception under Section 126 of the Transfer of Property Act, since he is not the competent authority to decide the disputed question of facts. The operative portion of the order reads as follows:

"11. Here, in this case, it is seen that the unilateral cancellation deed was registered without notice to the petitioners. Further, in the settlement deed itself, it has been stated that the possession is handed over to the donee vi., first petitioner. Based on the same,

mutations were also effected in the revenue records. In this regard, this Court is the view that it would be appropriate to look into the following decisions;

12. This Court in the judgment reported in 2012 (5) MLJ 169 (D.Mohan and another vs. Sub Registrar, Chennai and others) has held that in the case of gift, the donor after executing the gift deed when it is accepted by the donee, is left with no interest in the property, therefore, it was not open to the respondent to get the cancellation deed registered, as she could have challenged it by filing civil suit and proving the allegations of fraud. Further, a gift deed could not be revoked by way of cancellation deed, once the case did not fall within the exception, under Section 126 of the transfer of Property act and a person having no right in the property cannot get it cancelled by getting it registered.

13. Further, in the judgment reported in 2014 (3) CTC 113 (D.V.Loganathan Vs. The Sub Registrar, Chennai and another) has held that the registration of cancellation of the settlement deed is against the public policy as it was not open to the Sub Registrar to register the cancellation of the deed when the settlement deed is unconditional and irrevocable. If at all the party who has executed the document is aggrieved by the settlement deed he could have very well approached the Civil Court to set it aside, but certainly not unilaterally cancel it by getting the deed of cancellation registered with the Sub Registrar. The cancellation deed and its registration, therefore, being without jurisdiction is liable to be set aside.

14. In yet another judgment reported in (2012) 1 MLJ 216 (K.A.Shanmugam and another v. Tamilarasi and others), this Court has held that mentioning of handing over of possession in settlement deed itself is sufficient to come to a conclusion that the settlement deed has been acted upon.

15. The dictum laid down in the above judgments are squarely applicable to the facts of this case. Though the learned counsel for the respondents submitted that as per Section 127 of the Transfer of Property act, a gift deed can be revoked by way of a cancellation deed, if it falls within the exception under Section 126 of the Transfer Property Act, in my considered opinion, whether it falls within the exception under Section 126 of the Transfer of the Property Act or not is purely a matter of evidence. The same has to be adjudicated only before the Civil Court. The Registrar is not a competent person to register the unilateral cancellation deed by deciding the question whether it falls within the exception under Section 126 of the Transfer of Property Act, since he is not the competent authority to decide the disputed question of facts. Further, in my considered opinion, by executing a registered settlement deed in favour of 1st petitioner /settlee, the settlor/4th respondent herein had lost her right in the property. Unless the said right is restored by setting aside the settlement deed executed by the settlor in favour of the settlee by a competent Court, the Sub-Registrar is not competent to register the unilateral cancellation of settlement deed.

16. In view of the above, the deed of cancellation is ordered to be quashed and the subsequent order in the appeal dated 23.7.2012 is also quashed."

सतयमेव जयते
10. The aforesaid decision would be squarely applicable to the facts of the present case. Following the above said decision, the writ petition is allowed and the impugned deed of cancellation dated 08.05.2014 and the consequential settlement deed, dated 07.07.2014 are held to be invalid. However, it is open to the respondents 2, 4 and 5 to approach the Civil Court for appropriate relief if they so desire. No costs."

5. The above said proposition is not refuted by the learned counsel for the second respondent. Hence, following the same, this writ petition is allowed. The impugned deed of cancellation of settlement dated 25.09.2008 vide Document No.8875/2008, being

invalid, is hereby set aside. However, it is open to the second respondent to approach the Civil Court for appropriate relief, if so advised. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

gsk

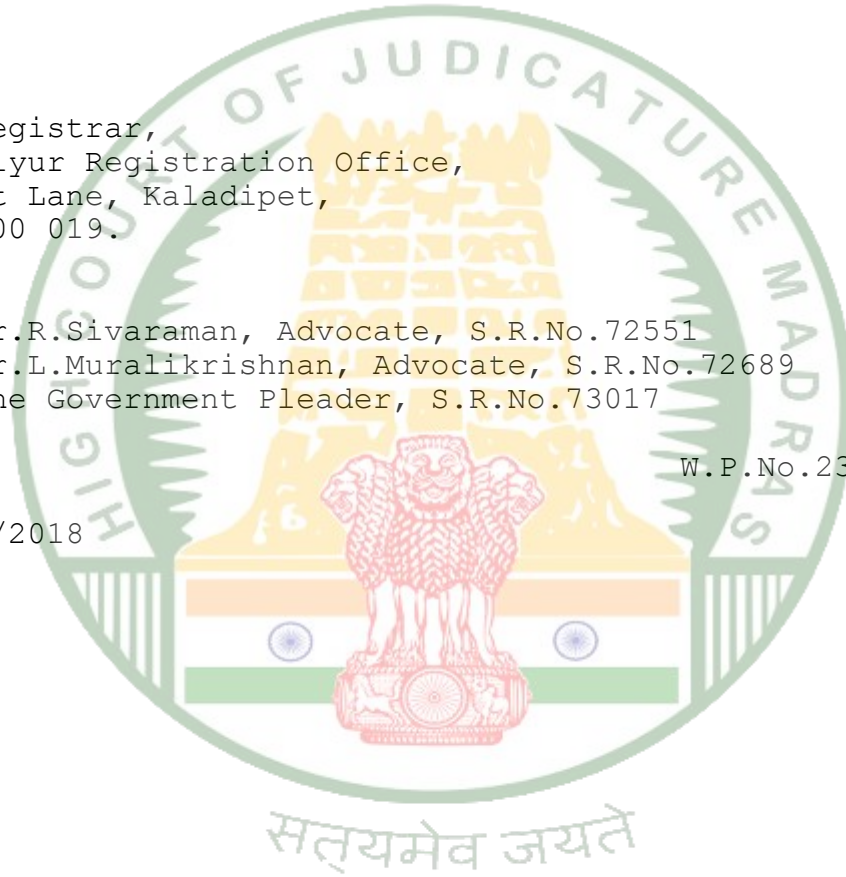
To

The Sub Registrar,
Thiruvottiyur Registration Office,
22, Market Lane, Kaladipet,
Chennai 600 019.

+1cc to Mr.R.Sivaraman, Advocate, S.R.No.72551
+1cc to Mr.L.Muralikrishnan, Advocate, S.R.No.72689
+1cc to the Government Pleader, S.R.No.73017

W.P.No.23744 of 2018

rrs 12/11/2018



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