

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.09.2018

CORAM

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

W.P.No.2897 of 2017

- 1.Apnan Banu (Minor)
- 2.Mohammed Isarul Islam (Minor)
- 3.Ume Ruman (Minor)

All Represented by their Mother

Mrs.H.Khaizer Banu,
W/o.Mr.Y.Suhail Ahmed,
New No.31, Old No.9,

Sultan Mlyan Sahib Street,
Tirupattur Town,
Vellore District.

..Petitioners

Versus

- 1.The Sub-Registrar,
O/o. Sub-Registrar,
Tirupattur,
Vellore District.

2.Mrs.Sirajunissa

3.Mr.Y.Suhail Ahmed

..Respondents

PRAYER: Writ petition is filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Declaration, declaring that the Deed of Cancellation of Settlement Deed dated 28.01.2016 executed by the 2nd Respondent and registered as Doc.No.713 of 2016 on the file of the 1st Respondent by cancelling the Settlement Deed dated 24.11.2010 executed by the 2nd Respondent in favour of the 1st and 2nd minor petitioners herein vide Doc.No.11810 of 2010 on the file of the 1st Respondent and again by cancelling the another Settlement Dated 05.11.2013 executed by the 2nd Respondent to and in favour of the 3rd Minor Petitioner herein and registered Doc.No.10547 of 2013 on the file of the 1st respondent herein and subsequent settlement deed dated 28.01.2016 executed by the 2nd Respondent in favour of the 3rd Respondent registered as Doc.No.715 of 2016 on the file of the 1st Respondent is null and void and not binding upon the petitioners' and their possession over the

property situate at New No.31, Old No.9, Sultan Miyan Sahib Street, Tirupattur Town, Vellore District, measuring an extent of 243.86 Sq.mt.as per parent documents comprised in T.S.No.86 and as per document T.S.No.26.

For Petitioners : Mr.G.Jayachandran
For Respondent-1 : Mr.P.P.Purushothaman, GA
For Respondents-2 & 3 : Mr.J.K.Shiva Ganesh

ORDER

The unilateral cancellation of the settlement deeds registered in favour of the writ petitioners originally are under challenge in this writ petition.

2.The learned counsel for the writ petitioner states that the property situated in New No.31, Old No.9, Sultan Miyan Sahib Street, Tirupattur Town, Vellore District, measuring an extent of 243.86 Sq.mt., as per the parent documents comprised in T.S.No.86 and as per subsequent document T.S.No.26 was originally belong to the 2nd respondent's father Mr.M.K.Abdul Madeen Sahib. The said Mr.M.K.Abdul Madeen Sahib settled the above said property through a deed of settlement dated 15.07.2003 Vide Doc.No.2854 of 2003 at SRO, Tirupattur, to and in favour of the 2nd respondent herein. The 2nd respondent is the grant mother of the writ petitioners, who in turn executed two Settlement Deeds in favour of the writ petitioners on 24.11.2010 in Vide Doc No.11810 of 2010 and another Settlement Deed dated 05.11.2013 in Vide Doc.No.10547 of 2013. Thus, the writ petitioners became the absolute owners of the property and the property settled by the 2nd respondent / grand mother, transferred in the name of the writ petitioners.

3.The learned counsel for the petitioner states that once the title in respect of the immovable properties were transferred in the name of the writ petitioners and thereafter, the 2nd respondent has no locus standi to deal with the property and execute a cancellation deed in accordance with the provisions of the Registration Act. Thus, the unilateral cancellation of settlement deed executed by the 2nd respondent is invalid and in violation of the Registration Act. This apart, there is no Clause for revocation of settlement deed in the original settlement deed registered in favour of the writ petitioners nor the writ petitioners have given any consent for any such cancellation. Thus, the impugned cancellation of settlement deeds are liable to be quashed.

4.The legal principles in this regard are settled by this Court 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 paragraphs 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."

5. In view of the fact that the unilateral cancellation of settlement deeds are impermissible under the Registration Act as well as the said legal principles are settled by the Full Bench of this Court, the present writ petition deserves consideration. Accordingly, the Deed of Cancellation of Settlement Deed dated 28.01.2016 executed by the 2nd Respondent and registered as Doc.No.713 of 2016 on the file of the 1st Respondent by cancelling the Settlement Deed dated 24.11.2010 executed by the 2nd Respondent in favour of the 1st and 2nd minor petitioners herein vide Doc.No.11810 of 2010 on the file of the 1st Respondent and again by cancelling the another Settlement Dated 05.11.2013 executed by the 2nd Respondent to and in favour of the 3rd Minor Petitioner herein and registered Doc.No.10547 of 2013 on the file of the 1st respondent herein and subsequent settlement deed dated 28.01.2016 executed by the 2nd Respondent in favour of the 3rd Respondent registered as Doc.No.715 of 2016

on the file of the 1st Respondent are quashed.

6. Accordingly, the writ petition stands allowed. However, there shall be no order as to costs.

Sd/-

Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

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To

The Sub-Registrar,
O/o. Sub-Registrar,
Tirupattur,
Vellore District.

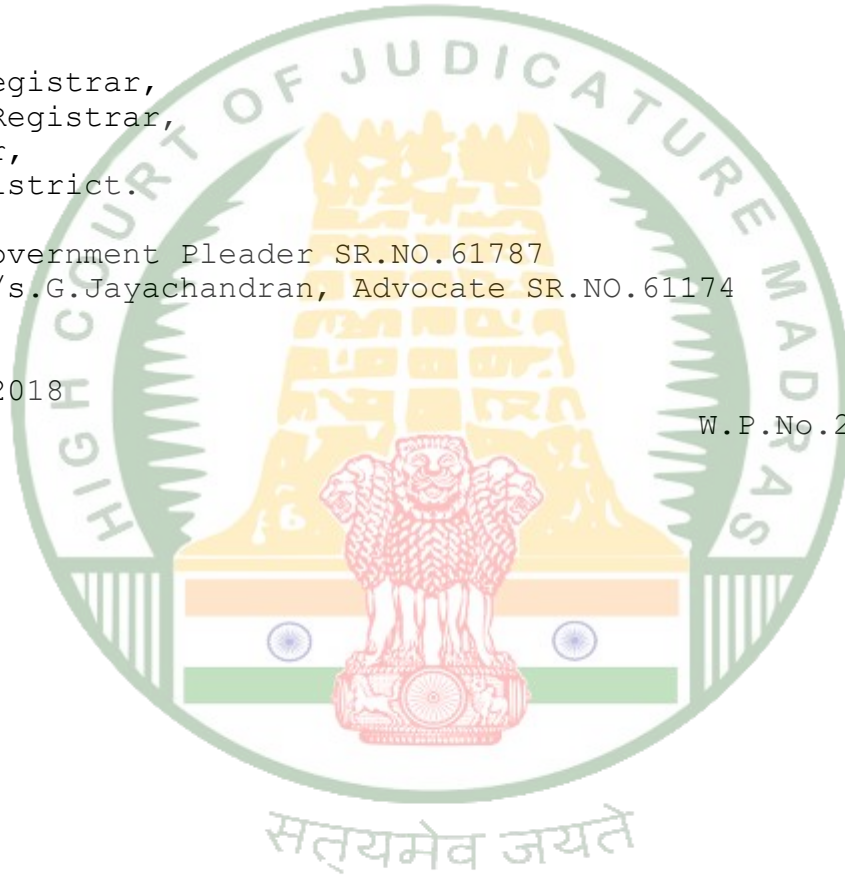
+1cc to Government Pleader SR.NO.61787

+1cc to M/s.G.Jayachandran, Advocate SR.NO.61174

PPA(CO)

sm:22.10.2018

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