

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :27.06.2018

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

W.P.No.20575 of 2016
and
W.M.P.No.17685 of 2016

E.Dhanasekaran

..Petitioner

vs

1.The Inspector General of Registration,
Santhome High Road,
Chennai - 600 004.

2.The Sub-Registrar,
Sub-Registrar's Office,
Redhills,
Chennai - 600 052.

3.Mrs.D.Udayakumari

4.M.Divya Bharathi

5.M.Aradhana

.. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, to call for the entire records from the 2nd respondent herein i.e.the Sub-Registrar, Redhills culminating in the cancellation of the Settlement Deed dated 03.04.2014, registered in Document No.3471 of 2014 and as well as the subsequent Settlement Deed dated 03.04.2014, registered in Document No.3472 of 2014, in the Office of the Sub-Registrar, Redhills and to quash the same as illegal and consequently direct the 2nd respondent herein i.e.the Sub - Registrar, Redhills to cancel the entries in the encumbrance certificate in the Office of the Sub-Registrar, Redhills.

For Petitioner : Mr.B.Ganesha Moorthy

For Respondents : Mr.P.P.Purushothaman, GA for R1 & R2
Mr.P.Sivamani, for R3 to R5

O R D E R

The relief sought for in this writ petition is to call for the records in respect of the cancellation of settlement deed registered before the Sub-Registrar, Redhills on 03.04.2014 in Document No.3471 of 2014 and as well as the subsequent Settlement Deed dated 03.04.2014, registered in Document No.3472 of 2014 and quash the same.

2.The writ petitioner states that the third respondent is his wife and the marriage between the writ petitioner and the third respondent was solemnized during the year 2005. The third respondent already married one Mr.Murugan and got two daughters namely, M.Divaya Bharathi and M.Aradhana, who are the fourth and fifth respondent in the present writ petition. The third respondent deserted her husband and subsequently, divorced him. Thereafter, the writ petitioner married the third respondent and was maintaining the entire family and brought up the children also. The third respondent executed a Settlement Deed in favour of the writ petitioner in respect of the property belongs to her. The settlement was made by the third respondent without any condition. It was the settlement without any covenant for such settlement and accordingly, the same became final. The Settlement Deed was registered on 09.07.2009 and the cancellation of the Settlement Deed was executed by the third respondent after a lapse of about five years on 03.04.2014.

3.The learned counsel appearing on behalf of the writ petitioner states that the settlement executed absolutely in favour of the writ petitioner by the third respondent cannot be canceled at all. The second respondent has no authority to register such a cancellation deed under the provisions of the Registration Act.

4.The learned counsel for the respondent made a submission that the cancellation deed was executed by the third respondent on account of certain personal reasons. Further, the Settlement Deed itself was executed on coercion. However, such contentions cannot be raised now after a lapse of many years by the respondents.

5.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 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."

6. Accordingly, the cancellation of Settlement Deed registered before the Sub-Registrar, Redhills on 03.04.2014, registered in Document No.3471 of 2014 and as well as the subsequent Settlement Deed dated 03.04.2014, registered in Document No.3472 of 2014 are quashed and accordingly, the writ petition stands allowed. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

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Sd/-

Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

To

1.The Inspector General of Registration,
Santhome High Road,
Chennai - 600 004.

2.The Sub-Registrar,
Sub-Registrar's Office,
Redhills,
Chennai - 600 052.

+1cc to Mr.B.Ganeshamoorthy, Advocate SR.No.40872

+1cc to Government Pleader Sr.No.41352

sm:10.7.2018

W.P.No.20575 of 2016

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