IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.06.2018

CORAM

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

W.P.41498 of 2016
and
W.M.P.No.2604 of 2017

D.Janani ..Petitioner

vs

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

2.The Sub-Registrar,
Anna Nagar,Chennai-600 040.

3.Padmavathy Ammal
4.K.R.Damodharan
5.R.Vijayaraghavan
6.A.Mohana .. 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 records pertaining tot he unilaterally executed Cancellation Deed in Doc. No.2896/2012, dated 22.08.2012, and further Execution of a Deed of Settlement dated 22/082012 registered as Doc. No.2897/2012 on the file of the second respondent and quash the same and consequently, direct the respondents 1 and 2 to remove the unilateral cancellation of Settlement Deed executed by the 3rd respondent in Doc.2896/2012 and further execution of a Deed of Settlement dated 22.08.2012, registered as Doc.No.2897/2012 from the encumbrance certificate of the land and building at Old No.7/1 New No.19, Soma Sundaram 6th Street, Ayanavaram, Chennai-600 023, and comprised in Paimash Nos.988 & 989, Old Block Nos.31 & 32 New Block No.33 T.S.No.2 and admeasuring East to West on the Northern Side 31 ft and Southern Side 301/4 North to South 57 ½ fir in all measuring an extent of 1761 sq.ft. Within the Registration District of Chennai Central and Sub-Registration District of Anna Nagar.

For Petitioner : M/s.M.Christella
For Respondents 1 to 2 : Mr.P.P.Purushothaman Government Advocate

For Respondent 4 : No appearance

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O R D E R

The unilateral cancellation of Settlement Deed in document No.2896/2012 dated 22.08.2012 and further execution of a Deed of Settlement dated 22.08.2012, registered as document No.2897/2012 on the file of the 2nd respondent, are under challenge in this writ petition.

2. The learned counsel, appearing on behalf of the writ petitioner, states that the original Settlement Deed was registered on 10.03.1986, in favour of one Mr.K.R.Damodharan. Thereafter, the said K.R.Damodharan executed a Settlement Deed in favour of his daughters D.Kirthika and D.Jananni, on 02.02.2011. Subsequently, the Settlement Deed in favour of the writ petitioner Smt.D.Janani, daughter of Mr.K.R.Damodharan, had been registered on 02.02.2011 itself. The Settlement Deed registered in favour of the 4th respondent Shri K.R.Damodharan was canceled on 22.08.2012.

3. The learned counsel for the petitioner states that the Deed of Settlement was registered in favour of her father K.R.Damodharan, on 10.3.1986 and the Settlement Deed is canceled unilaterally in the year 2012, after a lapse of 26 years from the date of registration of the Settlement Deed. Canceling the Settlement Deed registered in favour of the father of the writ petitioner Shri K.R.Damodharan, another Settlement Deed in favour of the respondents 4 to 6 by the third respondent on 22.08.2012.

4. It is contented that both the Cancellation Deeds as well as the registration of a fresh Settlement Deed are void on the ground that the original Settlement Deed had been registered in favour of the father of the writ petitioner Shri.K.R.Damodharan, on 10.03.1986, who in turn subsequently settled the properties in favour of his daughters on 02.02.2011. This being the factum of the case, the unilateral cancellation of the Settlement Deed registered on 10.03.1986, is in violation of the provisions of the Registration Act and the Registration Department has no authority to entertain such instrument for cancellation of Settlement Deed registered on 10.03.1986.

5. The Settlement Deed is absolute and there is no covenant to suggest that the same can be canceled or withdrawn. In the absence of any such specific covenant, cancellation deed, registered on 22.08.2012, is illegal.

6. The learned counsel relied on the Judgment of this Court dated 23.04.2018, passed in W.P.Nos.15624 and 15625 of 2014. The legal principles, in this regard, in respect of the unilateral cancellation of the Settlement Deed has been considered by this

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Court in the earlier Judgment and the operative portion of the Judgment is extracted herein under:-

> "3.The grievances of the writ petitioner is that the second respondent without any right or authority, on 10.03.2014 under document No.2129 of 2014 and on 19.03.2014 under Document No.571 of 2014 canceled the said settlement deeds executed by the second respondent in the office of the first respondent, which is contrary to law and this Court has elaborately adjudicated the matter and decided such unilateral cancellation is null and void. In this regard, the learned counsel for the writ petitioner cited the judgment delivered 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 paragraph Nos.13 to 16 are extracted below:
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> "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.
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> 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

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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

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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."

7. In view of the legal principles settled in the Judgment cited supra, the unilateral cancellation of Settlement Deed and the subsequent execution of the Settlement Deed, are contrary to law and accordingly, the writ petition deserves to be considered.

8. In this view of the matter, the Cancellation Deed registered in document No.2896/2012 dated 22.08.2012 and further execution of a Deed of Settlement dated 22.08.2012, registered as document No.2897/2012, on the file of the second respondent are quashed and the writ petition stands allowed. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CCC)

//True copy//

Sub Assistant Registrar

Svn/Nmm

To

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

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2.The Sub-Registrar,
Anna Nagar,
Chennai-600 040.

+1cc to Mr.M.Christella, Advocate SR.No.38624
+1cc to Government Pleader SR.No.39153

W.P.41498 of 2016
and
W.M.P.No.2604 of 2017

BS(CO)
GN(03/07/2018)

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