

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.08.2018

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.6811 of 2016
and
W.M.P.No.6075 of 2016

R.Thangavel

...Petitioner

Versus

1.The Sub-Registrar
O/o.Registration,
Mohanur,
Namakkal District.

2.T.R.Ramesh

...Respondents

Prayer: Petition filed under Article 226 of the Constitution of India, praying for the issuance of Writ of Certiorari, calling for the entire records relating to the impugned cancellation of Settlement Deed in Document No.2380 of 2015, dated 16.11.2015 on the file of the 1st respondent and quash the same.

For Petitioner :Mr.C.Prakasam

For Respondents :Mr.P.P.Purushothaman, GA for R1
Mr.C.Jagadish for R2

O R D E R

The unilateral cancellation of settlement deed registered in Document No.2380 of 2015 dated 16.11.2015 on the file of the 1st respondent is under challenge in this writ petition.

2.The petitioner is the Brother of the 2nd respondent. Admittedly, the 2nd respondent executed a settlement deed(Gift) in favour of the writ petitioner on 05.12.2014. The learned counsel for the 2nd respondent objected the very execution of the settlement deed on the ground that the writ petitioner had played a fraud on the transaction and the understanding between the writ petitioner and the 2nd respondent had not been honored and implemented. Thus, the very execution of the settlement deed in favour of the writ petitioner by the 2nd respondent was by way of coercion and not with a consent of the writ petitioner. Thus, the 2nd respondent is right in executing the deed of cancellation

of settlement deed.

3.The learned counsel appearing on behalf of the writ petitioner opposed the same by stating that the deed of settlement was executed, which is irrevocable in nature and the unilateral cancellation of settlement deed is impermissible in law. Once a settlement deed is executed, the title of the property has been transferred in the name of the writ petitioner and thereafter, the 2nd respondent has no locus standi to execute any deed or deal with the property under the provisions of the Registration Act itself. Thus, the very cancellation of settlement deed is non est in law and impermissible. In this regard, this Court has considered the same issues in W.P.No.15624 of 2014 dated 23.04.2018 based on the judgment of this Court.

4.This Court has elaborately adjudicated the issues and a decision that unilateral cancellation of settlement deed is null and void. 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 legal principles settled by the Hon'ble Full Bench of this Court, the unilateral cancellation of settlement deed in the present writ petition deserves to be set aside. Accordingly, the cancellation of settlement deed in Document No.2380/2015 dated 16.11.2015 on the file of the 1st respondent is quashed. It is needless to state that if any grievance exists for the 2nd respondent, it is left open to him to redress the same in the manner known to law.

6.Accordingly, the writ petition stands allowed. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-IX)

//True Copy//

Sub Assistant Registrar

kak

To

1.The Sub-Registrar
O/o.Registration,
Mohanur,
Namakkal District.

+1cc to Mr.C.PRAKASAM, Advocate, S.R.No. 57584
+1cc to the Government Pleader, S.R.No. 57901

W.P.No.6811 of 2016

TR(24/08/2018)

सत्यमेव जयते

WEB COPY