

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.08.2018

CORAM

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

W.P.NO.9738 of 2016
and WMP No.8720 of 2016

1. K.Chandra
2. K.Divakar
3. K.Narmada

..... Petitioners

Vs

1. The Inspector General of Registrar
Registration Office, Santhome High Road
Mylapore, Chennai 600 004.
2. The District Registrar
District Registration Office, Trichy.
3. The Sub-Registrar, Sub-Registrar Office
Thathiengarpet, Trichy District.
4. Mrs.Poongavanam
5. P.Periyasamy

..... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of certiorarified mandamus calling for the records pertaining to the fraudulent unilateral cancellation in Document in No.121/2013 dated 28.01.2013 done by the 4th respondent and executed a fresh fraudulent registration done in Document No.2030/2015 dated 16.12.2015 in favour of the 5th respondent, registered before the third respondent and quash the same and consequently direct 1st to 3rd respondent to take suitable action on 4th and 5th respondents as per Registration Act.

For Petitioners:Mr.J.Arockia Selvaraj

For Respondents:Mr.P.P.Purushothaman -
for RR 1 to 3

Mr.K.A.Vimal Kumar - for RR 4 and 5

O R D E R

The unilateral cancellation of the settlement deed in Document No.121 of 2013 dated 28.01.2013 on the file of the fourth respondent Sub Registrar is under challenge in this writ petition.

2. The fourth respondent executed a settlement deed in favour of his son, who is the husband of the writ petitioner No.1. In other words, the husband of the first writ petitioner is the son of the fourth respondent. Accordingly, the title has been transferred in favour of the husband of the first writ petitioner. The settlement deed was irrevocable one and therefore the title in respect of the immovable properties described in the schedule had been transferred in the name of the husband of the first writ petitioner. After some time, the fourth respondent executed a cancellation deed in Doc.No.121 of 2013 dated 28.1.2013. Learned counsel appearing on behalf of the petitioner states that such an unilateral cancellation of an irrevocable settlement deed is impermissible in law and the title already transferred in favour of the husband of the first writ petitioner cannot be dealt with by the fourth respondent. Once the title is conveyed absolutely, the fourth respondent has no locus standi to execute a deed of cancellation of the settlement deed. Thus, the very registration of the cancellation deed is null and void.

3. Learned counsel appearing on behalf of the fourth and fifth respondents contended that the very execution of the settlement deed was fraudulent and the same was executed on account of exerting coercion. In this regard, a civil suit is pending before the competent civil court in O.S.No.182 of 2015 on the file of the District Munsif Court, Musiri.

4. It is needless to state that in respect of such allegations, the respective parties are at liberty to adjudicate the same before the Civil Court. However, in respect of registration of the deed of cancellation of settlement deed cannot be sustained on account of the fact that such unilateral cancellation is impermissible in view of the Full Bench judgment of 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 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."

5. In view of the settled legal principles in respect of the unilateral cancellation of the settlement deeds the present writ petition deserves consideration. Accordingly, the cancellation of the settlement deed executed in Document No.121 of 2013 dated 28.1.2013 on the file of the third respondent stands quashed. Accordingly, the first and second respondents are directed to effect necessary entries in the records. The writ petition is allowed. Consequently, connected miscellaneous petition is closed. However, there is no order as to costs.

सत्यमेव जयते

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Assistant Registrar(Audit)

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Sub Assistant Registrar

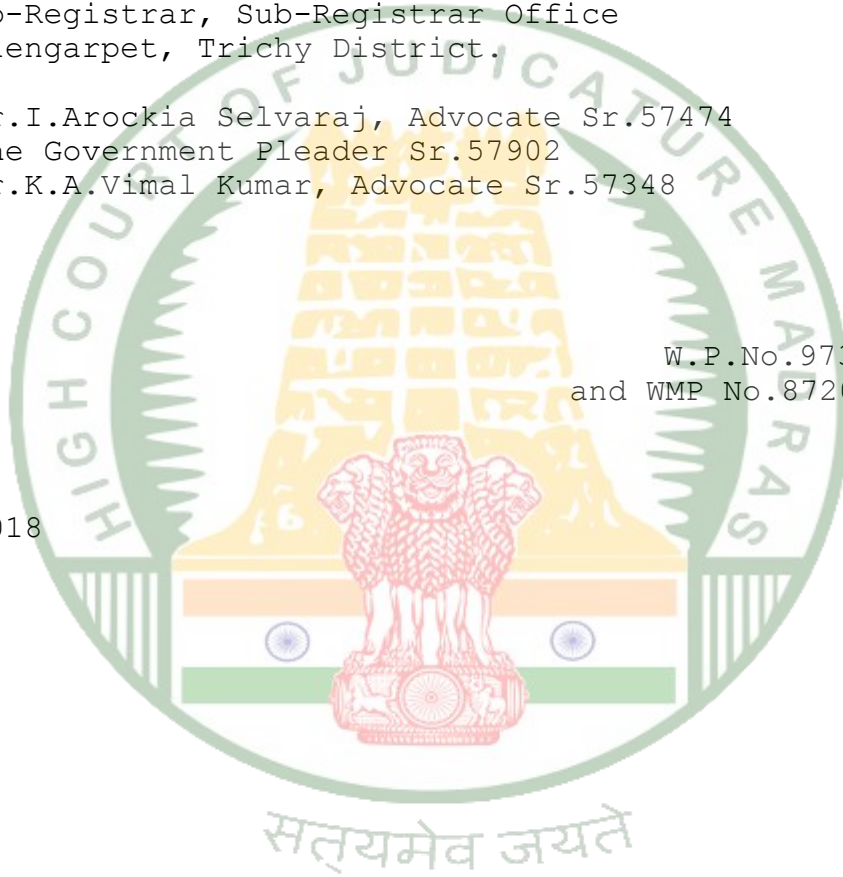
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To

1. The Inspector General of Registrar
Registration Office, Santhome High Road
Mylapore, Chennai 600 004.
2. The District Registrar
District Registration Office, Trichy.
3. The Sub-Registrar, Sub-Registrar Office
Thathiengarpet, Trichy District.

+1cc to Mr.I.Arockia Selvaraj, Advocate Sr.57474
+1cc to the Government Pleader Sr.57902
+1cc to Mr.K.A.Vimal Kumar, Advocate Sr.57348

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srg 4/9/2018



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