

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.11.2018

CORAM

THE HONOURABLE Mrs. JUSTICE PUSHPA SATHYANARAYANA

W.P. No.31510 of 2018

P.Dhananjayan

.. Petitioner

Vs.

1. The Inspector General of Registration,
100, Santhome High Road,
Mylapore, Chennai 600 028

2. Sub Registrar, Redhills,
No.44/5, Vallalar Street,
Bye Pass Road,
Redhills, Chennai 600 052.

3.Raniammal

... Respondents

PRAYER : Writ Petitions filed Under Article 226 of the Constitution of India praying to issue a Writ of Declaration to declare the Doc.No.9193 of 2013 dated 20.07.2012 on the file of the second respondent as null and void and non-est in law.

For Petitioner : Mr.V.Chandrakanthan

For Respondents 1 and 2: Mr.T.M.Pappiah,
Special Government Pleader

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O R D E R

The prayer sought for in this Writ Petition is for issuance of declaration to declare the Document No.919 of 2013 dated 20.07.2012 on the file of the second respondent as null and void and non-est in law.

2. The case of the petitioner is that originally, the petition mentioned properties were owned by one Srinivasalu Naidu. He died in the year 1991 leaving behind his wife, viz., Chinnammal and six daughters including the third respondent

herein. One another daughter, Shanthi is the wife of the petitioner. Therefore, all the legal heirs of the deceased Srinivasalu Naidu are entitled to 1/7th share each in the above petition mentioned properties as per the Hindu Succession Act. The said Chinnammal along with other daughters, namely, Raniammal/the third respondent, Dhanalakshmi, Devi, Geetha and Kala executed a release deed dated 02.03.2010 in favour of the petitioner's wife releasing their 6/7th undivided share in the property, which was also registered as Document No.1227 of 2010. The said release in favour of the wife of the petitioner is only out of love and affection towards her. Pursuant to the said release, the said Shanthi also obtained a patta in her favour in Patta No.392. The said Shanthi also executed a settlement deed dated 19.03.2010 in favour of the petitioner and the same was registered as Document No.1802 of 2010 at Sub Registrar Office, Redhills. Based on the settlement deed, the petitioner had also acted upon the same by mortgaging the property on 24.12.2010 in favour of one Venkataramana Ammal and availed a loan of Rs.1,00,000/-, which document was also registered as Document No.10347 of 2010 at Sub Registrar Office, Red Hills. It is also stated that the said mortgage was also discharged on 10.04.2013.

3. While so, when the petitioner had applied for a loan before the Bank, they asked him to mortgage the property. For availing the said loan, the petitioner applied for Encumbrance Certificate, which revealed that there was a cancellation deed cancelling the release deed dated 02.03.2010. The said cancellation deed was presented on 20.07.2012 and the same was registered on 01.08.2013 (i.e) after one year from the date of the presentation. The cancellation deed executed by the third respondent is now under challenge in this Writ Petition, as the unilateral cancellation is impermissible in law.

4. Heard both sides.

5. When the Settlement Deed is unconditional and irrevocable, the unilateral cancellation is being opposed to the public policy. In the event, the executant of the Settlement Deed is aggrieved by the same for having executed under coercion or undue influence, it is for him or her to approach the Civil Court to set aside the same and cannot unilaterally cancel it by way of deed of cancellation.

6. A Deed of Cancellation of a Settlement Deed unilaterally executed by the transferor does not create assign, limit or extinguish any right, title or interest in the property, which has already been transferred. Therefore, the second respondent also ought not to have entertained the registration of the Cancellation Deed. Immediately after the Settlement Deed is executed, the settlee/transferee becomes the absolute owner, as the property vests with the settlee and the

same cannot be divested by the Cancellation Deed, even with consent of the parties. Perhaps, the proper way to re-convey the property is by a deed of conveyance by the transferee in favour of the transferor. Any such transfer by way of sale or settlement deed can be cancelled at the instance of the transferor only taking re-course to the Civil Court.

7. Learned Special Government Pleader appearing for the respondents 1 and 2 also conceded that if it is an unilateral cancellation of the Settlement Deed, the same is liable to be set aside.

8. In view of the above discussion, the Writ Petition is allowed, declaring the Document No.9193 of 2013 dated 20.07.2012 cancelling the release deed dated 02.03.2010, as null and void. No costs.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

Srn

To

1. The Inspector General of Registration,
100, Santhome High Road,
Mylapore, Chennai 600 028

2.The Sub Registrar, Redhills,
No.44/5, Vallalar Street,
Bye Pass Road,
Redhills, Chennai 600 052.

+2cc to Mr.V.Chandrakanthan, Advocate, S.R.No.82319

+1cc to the Government Pleader, S.R.No.82931

SSI(CO)
GSP(31/12/2018)

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