

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.12.2018

CORAM

THE HONOURABLE MRS.JUSTICE PUSHPA SATHYANARAYANA

W.P.No.28855 of 2018 and
WMP.No.33705 of 2018

Mr.S.Sundaramurthy

... Petitioner

..Vs..

1.The Sub-Registrar,
Office of the Sub-Registrar,
Villivakkam,
Chennai.

2.Mrs.S.Alamelu

3.Mr.P.Srinivasan

... Respondents

Prayer: Writ petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus to call for the records in connection with Document No.1281/2011 dated 31.03.2011 on the file of the 1st respondent and quash the same as illegal improper and consequently direct the first respondent herein to remove the encumbrance from his records.

For Petitioner : Mr.S.Kingston Jerold

For Respondents: Mr.T.M.Pappiah (for R1)
Special Government Pleader
: Mr.K.Elango (for R2)

O R D E R

This Writ Petition has been filed to call for the records in connection with Document No.1281/2011 dated 31.03.2011 on the file of the 1st respondent and to quash the same as illegal improper and consequently direct the first respondent herein to remove the encumbrance from his records.

2.The case of the petitioner is that originally, the petition mentioned properties were owned by one Natesa Chettiar, who purchased the same from one Veerasamy Reddiar, under the

Sale Deed dated 25.01.1936 registered as Document No.95 of 1936. While so, the said Natesa Chettiar died intestate leaving behind his legal heirs viz., Sivakami Ammal and 11 others. The said legal heirs, through Power of Attorney Mr.C.R.Rajagopal Chettiar, created layout of residential plots, out of the aforesaid property and sold a plot bearing No.24, measuring an extent of 1800 sq.ft. with a hut thereon, to the third respondent herein under a sale deed dated 10.11.1989 registered as document no.5126 of 1989 Book 1 in the office of the Sub-Registrar, Anna Nagar. Further, the third respondent settled the aforesaid property in favour of his wife, who is the second respondent under a deed of settlement dated 25.06.2010 registered as Document No.2333 of 2010 in the office of the Sub Registrar, Villivakkam. The second respondent herein had been in absolute possession and enjoyment of the said property. Further, the second respondent sold the property to the petitioner through the document no.3562 of 2010, in the office of Sub Registrar, Villivakkam, Chennai, the first respondent herein. Subsequently, the third respondent, colluding with the second respondent cancelled the settlement deed dated 25.06.2010 on 31.03.2011 vide document No.1281 of 2011, before the first respondent office, without any title or right whatsoever. The said cancellation deed executed by the third respondent is now under challenge in this Writ Petition, as the unilateral cancellation is impermissible in law.

3.Heard both sides.

4.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.

5.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 first 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 vest 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.

6.Learned Special Government Pleader appearing for the first repondent also conceded that if it is an unilateral cancellation of the Settlement Deed, the same is liable to be set aside.

7. In view of the above discussion, the Writ Petition is allowed setting aside the cancellation deed dated 31.03.2011, cancelling the settlement deed dated 25.06.2010, as null and void and the first respondent is directed to remove the encumbrance from his records. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

arr

TO:

1.The Sub Registrar,
O/o. The Sub Registrar,
Villivakkam, Chennai.

+1cc to M/s.K.Elango, Advocate sr.no.85361

+1cc to Mr.S.Kingston Jerold, Advocate sr.no.85368

+1cc to Government Pleader sr.no.86234

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nr 09/01/2019

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