

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.12.2018

CORAM

THE HONOURABLE Mrs. JUSTICE PUSHPA SATHYANARAYANA

W.P. No.34125 of 2018

& W.MP.Nos.39648 & 39649 of 2018

Dhanalakshmi

.. Petitioner

Vs.

1. The Inspector General of registration
No.100, Santhome High Road,
Mylapore, Chennai - 28.

2. The Sub Registrar,
Hosur

3. Dhanaraj

... Respondents

PRAYER : Writ Petitions filed Under Article 226 of the Constitution of India praying to issue a Writ of Declaration, declaring the cancellation of settlement deed dated 04.10.2018 vide document No.16877/2018 registered on the file of second respondent has illegal, arbitrary, unlawful and non-est in eyes of law.

For Petitioner : Mr.S.Prabhakaran, Senior Counsel
for Mr.P.S.Amal Raj

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

O R D E R

The prayer sought for in this Writ Petition is for issuance of declaration to declare the cancellation of settlement deed dated 04.10.2018 vide document No.16877/2018 registered on the file of second respondent as illegal, arbitrary, unlawful and non-est in eye of law.

2. The case of the petitioner is that the petitioner's father, namely Mr.M.A.Dhanraj had executed a settlement deed dated 15.02.2007 in her favour and the same was registered as Document No.3085/2007 on the file of Sub-Registrar, Hosur. Pursuant to the same, the petitioner was given absolute right over the property. Subsequently, the petitioner had applied for housing loan by creating a charge over the property by mortgaging the schedule property and obtained a loan from the

LIC Housing Finance Limited vide Loan No.40106630 for a sum of Rs.28,00,000/- of a term extending upto 15 years with accrued interest of 10% per annum. The petitioner also applied for a building plan for the property situated at S.F.No.709, plot No.320 at Aavalapalli village, Hosur Taluk, NGGO Union, Hosur and plan was sanctioned on 21.03.2007. Subsequent to the construction of the house in the above said property, 5 residential units were constructed with car park and the same has been leased out to different people, vide different rental agreements which were absolutely maintained by the petitioner, for which, electricity connection has been obtained in the name of the petitioner and property tax also stands in the name of the petitioner. Under the instigation of the petitioner's elder brother, after a lapse of 11 years, the third respondent has unilaterally cancelled the gift settlement deed, dated 15.02.2007 and cancellation of the Gift Settlement has been registered as Document No.16877/2018, dated 04.10.2018 on the file of the second respondent. While cancelling the said Settlement Deed, the third respondent has not assigned any reason for cancellation and has also stated that the third respondent has not handed over the possession in favour of the petitioner and also that the Gift Settlement Deed dated 15.02.2007 was not acted upon. But, the said Settlement Deed was acted upon on 15.02.2007 and the third respondent has given absolute possession in favour of the petitioner on the same day. On the contrary, the third respondent had executed the present unilateral cancellation settlement dated 04.10.2018 vide Doc No.16877/2018 by stating false facts and having no right or claim over the property. While registering the cancellation of settlement deed dated 04.10.2018 vide Doc No.16877/2018, the third respondent has not followed the principles set out by this Court and acted against law. Hence the said cancellation of settlement deed dated 04.10.2018 is illegal, and arbitrary. After the registration, the third respondent attempted to interfere with the peaceful possession and enjoyment of the property, for which, a police complaint has also been registered as Crime No.588 of 2018, dated 30.11.2018 and the same is pending. The cancellation deed executed by the second respondent is now under challenge in this Writ Petition, as the unilateral cancellation is impermissible in law.

3. Heard both sides and perused the materials available on record.

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 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 the 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 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.

7. In view of the above discussion, the Writ Petition is allowed, declaring the Document No.16877 of 2018 dated 04.10.2018 cancelling the settlement deed dated 15.02.2007 as null and void. No costs. Consequently, connected miscellaneous petitions are also closed.

-s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

srn/av

To

1. The Inspector General of registration
No.100, Santhome High Road,
Mylapore, Chennai - 28.

2. The sub Registrar,
Hosur

+1 CC to Mr.P.S.Amalraj, Advocate sr 89228.

+1 CC to The Govt. Pleader sr 90023.

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GJII(CO)
SP(03/01/2019)