

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 24.01.2019

CORAM

THE HONOURABLE Mrs. JUSTICE PUSHPA SATHYANARAYANA

W.P. No.1015 of 2019
and
W.M.P.No.1134 of 2019

S.Krishnasamy

.. Petitioner

Vs.

1. The Sub Registrar,
Office of Sub Registrar,
Sulur, Coimbatore District.

2. K.Paramsivam

.. 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 of unilateral cancellation of the settlement deed in Doc.No.11169 of 2016 dated 24.10.2016 on the file of first respondent and quash the same and consequently direct the first respondent to delete the entries in respect of Doc.No.11169 of 2016 dated 24.10.2016 in the encumbrance certificate for the property in S.F.No.149/1 at Somanur in Karumathampatti Village of Sulur Taluk in Coimbatore District.

For Petitioner : Mr.N.Ponraj

For R1 : Mr.T.M.Pappiah
Special Government Pleader

O R D E R

By consent of both parties, this Writ Petition is taken up for final disposal at the admission stage itself.

2. The Writ Petition is filed by the petitioner to call for the records of unilateral cancellation of the settlement deed in Doc.No.11169 of 2016 dated 24.10.2016 on the file of first respondent and quash the same and consequently direct the first respondent to delete the entries in respect of Doc.No.11169 of 2016 dated 24.10.2016 in the encumbrance certificate for the

property in S.F.No.149/1 at Somanur in Karumathampatti Village of Sulur Taluk in Coimbatore District.

3. The case of the petitioner is that the second respondent herein, who is the son of the petitioner, had executed a settlement deed dated 02.09.2013 in favour of the petitioner and the same was registered as Document No.9918 of 2013 on the file of the Sub-Registrar, Sulur. Pursuant to the same, the petitioner is in possession and enjoyment of the above said property and all the revenue records were changed in his name. In the said property, he has also constructed a new concrete house by demolishing the old tiled house. The Property Tax, Water Tax and EB Bill were paid in his name and the building plan approval for constructing the above concrete house was also given in his name. While so, the second respondent cancelled the above settlement deed on 24.10.2016 without issuing notice to the petitioner and the cancellation of settlement has been registered as Doc.No.11169 of 2016 dated 24.10.2016 on the file of the first respondent. While cancelling the said Settlement Deed, the second respondent has not assigned any reason for cancellation. Hence the said cancellation of settlement deed dated 24.10.2016 is illegal, and arbitrary. The cancellation deed executed by the first respondent is now under challenge in this Writ Petition, as the unilateral cancellation is impermissible in law.

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

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 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 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 first respondent 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.11169 of 2016 dated 24.10.2016 cancelling the release deed dated 02.09.2013, as null and void, as the petitioner has moved this petition, challenging the unilateral cancellation within a period of three years from the date of execution of the cancellation deed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

//True copy//

Sub Assistant Registrar

rsi

To

The Sub Registrar,
Office of Sub Registrar,
Sulur,
Coimbatore District.

+1cc to Mr.N.Ponraj, Advocate SR.No.5287

+1cc to Government Pleader SR.No.6480

सत्यमेव जयते

W.P. No.1015 of 2019
and

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GMY(19/02/2019)