

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.07.2019

CORAM

THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM

W.P.No.33634 of 2015

and

M.P.Nos.1 and 2 of 2015

1.J.Jancy Mary

2.J.Jasmine

..Petitioners

Vs

1.The Sub-Registrar,
O/o.The Sub-Registrar,
Pallavaram.

2.D.Yesudas

.. Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, seeking issuance of a writ of certiorari, to call for the records relating to Deed of Cancellation of Settlement Deed with regard to an extent of 4606 sq.ft in 'B' Schedule property situated in Survey No.56/6 in No.24, Kannabiran Street, Pallavaram in Document No.5457 of 2013 dated 17.07.2013 executed by the second respondent on the file of the first respondent and quash the same.

For Petitioners : Mr.L.Chandrakumar

For Respondents : Mr.P.P.Purushothaman

Government Advocate for R1

Mr.M.Babu Muthumeeran

for R2

O R D E R

Heard the learned counsel for the petitioners, the learned Government Advocate for the first respondent, the learned counsel for the second respondent and perused the materials available on record.

2. This writ petition has been filed for issuance of a writ of certiorari, to call for the records relating to the Deed of Cancellation of Settlement with regard to an extent of 4606 sq.ft in 'B' Schedule property situated in Survey No.56/6 at No.24, Kannabiran Street, Pallavaram in Document No.5457 of 2013 dated 17.07.2013, executed by the second respondent on the file of the first respondent and quash the same.

3. This writ petition has been filed mainly contending that the settlor has no reserved right to cancel the settlement deed.

4. Admittedly, the property in dispute was originally belonged to the second respondent and by way of a registered settlement deed dated 22.05.2009, it was settled in favour of his daughters, the petitioners herein, however, the same was cancelled on 17.07.2013. Assailing the cancellation, the petitioners have come forward with this writ petition.

5. In the counter affidavit filed by the second respondent in paragraph No.3, it has been stated as follows :

"This respondent further submits that as there arose misunderstanding between the petitioners who are none other than the daughters of this respondent during 2013 in a fit of anger, he had chosen to cancel the settlement as already executed in favour of his daughters i.e., the petitioners in Document No.5457/2013 dated 17.07.2013. It is to be stated that out of hatred at that point of time, the same came to be done without thinking over the consequences, subsequently interruption and advice by the elders and family members made this respondent realize the mistake which he had done on the spur of a moment and on and after receipt of notice when the children had also met him in person, he had been persuaded to change his mind and therefore decided to concede to the prayer in the writ petition to the effect that the cancellation has been done unilaterally without any consultation what so ever and that the same is not binding inter-parties as per law. It is under these circumstances, this respondent is constrained to file this affidavit detailing the state of affairs which is prevalent as on date since all the children and this respondent had reunited themselves and are taken care of this respondent at this age which requires regular medical attention and that of care on day to day basis. Hence affidavit may be taken on file and appropriate suitable orders setting at right the cancellation done by this respondent may be passed."

6.The learned counsel for the petitioners by placing reliance on the decision of the Division Bench of this Court in W.A.(MD).No.156 of 2016, dated 20.04.2017 would submit that unilateral cancellation is not permissible in law. The relevant paragraph would run thus :-

"4. Before examining the aspect as to whether the appellants should be non-suited for approaching the Court belatedly, we may note the legal position. It has been held in D.V.Loganathan Vs.The Sub-Registrar, Office of the Sub-Registrar, Pallavaram, Chennai and another reported in 2014 (3) CTC 113 that unilateral cancellation of settlement deed is without jurisdiction and liable to be set aside. In the case of Samiappan and others Vs.Rajamani reported in CDJ-2014 MHC 5730, some what similar issue arose for consideration and the Court held that the settlement deed cannot be set at naught unilaterally by one party. The party, who settled the property in favour of the first appellant is none other than his father, who had executed the settlement deeds, dated 07.10.1986 and 20.10.1986 and the first appellant was put in possession. Further, the appellants would point out that in the settlement deed, no power of cancellation was reserved by the father of the first appellant and however, the father chose to cancel the documents during 1993.

5. It appears that the fourth respondent herein has purchased the property thereafter. Though notice has been served on the fourth respondent and his name is printed in the cause list, none appears for the fourth respondent.

6.As we are fully convinced that the unilateral cancellation of the settlement deed is without jurisdiction, any consequential transaction pursuant to that are deemed to be void. What is important to note is that the Sub-Registrar, who registered the cancellation deed, ought to have issued notice to the beneficiaries under the settlement deed, namely, the appellants and without doing so, has unilaterally registered the documents ignoring the fact that the settlement deeds were acted upon and the cancellation deed was presented for registration after nearly 7 years after the date of settlements. This

being contrary to the legal position, as stated above, requires to be interfered with.

7. In the light of the above, this Writ Appeal is allowed. The impugned order, dated 14.12.2015, is set aside and the Writ Petition is allowed and the unilateral cancellation of the settlement deed, registered as Document Nos.654/1993 and 655/1993, dated 05.05.1993, are set aside and the consequential transactions pursuant to the same are also held to be void and the third respondent/Sub-Registrar, Alanganallur Sub-Registrar Office, T.Vadipatti Taluk, Madurai District, is directed to remove the entries in his Registers. We make it clear that this order will not prevent the fourth respondent from approaching the Civil Court to establish his right over the property and if done so, the Civil Court, shall decide the matter uninfluenced by any observation in this judgment, as we have set at naught the cancellation of the settlement deed only on the ground that it is an unilateral cancellation and therefore, without jurisdiction. We make it clear that we have not adjudicated the title of the fourth respondent in this appeal... "

7. In the light of the counter affidavit filed by the second respondent and the decision of the Division Bench of this Court referred supra, this Court is of the considered opinion that the petitioners are entitled to succeed in this writ petition. Accordingly, the writ petition is allowed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(insp cell)

//True Copy//

Sub Assistant Registrar

ms
To
The Sub-Registrar,
O/o.The Sub-Registrar,Pallavaram.

+1cc to Mr.L.Chandrakumar , Advocate SR.No. 60341
+1cc to Mr.M.Babu MUTHumeeran , Advocate SR.No. 60126
+1 cc to Government Pleader Sr.No. 61214

W.P.No.33634 of 2015 and
M.P.Nos.1 and 2 of 2015

vn II (CO) A.SK(09/09/2019)