

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.09.2019

CORAM:

THE HONOURABLE MR. JUSTICE T. RAJA

Writ Petition No.30485 of 2014 and
M.P.Nos.1 and 2 of 2014

M.S.Anthonyraj ... Petitioner

Vs

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

2. W.Andrews Santhanaswamy ... 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 relating to Cancellation of Settlement Deed with regard to the property in Plot No.402, Ashtalakshmi Nagar situated at Survey No.360/2B, Maduravoyal Town Panchayat, Alapakkam Village, Ambattur Taluk, Thiruvallur District to an extent of 50% of undivided share of land in an extent of 2900 sq.ft. of land or 1450 sq.ft. share of land in 'A' schedule therein together with 1174 sq.ft. of building in Ground Floor in Document No.6151 of 2012 dated 20.11.2012 executed by the mother of the petitioner on the file of the 1st respondent, to quash the same and consequently, direct the respondent to deregister the same.

For Petitioner : Mr.L.Chandrakumar

For 1st Respondent : Mr.T.M.Pappiah, Spl.G.P.

O R D E R

The petitioner has filed this Writ Petition challenging the impugned Proceedings, namely, Cancellation of Settlement Deed with regard to the property in Plot No.402, Ashtalakshmi Nagar situated at Survey No.360/2B, Maduravoyal Town Panchayat, Alapakkam Village, Ambattur Taluk, Thiruvallur District and to quash the same.

2. Learned Counsel appearing for the petitioner submitted that the mother of the petitioner, namely, Tmt.M.S.Prichilla Mary, had executed a Settlement Deed in favour of the petitioner vide Document No.428 of 2009 dated 06.02.2009 in respect of an extent of 50% of undivided share of land in Plot No.402, Ashtalakshmi Nagar in Survey No.360/2B, Maduravoyal

Town Panchayat, Alapakkam Village, Ambattur Taluk, Thiruvallur District to an extent of 2900 sq.ft. of land in 'A' Schedule together with 1774 sq.ft. of building in Ground Floor. Thereafter, the petitioner's mother also had simultaneously executed a Will bequeathing certain other portions of the property in favour of her daughter-in-law with right of enjoyment, however, the absolute right with regard to the said Will was in favour of the grandchild born to the eldest son of the mother, the brother of the petitioner. When the petitioner has come to know that the execution of the Settlement Deed dated 06.02.2009 in favour of the daughter-in-law with right of enjoyment which is nothing, but nullity, he has given a representation to the 1st respondent to cancel the Cancellation of Settlement Deed, but there was no response for the same.

3. The learned Counsel for the petitioner further relied upon the ratio laid down by the Full Bench of this Court in the case of *Latif Estate Line India Limited vs. Hadeeja Ammal and others* reported in 2011 (2) CTC and argued that a Deed of Cancellation of a sale unilaterally executed by the transferor does not create, assign, limit or extinguish any right, title or interest in the property and is of no effect. Hence, such a Deed of Cancellation cannot be accepted for registration. Further, once title to the property is vested in the transferee by the sale of the property, it cannot be divested into the transferor by execution and registration of a Deed of Cancellation even with the consent of the parties.

4. It is at this stage, Mr.T.M.Pappiah, learned Special Government Pleader appearing for the 1st respondent submitted that in view of the Division Bench Order dated 17.07.2019 passed in W.A.No.229 of 2018 (P.Rukmani and 4 others vs. Amudhavalli and 5 others) in paragraph 9, it has been stated that if there is any dispute about the rights of the parties involved therein, the only appropriate remedy for the parties is to approach the Civil Court by way of civil suit. On this score, he prayed for dismissal of the Writ Petition.

5. However, the learned Counsel for the petitioner submitted that the said judgment of the Division Bench of this Court cannot be relied upon by the learned Special Government Pleader for the 1st respondent for the simple reason that in W.A.No.229 of 2018, the issue was relating to a pending dispute seized by a civil court. The Division Bench of this Court taking note of the pendency of the civil suit before the appropriate court has directed the authority to approach the civil court. But, there is no such dispute pending in the present case.

6. I also agree with the submissions made by the learned Counsel for the petitioner.

7. In this regard, it is relevant to extract paragraph 59 of the decision of the Full Bench of this Court in *Latif Estate Line India Limited vs. Hadeeja Ammal and others* reported in 2011 (2) CTC, hereunder :

'59. After giving our anxious consideration on the questions raised in the instant case, we come to the following conclusion:

(i) A Deed of Cancellation of a sale unilaterally executed by the transferor does not create, assign, limit or extinguish any right, title or interest in the property and is of no effect. Hence, such a Deed of Cancellation cannot be accepted for registration.

(ii) Once title to the property is vested in the transferee by the sale of the property, it cannot be divested into the transferor by execution and registration of a Deed of Cancellation even with the consent of the parties. The proper course would be to re-convey the property by a deed of conveyance by the transferee in favour of the transferor.'

While applying the ratio laid down by the Full Bench of this Court in the case cited supra to the present case, it is obvious that after the execution of the Settlement Deed dated 06.02.2009 even portion of the property given to the petitioner through the Registered Settlement Deed dated 06.02.2009 cannot be cancelled under the Cancellation of Settlement Deed. Therefore, the same is liable to be set aside.

8. In the result, the cancellation of the Settlement Deed dated 20.11.2012 is set aside and the Writ Petition stands allowed. Consequently, the Sub-Registrar, Virugambakkam, the 1st respondent herein is directed to cancel the Cancellation of Settlement Deed within a period of three weeks from the date of receipt of a copy of this Order. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

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To

The Sub-Registrar,
O/o.The Sub-Registrar,
Virugambakkam.

+lcc to Mr.L.Chandrakumar, Advocate Sr.83439
+lcc to the Government Pleader Sr.83668

W.P.No.30485 of 2014

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srg 12/11/2019



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