

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 11.01.2019

CORAM

THE HONOURABLE MRS. JUSTICE PUSHPA SATHYANARAYANA

W.P. NO.19483 of 2018 and
WMP.No.24794 of 2018

S.Iqbal

.. Petitioner

..Vs..

1. The Inspector General of Registrations,
Santhome High Road, Mylapore, Chennai.
2. The Sub Registrar,
S.R.O.Alandur,
Alandur, Chennai 600 114. .. Respondents

PRAYER : Petition filed Under Article 226 of the Constitution of India praying to issue a Writ of Certiorari to call for the entire records pertaining to Cancellation Deed dated 10.04.2008 registered as Document No.1111 of 2008, in office of Sub Registrar at Alandur, Chennai the 2nd respondent herein and quash the same.

For Petitioner : Ms.V.Mahathi Chari

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

O R D E R

This Writ Petition has been filed to call for the entire records pertaining to Cancellation Deed dated 10.04.2008 registered as Document No.1111 of 2008, in office of Sub Registrar at Alandur, Chennai, the second respondent herein and to quash the same.

2.The case of the petitioner is that originally the subject property was allotted to the petitioner's father late R.Subhan, vide proceedings of the Collector of Kancheepuram dated 11.03.1975. After the death of the petitioner's father, the petitioner expanded the property left behind by his father and the title deeds and the revenue records of the entire property were transferred to the name of his mother. While so, during the year 2005, the petitioner's mother executed a gift settlement

deed vide document No.2571/2005 dated 09.09.2005 in favour of the petitioner, for which his brothers and sister executed an "Acceptance Bond" of the even date, i.e., 09.09.2005, thereby accepting the Gift Settlement Deed. Further, "No Objection Bond" or "Assurance" was given by his brothers and sister and the possession was handed over to the petitioner on the same day and the settlement deed was irrevocable and completely came in force with immediate effect. Subsequently, the petitioner went overseas for employment. Taking advantage of his absence, the petitioner's younger brothers colluded with each other and forced his mother to execute a Cancellation Deed dated 10.04.2008, which was registered as Document No.1111 of 2008 in the office of the first respondent. After coming back to India, the petitioner sent a legal notice dated 10.08.2015 to the first respondent seeking action against the erring officials for registering the cancellation deed dated 10.04.2018, while the gift deed is an irrevocable one. The said cancellation deed executed by the mother of the petitioner is now under challenge in this Writ Petition, as the unilateral cancellation is impermissible in law.

3. Heard the learned counsels appearing on either side and perused the materials available on record.

4. The unilateral cancellation of settlement deed has been deprecated by this Court in several judgments.

5. It is relevant to note that a Full Bench of this Court in *Latif Estate Line India Ltd., V. Hadeeja Ammal*, 2011 (2) CTC 1, held that the unilateral cancellation of a deed cannot be done. The Inspector General of Registration, Chennai, has also issued a circular very recently in proceedings No.52666/C1/2018, dated 29.11.2018, wherein, considering all the judicial pronouncements on these aspects instructed that unilateral cancellation of such settlement deed without consent of Settlee is against the public policy declared in Section 126 of the Transfer of Property Act, 1882. This circular further states that in view of the legal position, it was classified that any settlement deed, which is sought to be unilaterally cancelled by the settlor is presented for registration, registering officers shall not accept such unilateral cancellation deeds for registration and check slip shall be issued in this regard.

6. 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.

7. 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 way of 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.

8. Learned Special Government Pleader appearing for the respondents also conceded that if it is an unilateral cancellation of the Settlement Deed, the registration of the same should be deprecated.

9. In view of the above discussion, this Court is of the view that the cancellation deed dated 10.04.2008 cancelling the settlement deed dated 09.09.2005 is liable to be set aside, subject to limitation.

10. With the above observation, this writ petition is disposed of. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(CS III)

//True Copy//

arr/mpa/gg

Sub Assistant Registrar

To

1. The Inspector General of Registrations,
Santhome High Road,
Mylapore, Chennai.
2. The Sub Registrar,
S.R.O.Alandur,
Alandur, Chennai 600 114.

+1cc to the Government Pleader, S.R.No.4027

W.P. No.19483 of 2018

CA(CO)
SSM(27/03/2019).