

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.01.2019

CORAM

THE HONOURABLE MRS. JUSTICE PUSHPA SATHYANARAYANA

W.P.No.34386 of 2018

J.Krishnaveni

... Petitioner

Vs.

1. The Joint Sub Registrar II,
(District Registrar Cadre),
Rajaveedhi, Coimbatore.
2. The Inspector General of Registration,
Santhome, Chennai - 600 004.
3. N.Krishnamoorthy, Proprietor,
M/s.Surya Krishna Enterprises,
Door No.13, Bharathi Park Cross Road -4,
Coimbatore Town,
Coimbatore - 641 043. ... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus to call for the Cancellation of Settlement Deed dated 13.06.2014 executed by the third respondent registered as document No.2598 of 2014 on the file of the first respondent and quash the same and consequently direct the first respondent to delete the entries that reflects the aforesaid document from the Book I and Index register maintained by the first respondent herein.

For Petitioner : Mr.S.Dhayaleswaran

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

O R D E R

The present Writ Petition has been filed for issuance of a Writ of Certiorarified Mandamus to call for the Cancellation of Settlement Deed dated 13.06.2014 executed by the third respondent registered as document No.2598 of 2014 on the

file of the first respondent and quash the same and consequently direct the first respondent to delete the entries that reflects the aforesaid document from the Book I and Index register maintained by the first respondent herein.

2. The learned counsel appearing for the petitioner submitted that the third respondent, who is the brother of the petitioner, and the Proprietor of M/s.Surya Krishna Enterprises purchased the property comprised in S.No.482/1, measuring 3400 sq.ft of vacant land, situated at Thelegu Palayam Village, Coimbatore Taluk, from one Tmt.Ramakal by virtue of registered sale deed dated 29.03.1991 in document No.1319 of 1991 on the file of the first respondent in the name of his proprietary concern viz., M/s.Surya Krishna Enterprises and out of natural love and affection settled the property in favour of the petitioner by virtue of gift settlement deed dated 18.05.2007 registered as document No.2578 of 2007 on the file of the first respondent. He further submitted that in the said Settlement Deed, it was stated that the third respondent handed over the physical possession of the property on the date of registration of the settlement deed to the petitioner and that the Settlement Deed is irrevocable and the said settlement deed was acted upon.

3. He further submitted that the true copy of the extract issued by the Sub Inspector of Survey, West Zone, Coimbatore Corporation taken from the Town Survey Land Register, Coimbatore Town, dated 10.03.2010 shows that the property comprised in S.No.480/3A part and 482/1 part stands in the name of the petitioner. He further submitted that after seven years from the date of settlement, the third respondent has unilaterally cancelled the settlement deed by Deed of Cancellation of Settlement Deed dated 13.06.2014 and registered as document No.2598 of 2014 on the file of the first respondent, which is against law and public policy. Challenging the unilateral cancellation done by the third respondent, the petitioner has come before this Court.

4. Heard the learned counsel appearing for both parties and perused the materials available on record.

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

6. It is relevant to note that a Full Bench of this Court in Latif Estate Line India Ltd., Vs. 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 held that unilateral

cancellation of such settlement deed without consent of Settlee is against 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 settler is presented for registration, registering officers shall not accept such unilateral cancellation deeds for registration and check slip shall be issued in this regard.

7. 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.

8. 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.

9. The learned Special Government Pleader appearing for respondent Nos.1 and 2 also conceded to that if it is an unilateral cancellation of the Settlement Deed, the same is liable to be set aside.

10. In view of the above discussions, the Writ Petition is allowed declaring the Document No.2598 of 2014 dated 13.06.2014 cancelling the settlement deed dated 18.05.2007, as null and void. There shall be no order as to costs.

Sd/-

Assistant Registrar (CS-VIII)

//True Copy//

Sub Assistant Registrar

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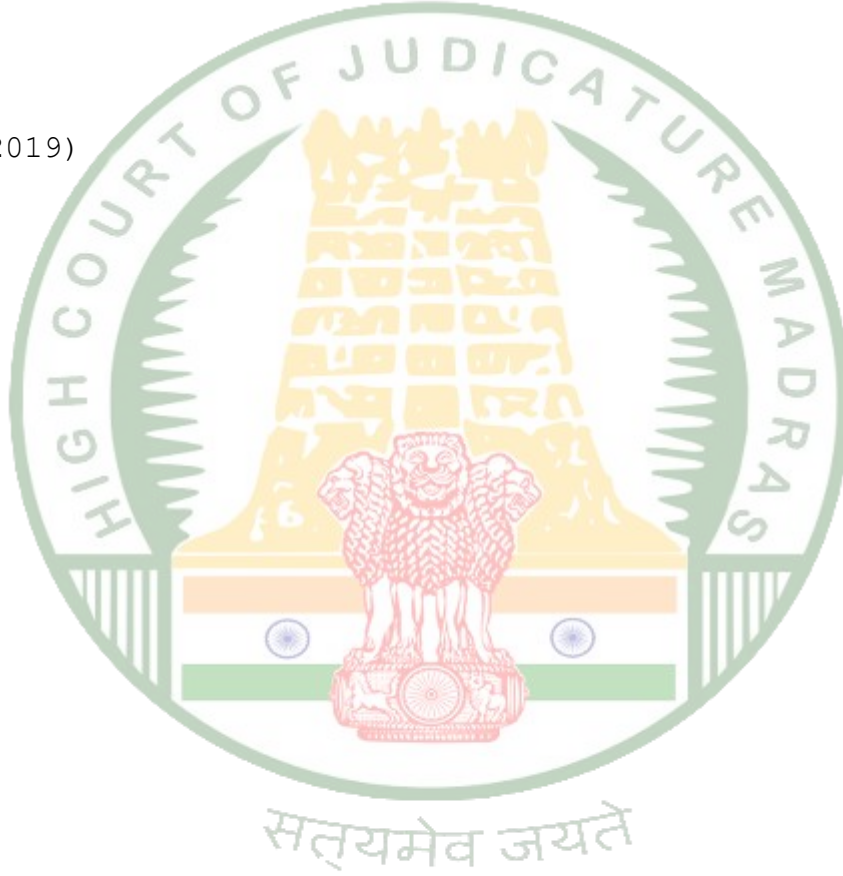
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+lcc to the Government Pleader, S.R.No. 4029

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PM(CO)
GN(23/04/2019)



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