

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.02.2020

CORAM:

THE HON'BLE MR. JUSTICE T.S.SIVAGNANAM

W.P.No.21629 of 2017
W.M.P.Nos. 22641 of 2017

1.R.Manikandan
2.V.Govindan
3.G.Andal

... Petitioners

Vs

1. The Inspector General of Registration,
100, Santhom High Road,
Chennai - 28.
2. The District Registrar,
(Administration-Addl.Charge),
Kallakurichi,
Villupuram District.
3. The Joint Sub Registrar No.1,
Kallakurichi SRO,
Kallakurichi,
Villupuram District.

.. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India seeking a writ of certiorarified mandamus to call for the records relating to the impugned orders dated 27.04.2017 made in proceedings No.692/A1/2017 passed by the second respondent confirming the order No.P18/2016, dated 16..02.2017, passed by the third respondent, quash the same, consequently direct the third respondent to register the sale deed dated 30.06.2016 executed by the first petitioner in the names of the petitioners 2 and 3 in respect of the property measuring 14 cents and 38 cents bearing Natham S.Nos.91/3D and 92/1 respectively, Emaper Village, Kallakurichi Taluk, Villupuram District.

For Petitioners : Mr.N.Manokaran

For Respondents : Mr.P.P.Purushothaman, GA

ORDER

Heard Mr.N.Manokaran, learned counsel for the petitioner, and Mr.P.P.Purushothaman, learned Government Advocate appearing for the respondents.

2. The petitioner has filed this writ petition challenging the order passed by the second respondent dated 27.04.2017 refusing to accept the document for registration of sale deed dated 30.06.2016 executed by the first petitioner in favour of the petitioners 2 and 3. The reason for refusal of registration is on the ground that the first petitioner claimed right over the property pursuant to the settlement deed dated 27.05.1985 executed by Mr.Narayana Mooppar. However, the said settlor had cancelled the same on 25.06.1990 and executed a Will in favour of one Mr.Kandan on 26.06.1990 and therefore, on the date when the petitioner executed the sale deed dated 30.06.2016 and presented the same for registration, he does not have any right over the property, because, the settlement deed dated 27.05.1985 stands cancelled.

3. The first aspect to be seen is whether the first petitioner has title over the property. Admittedly, Mr.Narayana Mooppar had executed settlement deed dated 27.05.1985 in favour of the first petitioner, by which, the first petitioner became entitled to the property in question. However, the said Mr.Narayana Mooppar had unilaterally cancelled the deed of settlement on 25.06.1990. Therefore, the Sub Registrar concerned could not have accepted the document for registration, because, the gift, having been made in favour of the first petitioner, is irrevocable and this is moreso in the light of the decision of the Hon'ble Full Bench of this Court in the case of M/s.Latif Estate Line India and others Vs. Mrs.Hadeeja Ammal (Madras) and others [2011 (2) CTC 1]. Operative portion of the said decision reads as follows:-

"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. Such a document does not create any encumbrance in the property already transferred. 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 unto 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.

(iii) Where a transfer is effected by way of sale with the condition that title will pass on payment of consideration, and such intention is clear from the recital in the deed, then such instrument or sale can be cancelled by a deed of cancellation with the consent of both the parties on the ground of non-payment of consideration. The reason is that in such a sale deed, admittedly, the title remained with the transferor.

(iv) In other cases, a complete and absolute sale can be cancelled at the instance of the transferor only by taking recourse to the Civil Court by obtaining a decree of cancellation of sale deed on the ground inter alia of fraud or any other valid reasons."

4. In the light of the above decision, unilateral cancellation of settlement deed dated 25.06.1990 could not have been accepted for registration as it is non-est in the eye of law. If that is so, the first petitioner has title over the property. Further, the beneficiary under Will dated 26.06.1990 had filed a suit in O.S.No.732 of 2002 on the file of III Additional District Munsif Court, Kallakurichi, praying to declare his title over the property on the strength of the Will dated 26.06.1990 alleged to have been executed by Mr.Narayana Mooppar. The said suit was dismissed on 30.08.2005. At this juncture, it would be relevant to take note of the following observation of the Civil Court in the said judgment pertaining

to the decision on issue No.3, namely, whether the plaintiffs have any right over their share in the property.

"XI
..... The 4th defendant virtually supports the plaintiff's case. Since the cancellation of deeds have also been executed by Narayana Moopar, the reason offered by defendants 1 to 3 for non-production of original gift deeds is found acceptable.

XII. From the above discussions, this Court concludes that there is acceptance of gift by and on behalf of the minors. Therefore, the second requirement under law that is acceptance is also fulfilled with. Therefore, this Court comes to the conclusion that the gift deeds dated 25.07.85, 27.1.1988 and 29.1.1988 are valid deeds of gift.

XIII. The next question is whether Narayana Moopar can cancel the gift deeds dated 27.05.1985, 27.01.1988 and 29.01.1988. The certified copies of the deeds marked as Ex.A1, Ex.A2 and B7 would show that Naryana Moopar has stated in these gift deeds that.....

" ,e;j jhd brl;oy;bkz;;l;
brhj;Jf;fis ehd; ,dpnky; khw;Wtnjh uj;J
bra;tnjh ,y;iy mg;go bra;jhYk; mJ
bry;yj;jf;fjy;y."

It is thus clear that Narayana Moopar had not retained the residuary power to cancel the gift deeds. When a gift is valid then it can be revoked or suspended under the provision of Section 126 of the Transfer of Property Act only. In the instant case there is no agreement that the deeds would be revoked on the happening any specified event. Even the reason offered in the cancellation deeds Ex.A3 to A5 that the guardian of defendants 1 to 3 attempted to sell the gifted properties has not been proved by the plaintiffs. When the gift deeds dated 27.05.1985, 27.01.1988 and 29.01.1988 are valid gifts and irrevocable, Ex.A3 to A6 cancellation deeds

and Will are of no use. Further only certified copy of the Will has been marked as Ex.A6. According to the plaintiffs, the defendants have taken the originals with them. But no steps as required under law are shown to have been taken by the plaintiffs to produce the original of the Will. Under such circumstances the examination of PW2 attester does not comply with the obligations under Section 68 of the Evidence Act.

XIV) For the above discussions the issue No.3 is answered that the plaintiffs have no right of their shares in the suit properties."

5. The appeal filed by Mr.Kandan and others in A.S.No.173 of 2005 on the file of the Sub-Court, Kallakurichi, was dismissed by judgment and decree dated 04.11.2011. It is submitted that the said judgment and decree had attained finality as no Second Appeal was preferred before this Court. Therefore, in the light of the findings rendered by the Civil Court, deed of cancellation of settlement dated 25.06.1990 is non-est in the eye of law and consequently, the settlement deed dated 27.05.1985 will stand revived in terms of the said judgment and decree.

6. It is no doubt true that the Sub Registrar was not a party to the suit. Nevertheless, what is required to be seen is whether on the date when the first petitioner executed the sale deed dated 30.06.2016 and presented the same for registration, whether he has got valid title to the property. On reading of the judgment of the Civil Court, it is abundantly clear that the claim of Mr.Kandan pursuant to the Will dated 26.06.1990 was rejected and unilateral cancellation of settlement deed dated 25.06.1990 was held to be of no use or in other words held to be non-est in the eye of law. Therefore, the third respondent would be well within his jurisdiction to accept the sale deed dated 30.06.2016 for registration.

7. Thus, for all the reasons stated above, the writ petition is allowed and the impugned orders are set aside. Consequently, the first petitioner is directed to present the sale deed for registration before the third respondent and upon compliance of other formalities as may be required, the third respondent shall accept the same for registration and register

and release the same in favour of the petitioners 2 and 3. No Costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

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To

1. The Inspector General of Registration,
100, Santhom High Road,
Chennai - 28.
2. The District Registrar,
(Administration-Addl.Charge),
Kallakurichi,
Villupuram District.
3. The Joint Sub Registrar No.1,
Kallakurichi SRO,
Kallakurichi,
Villupuram District.

+1cc to Mr.N.Manokaran, Advocate, S.R.No.14948
+1cc to the Government Pleader, S.R.No.15683

सत्यमेव जयते

W.P.No.21629 of 2017

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KKV/18/03/2020