In the High Court of Judicature at Madras

Dated : 03.3.2020

Coram :

The Honourable Mr.Justice T.S.SIVAGNANAM

Writ Petition No.34196 of 2017

Mr.N.Gunasekaran rep.by his
power of attorney and father
Sri V.Neelakandan ...Petitioner

Vs

1.The Sub-Registrar, Katpadi,
Vellore District.

2.P.Dandapani ...Respondents

PETITION under Article 226 of The Constitution of India praying for the issuance of a Writ of Declaration declaring that the registration of the deed of unilateral revocation of the gift settlement deed executed by the 2nd respondent dated 28.12.2005 in document No.7376 of 2005 on the file of the 1st respondent for cancelling the earlier settlement deed executed by the 2nd Respondent in respect of the schedule property is against the provisions of the Registration Act, illegal, null and void and non-est and further direct the 1st respondent to remove the entries made in the registration book in pursuance of the registered unilateral cancellation deed dated 28.12.2005 in Document No.7376 of 2005 on the file of the 1st respondent.

For Petitioner : Mr.K.R.Samratt

For Respondent-1 : Mr.P.P.Purushothaman, GA

For Respondent-2 : No appearance

ORDER

I have heard the learned counsel for the parties.

2. This writ petition has been filed by one Mr.N.Gunasekaran represented by his power of attorney and father one Mr.V.Neelakandan, as the petitioner is working abroad.

3. The prayer sought for is to declare the unilateral cancellation of the gift settlement deed executed in favour of the petitioner on 04.11.1998, as illegal and null and void.

4. The property in question was owned by one Mrs.Bhuvaneswari Ammal - wife of the second respondent and she purchased the same by sale deed dated 16.8.1976 registered as doc.No.1943 of 1976 on the file of the Sub-Registrar, Katpadi. The said Mrs.Bhuvaneswari Ammal is the paternal aunt of the petitioner - sister of the said Mr.V.Neelakandan.

5. It is the case of the petitioner that the second respondent and the said Mrs.Bhuvaneswari Ammal always treated the petitioner as their own son and it was the desire of the said Mrs.Bhuvaneswari Ammal to settle the property in question in favour of the petitioner on account of love and affection. The said Mrs.Bhuvaneswari Ammal passed away and with a view to honour the intentions of his deceased wife, the second respondent executed a gift settlement deed in favour of the petitioner on 04.11.1998 registered as doc.No.4324 of 1998 on the file of the Sub-Registrar, Katpadi.

6. The learned counsel for the petitioner would draw the attention of this Court to the recitals in the gift settlement deed dated 04.11.1998 wherein it has been stated that it was executed to honour the wishes of the wife of the second respondent - the said Mrs.Bhuvaneswari Ammal. Thereafter, the property tax was assessed in favour of the petitioner and he has been continuously paying property tax from 2000 onwards and all of a sudden, the second respondent, in the year 2005, unilaterally cancelled the gift settlement deed by document No.7376 of 2005 on the file of the first respondent dated 28.12.2005. The correctness of the same is being questioned in this writ petition.

7. The question would be as to whether the first respondent could have accepted the unilateral cancellation of the gift settlement deed for registration. In the unilateral cancellation of the gift settlement deed, there is a recital stating that the donee namely the petitioner had not accepted the gift settlement deed dated 04.11.1998. However, this is contrary to records because the property tax assessment has been changed in the name of the petitioner, which is a clear indication that the original settlement deed dated 04.11.1998 has been acted upon and given effect to.

8. The law on the issue is settled in the light of the decision of the Full Bench of this Court, (to which, I am a party), in the case of Latif Estate Line India Limited Vs.

Hadeeja Ammal [reported in 2011 (2) CTC 1], the relevant portions of which read 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."

9. In terms of sub-para (i) of paragraph 59 of the said judgment, such unilateral cancellation of the settlement deed

could not have been accepted by the first respondent for registration and that too, without notice to the petitioner and without production of the original gift settlement deed dated 04.11.1998. Furthermore, when there is a recital in the cancellation deed dated 28.12.2005 that the original settlement deed dated 04.11.1998 was not given effect to, an enquiry is required to be done. If that being the question of fact, the same cannot be adjudicated by the Sub-Registrar. Therefore, the correct procedure would have been to refuse to accept the document dated 28.12.2005 for registration and to direct the second respondent to approach the competent civil court. However, this was not done by the second respondent, which is illegal.

10. For the above reasons, the writ petition is allowed, the unilateral cancellation of the gift settlement deed dated 28.12.2005 is declared as null and void and consequently, the first respondent is directed to delete the entry in the register as well as in the encumbrance certificate. It is well open to the second respondent to approach the competent civil court for necessary relief. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

rs

To

1. The Sub-Registrar,
   Katpadi,
   Vellore District.

+1 cc to M/s.K.R.Samratt, Advocate, S.R.No.18525

+1 cc to M/s.A.Anusya, Advocate, S.R.No.19657

+1 cc to the Government Pleader, S.R.No.19294

WP.No.34196 of 2017

BP(CO)
RN(22/05/2020)