

In the High Court of Judicature at Madras

Dated : 03.3.2020

Coram :

The Honourable Mr.Justice T.S.SIVAGNANAM

Writ Petition No.1698 of 2017 & WMP.No.1668 of 2017

Lt.Col.R.John Daniel

...Petitioner

Vs

1.The District Registrar, Registration
Department, Udhagamandalam,
The Nilgiris District.

2.The Sub-Registrar, Gudalur,
The Nilgiris District.

3.Raichel Mary (deceased)

4.R.Beaulah Gnanammal (deceased)

5.R.Joy Christal

6.R.Metildamary

7.R.Victoria Angeline

8.R.Lizzy Jenika Dorathy

9.M.Jaganathan

10.Nirmala Devi

11.Indhira Gandhi

12.Jagatheesan

(R4 to R8 were impleaded as legal heirs of the deceased third respondent as per order of court dated 04.8.2017 by MDJ in WMP.No.21075 of 2017)

(R9 to R12 were substituted as the legal heirs of deceased fourth respondent as per order of court dated 02.1.2020 in WMP.No.35361 of 2019 by TSSJ)

...Respondents

PETITION under Article 226 of The Constitution of India praying for the issuance of a Writ of Certiorari to call for the records relating to the registration of the unilateral cancellation of settlement deed dated 18.5.2015 executed and presented by the third respondent as doc.No.956 of 2015 on 20.8.2015 on the file of the second respondent and quash the same.

For Petitioner :Mr.T.P.Manoharan, SC for
Mr.K.P.Jotheeswaran
For Respondents 1 & 2 :Mr.P.P.Purushothaman, GA
For Respondents 5 to 12:Mr.V.Karthikeyan
Respondents 3 & 4 :died

ORDER

I have heard the learned counsel for the parties.

2.This writ petition has been filed seeking to quash the registration of the unilateral cancellation of settlement deed dated 18.5.2015, registered as doc.No.956 of 2015 on the file of the second respondent, executed by the third respondent, as being null and void.

3.Initially, there were only three respondents in this writ petition and the third respondent is the mother of the writ petitioner. Subsequently, respondents 4 to 8 - sisters of the petitioner, were impleaded. During the pendency of the writ petition, the third respondent died and since all the legal heirs are parties to the writ petition, nothing was required to be done. Thereafter, one of the sisters of the petitioner namely the fourth respondent died and her legal heirs namely respondents 9 to 12 were brought on record by order dated 02.1.2020.

4. The third respondent namely the mother of the petitioner executed a settlement deed dated 24.10.2014 in favour of the petitioner registered as doc.No.1406 of 2014 on the file of the second respondent. It is submitted that even prior to the execution of the settlement deed dated 24.10.2014, respondents 4 to 8 executed a certificate dated 30.11.1993 in the presence of the Executive Officer of Gudalur Town Panchayat conveying no objection to the third respondent to execute a gift settlement deed in favour of the petitioner in respect of the property in question. There were three witnesses to the said no objection certificate dated 30.11.1993.

5. Therefore, the petitioner would contend that all the parties consented to execution of the said settlement deed dated 24.10.2014, after which, the petitioner was put in possession of the property. The property in question was assessed in the name of the petitioner from 28.11.2014. The petitioner also leased out the property in question on 01.2.2015. Subsequently, patta was granted in the name of the petitioner on 01.4.2015. There is another lease agreement dated 01.7.2015. These are all documents placed before this Court to show that the settlement deed dated 24.10.2014 was acted upon. While such was the factual position, the third respondent executed a document dated

18.5.2015, registered on 20.8.2015, cancelling the said settlement deed dated 24.10.2014 and vide another settlement dated 18.5.2015 registered on 27.8.2015, the third respondent settled the very same property in favour of her daughters namely respondents 4 to 8.

6. The question would be as to whether such a document could have been accepted by the second respondent for registration.

7. I need not labour much to find an answer to the said question 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."

8. Sub-para (i) of paragraph 59 of the said judgment would be a straight answer to the query raised in this writ petition. The unilateral cancellation of the settlement deed dated 18.5.2015 registered on 20.8.2015 cannot be accepted for registration by the second respondent and even after having done so, the same has to be treated as a void document and invalid for all purposes. Consequently, the execution and registration of the settlement deed dated 18.5.2015 on 27.8.2015 in favour of respondents 4 to 8 is also invalid because this was done after unilaterally canceling the settlement deed dated 24.10.2014 executed in favour of the writ petitioner. Therefore, the second respondent committed a gross error in entertaining the document dated 18.5.2015 for registration. The unilateral cancellation deed and the subsequent settlement deed, both dated 18.5.2015 in favour of respondents 4 to 8 have to be declared as null and void and that they have to be struck off the register and from the encumbrance certificate.

9. It is seen that the petitioner filed a suit in O.S.No.140 of 2015 on the file of the Principal District Munsif cum Judicial Magistrate, Gudalur wherein three reliefs were sought, namely (i) to declare that the cancellation of gift deed executed on 18.5.2015 by the third respondent vide doc.No.956 of 2015 on the file of the Sub-Registrar, Gudalur is null and void; (ii) to declare that the gift deed executed on 18.5.2015 by the third respondent in favour of respondents 4 to 8 vide doc.No.1022 of 2015 on the file of the Sub-Registrar, Gudalur is null and void; and (iii) for a consequential permanent injunction.

10. So far as relief Nos.1 and 2 are concerned, it is submitted that they were not pressed before the Trial Court and that the same was recorded by the Trial Court in its order dated 23.11.2016 in I.A.No.286 of 2016 in the said suit. Withdrawal of the two declaratory reliefs in the said suit was on the ground that the petitioner approached this Court to set aside those documents.

11. The learned counsel appearing for respondents 5 to 12

submits that the petitioner should approach the civil court because the Writ Court cannot declare a document as null and void.

12. It may be true that a Writ Court cannot render a document as null and void. However, in the light of the decision of the Full Bench of this Court in the case of Latif Estate Line India Limited, this Court is empowered to hold that the second respondent herein was not competent to receive the unilateral cancellation deed for registration. Consequently, if the second respondent has done so, then the document is null and void. With regard to right to the property, if respondents 5 to 12 claim any individual right over the same, it is for them to approach the civil court and they cannot compel the petitioner now to restore the original prayers sought for in the suit.

13. For the above reasons, the writ petition is allowed and the unilateral cancellation of the gift settlement deed dated 18.5.2015 is held to be null and void. Consequently, the settlement deed dated 18.5.2015 executed in favour of respondents 4 to 8 is also null and void and both the documents could not have been accepted for registration by the second respondent. There will be a direction to the second respondent to delete the said entries from the register as well as from the encumbrance certificate. So far as the claim over the property is concerned, it is well open to respondents 5 to 12 to approach the competent civil court for necessary relief. No costs. Consequently, the connected WMP is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

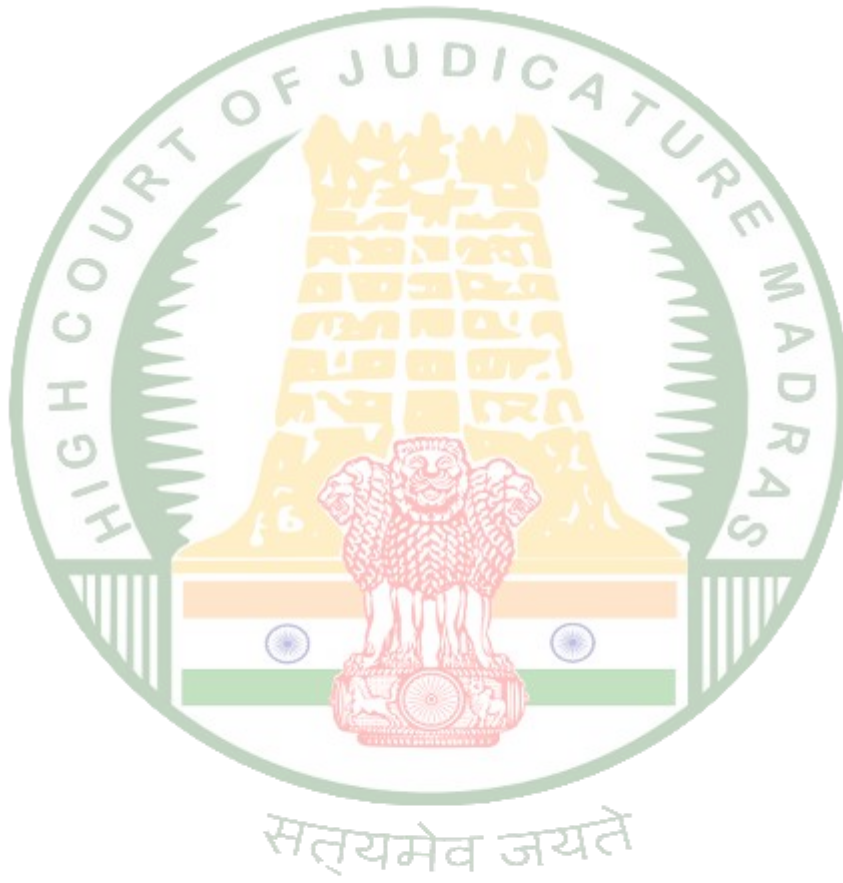
To

- 1.The District Registrar, Registration Department,
Udhagamandalam, The Nilgiris District.
- 2.The Sub-Registrar, Gudalur, The Nilgiris District.

+1 cc to Mr. K.P. Jotheeswaran(SR 18599)
+1 cc to Mr. V. Karthikeyan(SR 19101)
+1 cc to Government Pleader (Sr.No. 19293)

WP.No.1698 of 2017&

RV (CO)
NSP (19/5/2020)



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