



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.10.2021

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THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

W.P.NO.4356 OF 2021

K.Raman

...Petitioner

Vs.

1.Inspector General of Registration,
No.100, Santhome High Road,
Chennai - 600 028

2.The Sub Registrar,
Office of the Sub Registrar,
Vaniyambadi - 635 751
Thirupattur District

3.The Superintendent of Police,
Thirupattur District,
District Police Office,
Tirupattur - 635 601

4.State of Tamilnadu
Rep. By Inspector of Police,
Taluk Police Station,
Vaniyambadi - 635 751

5.K.Selva Nathan

...Respondents

Writ Petition is filed under Article 226 of Constitution of India to issue a Writ of Declaration to declare that the impugned deed of cancellation dated 05.07.2001 registered as Document No.1729 of 2001 on the file of the 2nd respondent as null and void and non-est in law and consequently direct the 2nd respondent to expunge the entry from the register by cancelling unilateral cancellation Document No.1729/2001 dated 05.07.2001 and restore status quo ante in respect of settlement deed No.2686/1999 dated 28.09.1999.

For Petitioner : Mr.B.Ramprasath

For Respondents : Mr.K.M.D.Muhilan for R1 to R4
Government Advocate

Mr.R.Ilanchizhian for R5



O R D E R

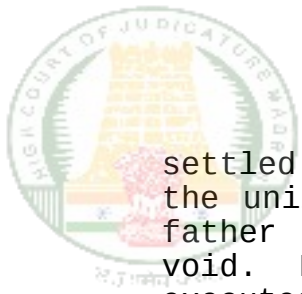
The present Writ Petition is filed under Article 226 of Constitution of India to issue a Writ of Declaration to declare that the impugned deed of cancellation dated 05.07.2001 registered as Document No.1729 of 2001 on the file of the 2nd respondent as null and void and non-est in law and consequently, direct the 2nd respondent to expunge the entry from the register by cancelling unilateral cancellation Document No.1729/2001 dated 05.07.2001 and restore status quo ante in respect of Settlement Deed No.2686/1999 dated 28.09.1999.

2. The case of the petitioner is that the father of the petitioner, viz., Kuzanthai Gownder was in possession of the hereditary properties at Vallipattu village, Vaniyambadi Taluk, Tirupattur District measuring to an extent of 8.95 Acres and had also purchased another property on his own earning with a measuring of 1.17 acres nearby to the above said hereditary properties. The father of the petitioner was left with five children, two daughters and three sons, in which the petitioner, 5th respondent are inclusive and one Raman. In the year 1974, the father of the petitioner partitioned the hereditary property amicably to his male children in the following proportion:-

- (i) Murgesan - 2.20 Acres Dry land and 70 Cents Rice mill
- (ii) Selvanathan - 3.40 Acres Wet land
- (iii) Raman - 2.65 Acres Dry Land

The above said partition of the hereditary properties was duly accepted by all the family members of petitioner's father including his two daughters. Thereafter, the settlement deed was executed on 28.09.1999 and the same was registered vide Document No.2686/1999 on the file of 2nd respondent herein. The 5th respondent, elder brother of the petitioner in order to usurp the hereditary right of the petitioner, forced his father to cancel the Settlement Deed No. 2686/1999, which confers the independent ownership right to the petitioner. The father of the petitioner on repeated compulsion of the 5th respondent filed an application before the 2nd respondent on 05.07.2001 for cancellation of settlement deed no.2686/1999. The 5th respondent filed a partition suit in O.S.167 of 2004 and the same was dismissed on 22.01.2015 with cost of Rs.3,135/- to the 5th respondent. As against the dismissal order, the 5th respondent preferred an Appeal in A.S.No.25 of 2015 and the same was also dismissed on 21.10.2019 and the order dated 22.01.2015 in O.S.No.167 of 2004 was upheld.

3. It is also the further case of the petitioner that the 2nd respondent without providing prior mandatory notice to the petitioner on 05.07.2001 allowed the unilateral cancellation application by way of registering the same as document no. 1729/2001. The father of the petitioner expired on 09.04.2006 due to illness and his old age and once the property has been



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settled in the name of the petitioner by his father, admittedly, the unilateral cancellation of the settlement deed filed by his father without prior notice to the petitioner is illegal and void. Further, the original settlement deed 2686/1999 was executed in favour of the petitioner without any specific covenant and condition and thus the property right conferred in favour of the petitioner and it cannot be cancelled by the executor of the original settlement deed and the executor does not have any right to register the cancellation deed 1729/2001, in the absence of any specific covenant and condition.

4. According to the petitioner the land comprised in the settlement deed 2686/1999 has not been maintained since a long time and therefore, thorn bushes had sprouted largely in the said land. Moreover, large number of snakes and venomous germs are entering in the house of the petitioner regularly, hence it is most necessary to remove the thorn bushes from the land, however, the 5th respondent and his family members had obstructed the same. Subsequently, the petitioner filed a complaint against the 5th respondent before the Inspector of Police, Vaniyambadi on 26.09.2019 and to that effect, a case was registered in Crime No.140 of 2020. Though several months have been elapsed, the respondent police had not taken any action on the basis of the complaint, neither the police restrained the above said accused nor provided adequate protection to the petitioner to remove the said thorn bushes.

5. While the matter stood thus, the petitioner approached the Superintendent of Police, Thirupattur on 27.07.2020 with a request to direct the respondent police to provide adequate protection to remove the thorn bushes and the same was duly transferred to the respondent police for needful action. However, after receiving the said complaint, the respondent police denied to provide adequate protection to remove the bushes from his land because of the cancellation deed No.1729/2001.

6. In consequence thereto, the petitioner filed a W.P.No.13626 of 2020 for issuance of Writ of Declaration to declare the impugned deed of cancellation dated 05.07.2001 registered as Document No.1729/2001 on the file of 2nd respondent as null and void and non-est in law. In the said petition, this Court granted liberty to withdraw the said petition and directed the petitioner to workout his remedy according to law. Thereafter, the petitioner approached the 1st and 2nd respondents by filing rectification petition on 27.10.2020 and 22.12.2020, but the respondents denied the same and the 1st respondent by an order dated 08.01.2001 held that he is not the competent authority to rectify the settlement deed and expunge the entry and consequently instructed the petitioner to approach the concerned court, hence the petitioner has come up with this petition.



7. The learned counsel for the petitioner, in support of his contention has relied on the following Orders of this Court:
(i) W.P.No.7725 of 2015 [P.A.G.Kumaran Vs. Inspector General of Registration] wherein at Paragraph No.16 among other things, it is held as follows:-

"16. In view of the fact that the unilateral cancellation of the settlement deed made by the first and second respondents is bad, this Court declares that the said cancellation of document, namely Deed of Cancellation of Settlement deed, registered as Document No.3328 of 2014, dated 10.11.2014, is illegal and in view of the same, the first and second respondents are directed to remove the entries in the Register and the subsequent transaction, namely settling the property in favour of the son of the third respondent, made pursuant to the unilateral cancellation of settlement deed, is also null and void...."

(ii) W.P.No.22386 of 2015 [P.Dinesh Kumar Vs. The Inspector General of Registration] wherein at Paragraph No.6 among other things, it is held as follows:-

"....in my considered opinion, whether it falls within the exception under Section 126 of the Transfer of the Property Act or not is purely a matter of evidence. The same has to be adjudicated only before the Civil Court. The Registrar is not a competent person to register the unilateral cancellation deed by deciding the question whether it falls within the exception under Section 126 of the Transfer of Property Act, since he is not the competent authority to decide the disputed question of facts. Further, in my considered opinion, by executing a registered settlement deed in favour of petitioners/settlees, the settlor/3rd respondent herein had lost his right in the property. Unless the said right is restored by setting aside the settlement deed executed by the settlor in favour of the settlees by a competent Court, the Sub-Registrar is not competent to register the unilateral cancellation of settlement deed."

(iii) Reported in 2014(3) CTC - 113 [D.V.Loganathan Vs. Sub Registrar, Chennai]

"The registration of cancellation of settlement deed is against the public policy as it is not open to the Sub Registrar to register the cancellation deed when the settlement deed is unconditional and irrevocable. The cancellation deed and its registration, therefore, being without jurisdiction is liable to be set aside."

(iv) Apnan Banu Vs. The Sub Registrar in W.P.No.2897 of 2017 on 04.09.2018, this Court by stating that "In view of the fact that the unilateral cancellation of settlement deeds are



impermissible under the Registration Act as well as the legal principles are settled by the full bench of this Court, this Court has cancelled the Unilateral cancellation deed.

(v) In the order [N.Vijayabaskar Vs. Gokul Anand] in W.P.No.27342/2016, this Court has taken note of the "settled legal position and quashed a unilateral cancellation of settlement deed by an order dated 10.10.2018".

8. Per contra, by way of filing a detailed counter affidavit, the learned counsel for the 5th respondent has submitted that the 5th respondent is the brother of the petitioner and after the properties were partitioned, all the three male heirs have become owner of the property. Since the father of the petitioner as well as the 5th respondent is illiterate, the petitioner had executed two settlement deeds in his favour as document no.2686 of 1999 and 2160 of 2000. Further, the sale deeds were not as per the share allotted through oral partition and hence the said documents were cancelled by the father of the petitioner. The said cancellation was through registered cancellation deeds no.1729/2001 dated 12.01.2001 and 1730/2001 dated 12.01.2001.

9. That apart, the learned counsel for the 5th respondent contends that the petitioner has availed two settlement deeds in his name and the said two settlement deeds have been cancelled by the settlor, however, the petitioner is claiming only one cancellation deed to be revoked through this petition. The claim of the petitioner is barred by law, as the petitioner has got the knowledge of the said cancellation before 10 years. Further, it is admitted by the petitioner in the petition about the oral partition and further about the suit and it is precise to state that as the oral partition makes the rights of share to the parties absolute, what is the necessity for the petitioner to create a settlement deed in favour of the petitioner and the settlement deed is against the oral partition as the 30 cents in S.No.133/1A is under the possession and enjoyment of the 5th respondent.

10. That apart, it is represented on behalf of the 5th respondent that after 19 years from the date of cancellation, 17 years from the date of filing the partition suit and after 12 years from the date of submitting the said documents before the trial court, the petitioner has come before this Court and right to claim has been exhausted as it is barred by law. The petitioner has submitted that the 5th respondent has filed a case before the Additional District Munsif in O.S.No.167 of 2004 and never stated that what was the nature of the suit and also what was the reason for the dismissal.

11. While concluding, the learned counsel for the 5th respondent contends that the present petition is devoid of



merits and the remedies can be claimed only through proper trial forum and the same is also barred by law.

12. Heard the learned counsel for the petitioner, learned Government advocate for the respondents 1 to 4 and the learned counsel for the 5th respondent and perused the documents placed on record.

13. It is to be noted that this Court in the case of D.V.Loganathan Vs. the Sub-Registrar, Office of the Sub-Registrar, Pallavaram, Chennai and another reported in 2014(3) CTC 113 it is observed that the Unilateral cancellation of settlement deed is without jurisdiction and liable to be set aside. Further, in the case of Samiappan and Others Vs. Rajamani reported in CDJ 2014 MHC 5730, the Hon'ble Division Bench of this Court held that the 'settlement deed cannot be set at naught unilaterally by one party'. The party, who settled the property in favour of the petitioner is none other than his father, who had executed the settlement deed dated 28.09.1999 and the petitioner was put in possession. It is also brought to the notice of this Court by the petitioner that in the settlement deed, no power of cancellation was reserved by the father of the petitioner and however, the father chose to cancel the documents during the year 2001.

14. It is pertinent to point out that the Sub Registrar, who registered the cancellation deed, ought to have issued notice to the parties under the settlement deed, namely, the petitioner and concerned parties and without doing so, has unilaterally registered the documents ignoring the fact that the settlement deed was acted upon and the cancellation deed was presented for registration after nearly 2 years after the date of settlement. This being contrary to the legal position, the same requires to be interfered with.

15. Moreover, the Hon'ble Full Bench of this Court [Latif Estate Line India Ltd., Vs. Hadeeja Ammal] reported in 2011 (2) CTC 1 has held that unilateral cancellation of a registered sale deed through a deed of cancellation is of no effect in law. The conclusion drawn by the Full Bench as recorded in paragraph nos.58 and 59 are extracted hereunder:

"58. It can also not be overlooked or ignored that a unilateral cancellation of a sale deed by registered instrument at the instance of the vendor only encourages fraud and is against public policy. But there are circumstances where a deed of cancellation presented by both the vendor and the purchaser for registration has to be accepted by the Registrar if other mandatory requirements are complied with. Hence, the vendor by the unilateral execution of the cancellation deed cannot annul a registered document duly executed by him as such an act of the vendor is opposed to public policy.



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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 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."

In the light of the above, the present Writ Petition is allowed and the unilateral cancellation of the settlement deed registered as document No.1729 / 2001 dated 05.07.2001 is set aside and the 2nd respondent is directed to remove the entries pertaining to the same in the register. It is needless for this Court to make a mention that this order will not prevent the 5th respondent from approaching the civil court to establish his right over the property, if done so, the Civil court, shall decide the matter uninfluenced by any of the observation in this order, as this petition is decided only on the cancellation of settlement deed on the ground that it is an unilateral cancellation. No costs.

Sd/-

Assistant Registrar (CS-IV)

// True Copy //

Sub Assistant Registrar

ssd



To

1.The Inspector General of Registration
No.100, Santhome High Road,
Chennai-28.

2.The Sub Registrar,
Office of the Sub Registrar,
Vaniyambadi - 635751,
Thirupattur District.

3.The Superintendent of Police,
Thirupattur District,
District Police Office,
Tirupattur - 635601.

4.The Inspector of Police,
State of Tamilnadu,
Taluk Police Station,
Vaniyambadi - 635751.

W.P.No.4356 of 2021

PCH(CO)
RVM(10/11/2021)