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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.09.2021

CORAM :

THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

W.P.No.17557 of 2012 and
MP.No.1 of 2012

Soundaryaammal alias Gnanasoundry

... Petitioner

-Vs-

1.The Inspector General of Registration,
Santhome,
Chennai-4

2.The Sub Registrar,
Sub Registrar Office,
Triplicane, Chennai 600 005

3.Senkallaammal

... Respondents

Prayer :- Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of certiorari calling for the cancellation of settlement deed dated 19.11.2007 in Doc.No.1435/2007 on the file of second respondent and quash the same as null and void.

For petitioner : No appearance

For Respondents

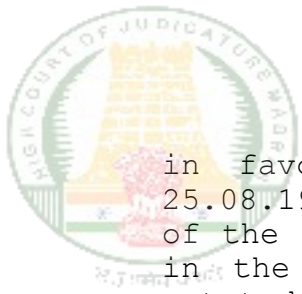
For R1 & 2: Mr.Richardson Wilson,
Government Advocate

For R3 : disd vide court order dated 15.12.2014

ORDER

The Writ Petition has been filed to issue a writ of certiorari calling for the cancellation of settlement deed dated 19.11.2007 in Doc.No.1435/2007 on the file of second respondent and quash the same as null and void.

2. The case of the petitioner is that the property comprised in old survey No.734, old new survey No.108, present new survey No.1084/37 situated at Triplicane admeasuring 679 sq.ft. being the house property was settled by the third respondent who is the paternal mother of the petitioner herein



in favour of the petitioner by the settlement deed dated 25.08.1967 registered vide document No.800 of 1967 on the file of the second respondent. Thereafter, the petitioner is residing in the said property and all the revenue records have been mutated in his name. While being so, during the year 2007, the third respondent unilaterally executed cancellation of settlement deed dated 19.11.2007 registered vide document No.1435 of 2007 on the file of the second respondent.

3. It seems thereafter the third respondent sold out the said property. When the purchaser came to take the possession of the said property, the petitioner came to understand about the unilateral cancellation of settlement deed dated 19.11.2007. The settlement cannot be cancelled unless and otherwise the revocation is executed by both the settlor and settlee. The provision under Section 17 of the Indian Registration Act, all non testamentary instruments declaring a right or title over immovable properties worth Rs.100/- and upwards shall be registered. A deed of cancellation of a settlement falls within the purview of such an instrument declaring right and title for an immovable property. If any such document cancelling the settlement is presented for registration by execution of mutual consent of the parties, the same is compulsorily registrable under Section 17 and the Registering Officer is obliged to register the same. If the document is unilaterally executed by incompetent persons, the Registering Officer has to necessarily refuse to register the document. Thus, where the document is either void or illegal or there is no valid execution, and if the Registering Officer proceeds to register the said document, then the said registration would be without jurisdiction and not valid.

4. In this regard, it is relevant to rely upon the judgment in the case of P.A.G.Kumaran Vs. Inspector General of Registration in WP.No.7725 of 2015 dated 31.07.2017, wherein 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. All the entries have got to



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be removed and this has got to be done within one month from the date of receipt of a copy of this order. This Court makes it clear that this order will not prevent the third respondent from approaching the Civil Court and establish her right over the property in question and if done, the Civil Court shall decide the matter without being influenced by any of the observations made in this writ petition touching on the merits of the matter. As this Court has held that the cancellation of settlement deed is illegal and without jurisdiction, and declared the same as null and void, if any suit is filed, the same has got to be decided by the Civil Court in accordance with law, including the issue of limitation. If the third respondent goes before appropriate forum with regard to the cancellation of settlement deed, which is the subject matter of this Writ Petition, this Court expects that the said civil forum to decide the matter as expeditiously as possible, from the date of initiation of such suit, and the matter shall not be adjourned beyond seven working days at any point of time. The petitioner shall co-operate in the trial if such suit is filed."

5. In view of the legal principles settled in the above judgment, the unilateral cancellation of settlement is contrary to law. Thus, the cancellation deed of settlement dated 19.11.2007 registered vide document No.1435 of 2007 is set aside and the writ petition is allowed. The second respondent is directed to correct the entries made in the encumbrance register and all relevant records. Consequently, connected miscellaneous petition is closed. No order as to costs.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

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To

1.The Inspector General of Registration,
Santhome,
Chennai-4



2.The Sub Registrar,
Sub Registrar Office,
Triplicane, Chennai 600 005

+1cc to the Government Pleader, S.R.No.47552

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KSM(CO)
CB(06/10/2021)