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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.07.2021

CORAM

THE HON'BLE MR. JUSTICE R.SURESH KUMAR

W.P. No. 30106 of 2011
and
W.M.P. No. 1 of 2011

S.Kanakaraj ... Petitioner

-vs-

1. The Sub-Registrar,
   Mettur Sub-Registration Office,
   Mettur, Salem District.

2. Thiru Sadasivam ... Respondents

Prayer:- Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Declaration, declaring the Cancellation Deed registered by the first respondent in Document No.749/2003 dated 27.03.2003 as illegal, void and against the provisions of Registration Act.

For Petitioner : Mr.G.Sankaran

For Respondents: Ms.Akila Rajendran
Counsel for Government for R1
Mr.R.Nalliyappan for R2

O R D E R

The prayer sought for herein is for a Writ of Declaration declaring the Cancellation Deed registered by the first respondent in Document No.749/2003 dated 27.03.2003 as illegal, void and against the provisions of Registration Act.

2. The petitioner is the son of the second respondent. The second respondent has executed a Settlement Deed in favour of the petitioner in the year 2001 duly registered in Document No.361 of 2001 on the file of the first respondent Office. By

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virtue of the said Settlement Deed, the petitioner has become owner of the property concerned. Thereafter, according to the petitioner, he has made an application for transfer of patta, which was ordered as per the proceedings of the Revenue Authorities dated 30.01.2002. Subsequently, the petitioner, who is working as Driver in the Tamil Nadu Mineral Department has made an application to the Department, seeking permission to construct a house in his plot and that was also granted by the Department dated 09.03.2002 and he has constructed the house and regularly paying the property tax to the concerned authorities.

3. While that being so, the second respondent, according to the petitioner, as per the advises of the petitioner's brother, has executed a Cancellation Deed, cancelling the Settlement Deed already issued in 2001 and the same has been registered as Document No.749 of 2003 dated 27.05.2003 on the file of the first respondent. According to the petitioner, such kind of unilateral cancellation of settlement deed should not have been registered in view of the law having been declared by the Hon'ble Full Bench in "Latif Estate Line India Ltd., v. Hadeeja Ammal" reported in 2011 (2) CTC 1 as well as G.D.Subramaniam case reported in 2001(1) CTC 709.

4. In view of the legal position, that the unilateral cancellation of the Settlement Deed is bad in law and the same cannot be registered by the Registering Authorities, challenging such cancellation made in respect of the Settlement Deed, executed by the second respondent dated 27.03.2003 and to declare it as a void document, the petitioner has moved this Writ Petition with the aforesaid prayer.

5. Heard Mr.G.Sankaran, learned counsel appearing for the petitioner, who having reiterated the aforesaid would further submit that, subsequently, the petitioner in the proceedings for maintenance separately initiated by the second respondent, has been continuously paying the maintenance amount to the second respondent, i.e., the father of the petitioner and the arrears to that effect also had been paid. In this regard, the petitioner filed additional documents by way of additional typed set of papers, where, according to the memo filed by the second respondent in M.C. No. 1 of 2005 in C.M.P. No. 4046 of 2010, some amount as an arrear had been paid on 18.09.2017 and subsequently, according to the petitioner, he had continuously paying the same. Even the reasons stated in the deed in question since has not been available to the second respondent and also the law does not permit for such unilateral cancellation, the said Cancellation Deed in question cannot be sustained, he contended.

6. Per contra, Mr.R.Nalliyappan, learned counsel appearing

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for the second respondent, on instructions, would submit that, believing the words of the petitioner, who is none other than the son of the second respondent, the property which was purchased by the second respondent out of his hard earned money has been settled in favour of the petitioner. However, after some time, the petitioner has not come forward to maintain the second respondent and due to the suffering which was so ordeal, the second respondent thought it fit to cancel the said deed, that is how, the cancellation has been effected and it was duly registered.

7. The learned counsel would further submit that, if at all, the senior citizen like the second respondent is not maintained by the legal heirs, who have inherited the property of the senior citizen, the senior citizen is empowered under The Maintenance and Welfare of Parents and Senior Citizens Act, 2007 and accordingly, the cancellation of Settlement Deed is permissible under the said Act. Therefore, the present Cancellation Deed made of the Settlement Deed made in favour of the petitioner is justified and acceptable under law. Hence, the prayer sought for herein by the petitioner can be rejected, he contended.

8. I have heard Ms.Akila Rajendran, learned counsel for the Government appearing for the first respondent, who would submit that, as per the law declared by this Court, especially in the Hon'ble Full Court Bench Judgment in "Latif Estate Line India Ltd., v. Hadeeja Ammal", the unilateral cancellation of the Settlement Deed is not permissible, such a registration taken place can very well be revisited and a suitable direction can be issued by this Court.

9. I have considered the rival submissions made by the learned counsel appearing for the parties and have perused the materials placed before this Court.

10. It is an admitted fact that, the second respondent being the father, executed the Settlement Deed in favour of the petitioner in the year 2001, subsequently, the same had been cancelled by the very same second respondent by Cancellation Deed dated 27.05.2003 vide Document No.749 of 2003 registered on the file of the first respondent.

11. Insofar as such unilateral cancellation of settlement is concerned, for whatever the plausible reason on the part of the second respondent, the law has been well settled in this regard, especially after the Full Bench Judgment cited supra, that such unilateral cancellation is impermissible.

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12. Therefore, in view of the law having been declared by the Honb'le Full Bench, I am of the view that, the present Cancellation Deed which is in question executed and registered on 27.05.2003 by the second respondent at the first respondent Office is a void document. Therefore, such a registration and document is declared to be a void one.

13. But at the same time, insofar as the non-maintenance of the second respondent by the petitioner is concerned, it is a very serious issue to be looked into.

14. In order to protect the senior citizen knowing the present trend from younger generation, the parliament thought it fit to bring the said Act. There are some exhaustive provisions in the said Act under which the Revenue Divisional Officers in this State had been designated as a Tribunal. Before such Tribunal, any affected parties, i.e., senior citizen can very well make the complaint that, after having inherited the property by way of settlement or otherwise from senior citizen, parents etc., if the beneficiaries or the legal heirs have not come forward to maintain the senior citizen, then they are very well entitled to cancel such document or instruments executed in favour of the legal heirs and that kind of mechanism is very well available under Section 23 of the said Act, which reads thus:

> "23. Transfer of property to be void in certain circumstances:
>
> (1) Where any senior citizen who, after the commencement of this Act, has transferred by way of gift or otherwise, his property, subject to the condition that the transferee shall provide the basic amenities and basic physical needs to the transferor and such transferee refuses or fails to provide such amenities and physical needs, the said transfer of property shall be deemed to have been made by fraud or coercion or under undue influence and shall at the option of the transferor be declared void by the Tribunal.
>
> (2) Where any senior citizen has a right to receive maintenance out of an estate and such estate or part thereof is transferred, the right to receive maintenance may be enforced against the transferee if the transferee has notice of the right, or if the transfer is gratuitous; but not against the transferee for consideration and without notice of right.
>
> (3) If, any senior citizen is incapable of enforcing the rights under sub-sections (1) and (2), action may be taken on his behalf by any of the organization referred to in Explanation to

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sub-section (1) of section 5."

15. In view of the said provisions, it is permissible for the second respondent to get it cancelled, if he still feels that the Settlement Deed made in favour of the petitioner has to be cancelled for the reasons that is available before the second respondent and for the said purpose, it is open to the second respondent to approach the Tribunal under the provisions of the said Act and once such approach is made and the complaint is given by the second respondent, it is open to the Tribunal concerned, to pass orders on merits after hearing both parties and in that case, it is open to the second respondent to convince the Tribunal to get an order in his favour desired so to cancel the settlement made in favour of the petitioner.

16. With these observations and directions, this Writ Petition is ordered accordingly. However, there shall be no order as to costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS-III)

//True Copy//

Sub Assistant Registrar

vji/MR

To

The Sub-Registrar,
Mettur Sub-Registration Office,
Mettur,
Salem District.

+1cc to Mr.G.Sankaran, Advocate, S.R.No.36101

+1cc to the Government Pleader, S.R.No.36259

W.P. No. 30106 of 2011
and
W.M.P. No. 1 of 2011

NR(CO)
SU(06/10/2021)

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