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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.08.2021

CORAM

THE HON'BLE MR.JUSTICE G.K. ILANTHIRAIYAN

W.P.No.36218 of 2016

Mandothari Prasad @ Russia

....Petitioner

Vs

1. The Sub Registrar,
Office of the Sub Registrar,
(District Registrar Cadre),
Mylapore,
Chennai - 600 004.

2. Kantha @ K.T. Kanthasoroobi

....Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of declaration, declaring that the deed of cancellation of settlement deed executed by the second respondent on 07.02.2014 registered as document No.368/2014 on the file of the first respondent by cancelling the settlement deed dated 27.05.2013 executed by the second respondent in favour of the petitioner registered as document No.1647/2013 on the file of the first respondent is null and void and not binding on the petitioner over the property situate in old door No.36 later No.7 and now New No.13, 3rd Main Road, Raja Annamalaipuram, Chennai 600 028 with RS.No.3968/80 part Block No.88, Mylapore Division, more fully described in the B Schedule in the settlement deed to an extent of 2613 sq.ft. along with built up house.

For Petitioner : Mr.S.Balasubramanian

For R1 : Mr.Richardson Wilson
Government Advocate

For R2 : Mr.S.Kumara Devan



O R D E R

This Writ Petition has been filed to issue a Writ of declaration, declaring that the deed of cancellation of settlement deed executed by the second respondent on 07.02.2014 registered as document No.368/2014 on the file of the first respondent by cancelling the settlement deed dated 27.05.2013 executed by the second respondent in favour of the petitioner registered as document No.1647/2013 on the file of the first respondent is null and void and not binding on the petitioner over the property situated in old door No.36 later No.7 and now New No.13, 3rd Main Road, Raja Annamalaipuram, Chennai 600 028 with RS.No.3968/80 part Block No.88, Mylapore Division, more fully described in the B Schedule in the settlement deed to an extent of 2613 sq.ft. along with built up house.

2. Heard, Mr.S.Balasubramanian, the learned counsel appearing for the petitioner and Mr.Richardson Wilson, Government Advocate appearing for the first respondent and Mr.S.Kumara Devan, learned counsel appearing for the second respondent.

3. The petitioner's mother and the second respondent herein purchased the property comprised in RS.No.3968/80 to an extent of 4408 sq.ft. from Raja Annamalai Housing Co-operative Society. Thereafter, the second respondent has constructed a superstructure in the said plot with the help of the petitioner. The petitioner was living with them. Therefore, her mother executed a settlement deed dated 27.05.2013 settling a portion of the property in favour of the petitioner vide document No.1647/2013. In fact, her father was one of the witnesses in the settlement deed, which was executed by her mother in favour of the petitioner.

4. After the demise of the petitioner's father on 05.01.2014, there was a dispute between the family members and her mother executed a cancellation deed dated 07.02.2014 registered vide document No.368/2014 with the office of the first respondent unilaterally. The unilateral cancellation of the settlement deed has been deprecated in various several judgments. It is relevant to extract the relevant portion of the order of this Court in W.P.No.19483 of 2018 dated 11.01.2019 hereunder:

"5. It is relevant to note that a Full Bench of this Court in *Latif Estate Line India Ltd., Vs. Hadeeja Ammal*, 2011 (2) CTC 1, held that the unilateral cancellation of a deed cannot be done. The Inspector General of Registration, Chennai, has also issued a circular very recently in proceedings No.52666/C1/2018, dated 29.11.2018, wherein, considering all the judicial



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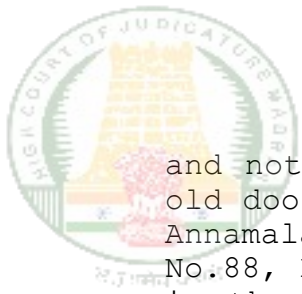
pronouncements on these aspects instructed that unilateral cancellation of such settlement deed without consent of Settlee is against the public policy declared in Section 126 of the Transfer of Property Act, 1882. This circular further states that in view of the legal position, it was classified that any settlement deed, which is sought to be unilaterally cancelled by the settlor is presented for registration, registering officers shall not accept such unilateral cancellation deeds for registration and check slip shall be issued in this regard.

6. When the Settlement Deed is unconditional and irrevocable, the unilateral cancellation is being opposed to the public policy. In the event, the executant of the Settlement Deed is aggrieved by the same for having executed under coercion or undue influence, it is for him or her to approach the Civil Court to set aside the same and cannot unilaterally cancel it by way of deed of cancellation.

7. A Deed of cancellation of a Settlement Deed unilaterally executed by the transferor does not create assign, limit or extinguish any right, title or interest in the property, which has already been transferred. Therefore, the second respondent also ought not to have entertained the registration of the Cancellation Deed. Immediately after the Settlement Deed is executed, the settlee/transferee becomes the absolute owner, as the property vests with the settlee and the same cannot be divested by the Cancellation Deed, even with the consent of the parties. Perhaps, the proper way to re-convey the property is by way of a deed of conveyance by the transferee in favour of the transferor. Any such transfer by way of sale or settlement deed can be cancelled at the instance of the transferor only taking re-course to the Civil Court.

8. Learned Special Government Pleader appearing for the respondents also conceded that if it is an unilateral cancellation of the Settlement Deed, the registration of the same should be deprecated."

5. In view of the above discussion, the deed of cancellation of settlement deed executed by the second respondent on 07.02.2014 registered as document No.368/2014 on the file of the first respondent by cancelling the settlement deed dated 27.05.2013 executed by the second respondent in favour of the petitioner registered as document No.1647/2013 on the file of the first respondent is declared as null and void



and not binding on the petitioner over the property situated in old door No.36 later No.7 and now New No.13, 3rd Main Road, Raja Annamalaipuram, Chennai 600 028 with RS.No.3968/80 part Block No.88, Mylapore Division, more fully described in the B Schedule in the settlement deed to an extent of 2613 sq.ft. along with built up house.

6. Accordingly, the Writ Petition stands allowed. No costs.

Sd/-
Assistant Registrar(CS-IV)

//True Copy//

Sub Assistant Registrar

GLpp

To

The Sub Registrar,
Office of the Sub Registrar,
(District Registrar Cadre),
Mylapore,
Chennai - 600 004.

+1cc to M/s.S.Kumara Devan, Advocate, S.R.No.42924
+1cc to S.Balasubramanian, Advocate, S.R.No.42814
+1cc to the Government Pleader, S.R.No.43409

W.P.No.36218 of 2016

RR(CO)
RGA(23/09/2021)