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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.09.2021

CORAM:

THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

W.P.Nos.27628 to 27630 of 2017
and

W.M.P.Nos.29556 to 29558 of 2017

W.P.No.27628 of 2017

L.Kempaiha

... Petitioner

Vs.

1. The District Registrar,
Krishnagiri.

2. The Sub Registrar,
Hosur,
Krishnagiri District.

3. K.Lakkappa

...Respondents

Writ Petition filed under Article 226 of the Constitution of India, to issue a writ of Certiorarified Mandamus, calling for the records relating to registration of cancellation of gift settlement deed dated 09.05.2012 registered as Document No.7021 of 2012 in the office of Sub Registrar, Hosur, cancelling the registered gift settlement deed dated 23.12.2011 registered as Document No.18841 of 2011 in the office of Sub Registrar, Hosur and quash the same as un-constitutional, arbitrary and illegal and consequently direct the second respondent to forthwith to delete the relevant entries relating to registration of cancellation of gift deed in the registration records.

For Petitioner : R.Bharath Kumar

For Respondents: Mr.M.R.Gokul Krishnan
Government Advocate (for R-1 & R-2)

W.P.No.27629 of 2017

L.Kempaiha

... Petitioner

Vs.

1. The District Registrar,
Krishnagiri.



2. The Sub Registrar,
Hosur,
Krishnagiri District.

3. K.Lakkappa
4. L.Narayanappa
5. M.Sasikumar

...Respondents

Writ Petition filed under Article 226 of the Constitution of India, to issue a writ of Certiorarified Mandamus, calling for the records relating to registration of cancellation of gift settlement deed dated 23.10.2015 registered as Document No.16700 of 2015 in the office of Sub Registrar, Hosur, cancelling the registered gift settlement deed dated 23.05.2014 registered as Document No.7113 of 2014 in the office of Sub Registrar, Hosur and quash the same as un-constitutional, arbitrary and illegal and consequently direct the second respondent to forthwith to delete the relevant entries relating to registration of cancellation of gift deed in the registration records.

For Petitioner : R.Bharath Kumar

For Respondents: Mr.M.R.Gokul Krishnan
Government Advocate (for R-1 & R-2)

: Mr.M.J.Jaseem Mohamed (for R-4)

: Mr.Karthikeyan
for Mr.V.Nicholas (for R-3 & R-5)

W.P.No.27630 of 2017

L.Kempaiha

Vs.

... Petitioner

1. The District Registrar,
Krishnagiri.

2. The Sub Registrar,
Hosur,
Krishnagiri District.

3. K.Lakkappa
4. L.Narayanappa
5. M.Sasikumar
6. L.Krishnappa

...Respondents



Writ Petition filed under Article 226 of the Constitution of India, to issue a writ of Certiorarified Mandamus, calling for the records relating to registration of cancellation of gift settlement deed dated 23.05.2014 registered as Document No.7111 of 2014 in the office of Sub Registrar, Hosur, cancelling the registered gift settlement deed dated 26.11.2011 registered as Document No.15216 of 2012 in the office of Sub Registrar, Hosur and quash the same as un-constitutional, arbitrary and illegal and consequently direct the second respondent to forthwith to delete the relevant entries relating to registration of cancellation of gift deed in the registration records.

For Petitioner : R.Bharath Kumar

For Respondents: Mr.M.R.Gokul Krishnan
Government Advocate (for R-1 & R-2)

: Mr.M.J.Jaseem Mohamed (for R-4)

: Mr.Karthikeyan
for Mr.V.Nicholas (for R-3 & R-5)

COMMON ORDER

These writ petitions are filed to issue a writ of Certiorarified Mandamus, calling for the records relating to registration of cancellation of gift settlement deeds dated 09.05.2012, 23.05.2014 and 23.10.2015 registered as Document Nos.7021 of 2012, 7111 of 2014 and 16700 of 2015 in the office of Sub Registrar, Hosur, cancelling the registered gift settlement deeds dated 23.12.2011, 26.11.2011 and 23.05.2014 registered as Document Nos.18841 of 2011, 15216 of 2012 and 7113 of 2014 in the office of Sub Registrar, Hosur and quash the same as un-constitutional, arbitrary and illegal and consequently direct the second respondent to forthwith to delete the relevant entries relating to registration of cancellation of gift deed in the registration records.

2. The case of the petitioner is that the property belonged to the third respondent who had acquired title by the registered sale deed dated 08.12.2007 and settlement dated 27.07.2011. Both were registered as document No.17242 of 2007 and document No.10312 of 2011 on the file of the the Sub Registrar, Hosur. Thereafter, he executed three registered settlement deed in favour of the petitioner. In pursuance of the settlement deed, the petitioner was issued patta for the respective properties. By the settlement deed dated 23.12.2011 registered vide document



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No.18841 of 2011 in the office of the Sub Registrar, Hosur, the property comprised in S.No.947 to an extent of 10 cents, the property comprised in S.No.234/1A to an extent of 12 cents, the property comprised in 232/2 to extent of 4 cents, the property comprised in 249 to an extent of 17.5 cents and the property comprised in 257/4 to extent of 1/3rd right in bore well and pump set in total 43.5 cents were settled. The third respondent also executed another settlement deed dated 26.11.2012 registered vide document No.15216 of 2012 on the file of the Sub-Registrar, Hosur, thereby settled the property comprised in S.No.249 to an extent of 0.59.0 hectares and the property comprised in S.No.257/4 to an extent of 0.65.0 hectares out of which 0.01 cent contains borewell and 5 HP pump set. The third respondent by another settlement deed dated 23.05.2014 registered vide document No.7113 of 2014 in the office of the Sub Registrar, Hosur, thereby settled the property comprised in S.No.249 ad-measuring to an extent of 43.5 cents and half right in 5 HP pump set and bore well in S.No.257/4 in favour of the petitioner and his brothers. While verifying the encumbrance certificate, the petitioner came to understand that the third respondent had executed deed of cancellation dated 09.05.2012 registered vide Document No.7021 of 2012 on the file of the Sub Registrar, Hosur, thereby cancelling the settlement deed dated 23.12.2011 registered vide Document No.18841 of 2011. Similarly the settlement deed dated 26.11.2012 registered vide Document No.15216 of 2012 was also cancelled by a deed of cancellation dated 23.05.2014 registered vide document No.7111 of 2014. Again, the third respondent cancelled the settlement deed dated 23.05.2014 registered vide document No.7113 of 2014 by the deed of cancellation dated 23.10.2015 registered vide document No.16700 of 2015. All the settlement deeds were cancelled by the deed of cancellation unilaterally by the third respondent without the consent of the petitioner.

3. While being so, it is alleged that the third respondent had unilaterally cancelled the settlement deeds dated 23.12.2011, 26.11.2012 and 23.05.2014 by the deeds of cancellation dated 09.05.2012, 23.05.2014 and 23.10.2015, registered as Document Nos. 7021 of 2012, 7111 of 2014 and 16700 of 2015 respectively in the office of Sub Registrar, Hosur. The settlement deeds dated 23.12.2011, 26.11.2012 and 23.05.2014 are irrevocable. The possession of the property is also handed over immediately after the execution of settlement deed and thereafter, the petitioner is in possession and enjoyment of the same. In fact, the petitioner also sent a representation dated 24.07.2017 to the first and second respondents to cancel the deeds of cancellation dated 09.05.2012, 23.05.2014 and 23.10.2015.

4. The third respondent has assigned reason for



cancellation of the settlement deeds that as per the conditions mentioned in the registered settlement deeds, the petitioner has not maintained him and hence, he intends to cancel the settlement deeds. On perusal of the records, it is evident that there is no such conditions mentioned in the settlement deeds and impugned cancellation deeds are unilaterally made by the third respondent.

5. After registering the document, no authority has power to cancel the registration of a document. The Civil Court alone can set aside the registered document. The second respondent has no power to register the cancellation deed that too presented unilaterally. Therefore, the deeds of cancellation dated dated 09.05.2012, 23.05.2014 and 23.10.2015, registered as Document Nos. 7021 of 2012, 7111 of 2014 and 16700 of 2015 respectively in the office of Sub Registrar, Hosur are hereby declared as bad and non-est in the eye of law. In this regard, it is relevant to refer upon the Judgment reported in 2017(2) CWC 796 dated 31.07.2017 P.A.G.Kumaran -vs- Inspector General of Registration held as follows:

"13. According to the learned counsel for the petitioner, it is not only based on the judgment of the Apex Court reported in 2014 (4) CTC 572 (SC) (cited supra) that this Court has rendered a finding with regard to the cancellation of settlement deed, in W.P.No.6230 and 6231 of 2011 (cited supra), but also referring to the judgment of the Full Bench of this Court reported in 2011 (2) CTC 1 (cited supra) to show that when once the property is settled, it cannot be overruled or ignored that a unilateral cancellation at the instance of the person who has settled the property, can be cancelled, unless and otherwise it establishes fraud or against the public policy.

14. Though it has been vociferously contended by the learned counsel for the third respondent that the deed of cancellation can be done by the respondents 1 and 2 and in view of the judgment of the Full Bench of this Court reported in 2011 (2) CTC 1 (cited supra), as could be seen from paragraphs quoted therein above, it is no doubt true that the Writ Petition is maintainable, provided there are no disputed



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questions of fact. In this case, there is clear evidence to show that there are disputed questions of facts, namely that after the property has been settled in favour of the petitioner, under the guise of family dispute, the registration of the property was sought to be cancelled.

15. Though it is not in dispute that the property was purchased by the third respondent, as admitted by the petitioner, there is subsequent development which led to the settlement of the property in favour of the petitioner by the third respondent. Naturally, to avoid any stamp duty, such registration has taken place between the husband and wife and when the dispute arose, it comes to light as to under what circumstances, the property has been settled in favour of one person by the spouse. Since, as narrated by the third respondent in the counter that there are disputed questions of facts, the matter has got to be resolved only before the civil forum. This Court cannot render any finding based on the disputed questions of fact, as the parties will have to let in evidence.

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 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



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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."

6. The deeds of cancellation dated 09.05.2012, 23.05.2014 and 23.10.2015, registered as Document Nos. 7021 of 2012, 7111 of 2014 and 16700 of 2015 respectively in the office of Sub Registrar, Hosur are hereby set aside. The second respondent is directed to correct the entries in the encumbrance register and all the relevant records. In view of the legal principles settled in the above Judgment, unilaterally cancellation of settlement deed is contrary to law and void ab initio. However, the third respondent is at liberty to challenge the settlement deed before the Civil Court in the manner known to law.

7. Accordingly, these writ petitions are allowed. Consequently, the connected miscellaneous petitions are closed. No costs.

Sd/-
Assistant Registrar (CS-IX)

//True Copy//

Sub Assistant Registrar

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To

1. The District Registrar,
Krishnagiri.

2. The Sub Registrar,
Hosur,
Krishnagiri District.

+1cc to Mr.R.Bharath Kumar, Advocate, S.R.No.48692

+1cc to Mr.M.J.Jaseem Mohamed, Advocate, S.R.No.47771

+1cc to the Government Pleader, S.R.No.48220

W.P.Nos.27628 to 27630 of 2017

VBM(CO)
SU(12/10/2021)