



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 10.01.2022

CORAM

WEB COPY

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

W.P(MD).No.13856 of 2021

and

W.M.P(MD)No.17024 of 2021

Jagadheeswari

...Petitioner

Vs.

1.The Inspector General of Registration,
No.100, Santhom High Road,
Chennai - 600 009.

2.The District Registrar,
Palace Road,
Madurai-625 001.

3.The Sub-Registrar,
Thirupparankundram,
Madurai.

4.Latha

...Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, calling for the records pertaining to the Impugned Cancellation of settlement deed in document No.3489 of 2019, dated 18.10.2019 by the fourth respondent on the file of the third respondent herein and quash the same as illegal and consequently direct the third respondent herein to delete the entry of above said documents from the Encumbrance Certificate.

For Petitioner : Mr.M.Natarajan

For R1 to R3 : Mr.S.Shanmugavel
Additional Government Pleader

For R4 : Mr.A.Vadivel

ORDER

The Writ Petition has been filed in the nature of Certiorari, seeking records relating to the cancellation of Settlement Deed in Document No.3489 of 2019, dated 18.10.2019, executed by the fourth



respondent, which was registered by the third respondent/the Sub Registrar, Thiruparankundram, Madurai and consequently to direct the third respondent/the Sub Registrar to delete the entries relating to the said document from the Encumbrance Certificate.

2. In the affidavit filed in support of the Writ Petition, it has been stated that the fourth respondent/mother of the petitioner herein had gifted a house property in S.No.15/5B, measuring an extent 2936 square feet and in S.No.5/5A, measuring an extent of 2190 and in S.No.15/2B square feet, measuring an extent of 1845 square feet at Vadivelkarai Village, Madurai South Taluk to the petitioner herein. They were all registered by way of a registered settlement deed registered as document No.1676 of 2016 on 01.06.2016, in the office of the third respondent. It had been stated that the fourth respondent however, cancelled the said settlement deed unilaterally, and this necessitated the filing of the present Writ Petition.

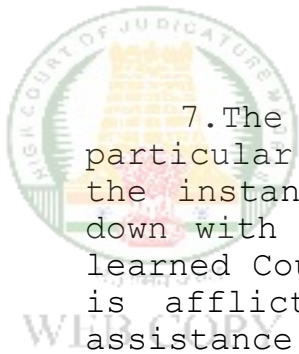
3. It is stated that unilateral cancellation cannot be done under Rule 162 (A) of Registration Rule framed under Section 69 of the Registration Act, 1908. It is also stated that even in the circular issued by the first respondent, dated 29.11.2018, it had also been clarified that unilateral cancellation should not be entertained.

4. Heard Mr.M.Natarajan, learned Counsel who appears for the petitioner and Mr.S.Shanmugavel, learned Additional Government Pleader who appears for the first to third respondents and Mr.A.Vadivel, learned Counsel who appears for the fourth respondent.

5. The primary contention of the petitioner is that once the settlement deeds had been executed, it cannot be and should not have been cancelled unilaterally by the fourth respondent and therefore, the cancellation deed which had been registered by the third respondent stands vitiated.

6. On the other hand, it is seen that a circular had also been issued by the first respondent, dated 29.11.2018, bearing No.52666/C1/2018 and among other clauses, Clause No.5(C) is extracted below:

'(c) Any settlement deed wherein certain condition has been imposed on the Settlee, and if an unilateral revocation/cancellation of such settlement deed is executed by the Settlor clearly stating that Settlee has not fulfilled certain conditions imposed in the settlement deed, the same can be registered after ensuring that said conditions were specifically mentioned in the said Settlement deed.'



7.The above Clause gives a small leverage of window to cancel a particular deed, if terms had not been complied with and when as in the instant case, the settlee becomes old, becomes infirm, struck down with disease and requires assistance. It is the case of the learned Counsel for the fourth respondent that the fourth respondent is afflicted with cancer and therefore requires urgent medical assistance. The only property had been gifted to her daughter. The fourth respondent requires financial help, since her daughter has turned a blind eye to her sufferings. These accompanying circumstances necessitated the fourth respondent to cancel the settlement deed. The circular permits registration of the cancellation deed in special circumstances.

8.I find no reason to interfere with the order questioned in the Writ Petition. The fourth respondent is at liberty to deal with the property at any time from this date.

9.The property lawfully stands in the name of the fourth respondent. She had been deserted by the petitioner. It is also stated that the petitioner has filed a suit in O.S.No.304 of 2021. The said suit had been instituted before the District Munsif Court at Thirumangalam. A suit which seeks the same relief as that in the Writ Petition, is not maintainable. In **T.Arivanandam Vs. T.V.Satyapal and another (1977) 4 SCC 467**, the Hon'ble Supreme Court had held that if a suit is found to be fraudulent, and been malafide, then, it should be nipped in the bud. The relevant portion is as follows:

'5.We have not the slightest hesitation in condemning the petitioner for the gross abuse of the process of the court...The learned Munsif must remember that if on a meaningful - not formal - reading of the plaint it is manifestly vexatious, and meritless, in the sense of not disclosing a clear right to sue, ... and, if clever drafting has created the illusion of a cause of action, nip it in the bud at the first hearing...'

10.This Court under Article 226 of the Constitution of India has every right to interfere with the suit which had been filed seeking the very same relief as that of the present Writ Petition. To protect the property of the fourth respondent. I would exercise my powers under Article 226 of the Constitution of India and strike down the said suit.

11.A copy of this order should be forwarded to the District Munsif Court, Thirumangalam. The District Munsif, Thirumangalam is directed to strike out the suit in O.S.No.304 of 2021 from the suit register. The cancellation settlement deed stands, in view of the circular issued which permits such cancellation and I would dismiss the present Writ Petition.



12. With the above direction, this Writ Petition is dismissed. No costs. Consequently, the connected Miscellaneous Petition is also closed.

WEB COPY

// True Copy //

Sd/-

Assistant Registrar (CS-III)

/ /2022

Sub Assistant Registrar (CS)

lr

Note : In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

1. The District Munsif, Thirumangalam.

2. The Inspector General of Registration,
No.100, Santhom High Road,
Chennai - 600 009.

3. The District Registrar,
Palace Road,
Madurai-625 001.

4. The Sub-Registrar,
Thirupparankundram,
Madurai.

+1 CC to M/s.SPL GP (SR-1308[F] dated 11/01/2022)

+1 CC to M/s.P.SARAVANAN, Advocate (SR-1413[F] dated 12/01/2022)

W.P(MD) .No.13856 of 2021
10.01.2022

RK(01/02/2022) 4P 7C