

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.11.2018

CORAM

THE HONOURABLE Mrs. JUSTICE PUSHPA SATHYANARAYANA

W.P. No.29531 of 2018
and W.M.P.No.34501 of 2018

1. S.Masilamani
2. S.Saravanan
3. T.Sasi Kumar
4. T.Ramaprabha
5. S.Prema
6. T.Mala
7. S.Gunabooshanam
8. S.Praveena

... Petitioners

Vs.

1. The Sub Registrar,
Office of Sub Registrar,
Ponneri, Tiruvallur District.
2. S.Saradambal
3. S.Diwakar
4. Vijayalakshmi

... Respondents

PRAYER : Petition filed Under Article 226 of the Constitution of India praying to issue a Writ of Declaration to declare the Deed of Cancellation of Settlement deed dated 12.07.2018 registered as Document NO.4373/2018 and General Power of Attorney dated 17.11.2015 registered as Document No.12413/2015 before the first respondent as illegal, null and void and non-est in law and consequently direct the first respondent to remove the entries pertaining to the aforesaid deeds from the register of the first respondent.

For Petitioner : Mr.M.Praveen Kumar

For Respondents : Mr.T.M.P.appiah
Special Government Pleader for R1

O R D E R

The prayer sought for in this writ petition is to declare the Deed of Cancellation of Settlement dated 12.07.2018 registered as Document No.4373 of 2018 and General Power of Attorney dated 17.11.2015 registered as Document No.12413/2015 before the first respondent as illegal, null and void and non-existent in law and consequently direct the first respondent to remove the entries pertaining to the aforesaid deeds from the register of the first respondent.

2. The case of the petitioners is that the petition mentioned properties to an extent of 24.66 acres were purchased by the second respondent in the year 1969 and she was in possessions and enjoyment of the same. She obtained patta also. She executed a Deed of Settlement on 21.12.2011 under Document No.16291 of 2011 in favour of the petitioners and the fourth respondent and handed over possession of the property to them and they in turn executed a General Power of Attorney dated 16.07.2015 registered as Document No.507/2012 in favour of one P.D.Senthil Kumar for an extent of 3.50 acres. The Power Agent sold the property to one M.Gokulnath vide the Sale Deed dated 26.02.2014 registered as Document No.1812/2014.

3. While so, on 12.07.2018, the second respondent executed a cancellation of Settlement Deed dated 21.12.2011 under document No.4373/2018 and thereafter only, the petitioners learnt that a General Power of Attorney was executed by the second respondent on 17.11.2015. The cancellation of settlement deed and the general power of attorney are challenged in this writ petition, as the unilateral cancellation is impermissible in law.

4. Heard both sides.

5. 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.

6. 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 first respondent 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 consent of the parties. Perhaps, the proper way to re-convey the property is by 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 recourse to the civil court.

7. Learned Special Government Pleader appearing for the first respondent also conceded that if it is an unilateral cancellation of the settlement deed, the same is liable to be set aside.

8. When the Settlement Deed dated 21.12.2011 is in existence, the second respondent has no right to execute a General Power of Attorney dated 17.11.2015 registered as Document No.12413/2015 and the same is also liable to be set aside.

9. In view of the above discussion, the writ petition is allowed declaring the Document No.4373/2018 dated 12.07.2018 as well as the General Power of Attorney dated 17.11.2015 registered as Document No.12413/2015 as null and void. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

gg

To

The Sub Registrar,
Office of Sub Registrar, सतयमेव जयते
Ponneri, Tiruvallur District.

+1 cc to Mr.M.Praveen Kumar, Advocate Sr.No.82347

+1 cc to The Government Pleader, Sr.No.82648

W.P.No.29531 of 2018
& W.M.P.No.34501 of 2018

VSNII(CO)
CSL/24.01.2019