

(2012) 09 MAD CK 0008

In the Madras High Court

Case No : Writ Petition No. 3773 of 2012 and M.P. No. 2 of 2012

K. Vimal Chand Bora and Another

APPELLANT

Vs

Inspector General of Registration, Pattinapakkam, Chennai
and Others

RESPONDENT

Date of Decision : 03-09-2012

Acts Referred:

Constitution of India, 1950 — Article 226
Registration Act, 1908 — Section 32A
Transfer of Property Act, 1882 — Section 126

Citation : (2012) 7 MLJ 339

Hon'ble Judges : D. Hariparanthaman, J

Bench : Single Bench

Advocate : Bharatha Chakravarthy for Sai Bharath and Ilan, for the Appellant;
R. Vijayakumar, Additional Government Pleader, A. Prabhakaran and D.
Kanagasundaram, for the Respondent

Final Decision : Dismissed

Judgement

D. Hariparanthaman, J.—The first petitioner is the husband of the third respondent. The second petitioner is their grand son born through

their son. The third respondent owns 1.12 acres of lands at Guduvancherry in Chengalpet Taluk in Kanchipuram District and she also owns 12.70

acres at Chinnivakkam Village in Kanchipuram Taluk and District.

2. The third respondent executed a deed of power of attorney dated 27.6.2008 in favour of the first petitioner without mentioning any schedule of

property and giving power to the first petitioner to present the documents for registration and admit execution of sale deed or any other deeds

without giving the details of any properties.

3. According to the petitioners, the third respondent executed an irrevocable

deed of Settlement on 11.12.2010 in favour of the petitioners in relation to the aforesaid properties. While so, according to the petitioners, the third respondent unilaterally cancelled the aforesaid settlement deed by way of cancellation deed dated 18.1.2012, which was registered in the Sub-Registrar's Office, Wallajabad. While cancelling the settlement deed dated 11.12.2010, the third respondent executed the sale deed on 18.1.2012 itself, in respect of the lands measuring 12.70 acres at Chinnivakkam Village, in favour of the respondents 4 and 5.

4. The petitioners have filed this writ petition to quash the unilateral cancellation of settlement deed dated 18.1.2012 bearing Document No. 305 of 2012 and the sale deed dated 18.1.2012 bearing Document No. 306 of 2012, on the file of the Sub-Registrar's Office, Wallajabad.

5. The third respondent filed counter affidavit refuting the allegations made by the petitioners. The respondents 4 and 5 have also filed another counter affidavit refuting the allegations.

6. According to the third respondent, she received various amounts on various dates from the 4th and 5th respondents as advance for sale of the lands measuring 1.12 acres at Guduvancherry and 12.70 acres at Chinnivakkam Village. The details of receipt of amounts are stated in the typed set of papers filed by the third respondent. According to the third respondent, the first petitioner was aware of the receipt of various amounts from the respondents 4 and 5.

7. The third respondent has stated that she executed the power of attorney dated 27.6.2008 in favour of the first petitioner being the husband to present the documents like Sale Agreements, Rectification deeds, Ratification deeds, Cancellation deeds, Exchange deeds, Mortgage deeds, Receipt deeds, Deposit of Title deeds as mentioned in the deed of power of attorney and the deed does not give power to the first petitioner in respect of execution of the Settlement deed. The third respondent has further averred that the first petitioner, utilising his position as the husband of the third respondent, made the Settlement deed dated 11.12.2010 in his favour without the knowledge of the third respondent and hence, the said Settlement deed does not bind the third respondent. It is also stated that divorce proceedings was initiated by the first petitioner against the third respondent and the same is pending in O.P. No. 70 of 2012 before the First

Additional Family Court at Chennai. Since the third respondent received various amounts from 4th and 5th respondents agreeing to sell the property and also executed the sale agreements on various dates, on 18.1.2012, the third respondent cancelled the Settlement deed dated 11.12.2010 and also executed the Sale deed in favour of 4th and 5th respondents.

8. The 4th and 5th respondents have filed common counter affidavit stating that they paid various amounts to the third respondent and also entered into the sale agreements with the third respondent in respect of the lands at Guduvancherry and Chinnivakkam Village. Those amounts were mentioned in the sale agreements. They further stated that they were not aware of the rift between the first petitioner and the third respondent and that the third respondent left the matrimonial home during November/December 2011. In the meantime, according to the respondents 4 and 5, the first petitioner held a compromise talk in the presence of his sister's husband one Mr. Lalith and he agreed to repay 1 crore 50 lakhs in three installments. According to the arrangement, the first petitioner has to give a sum of Rs. 25 lakhs on 29.12.2011, another sum of Rs. 25 lakhs on 30.1.2012 and the balance sum of Rs. 1 crore on 30.4.2012. But the amount was not given by the first petitioner. Further, the first petitioner lodged a complaint before J1, Saidapet Police station on 27.12.2011 that his wife namely, the third respondent herein was missing. Later, she was found in the house of her relative at Villivakkam and she gave a statement that she left the matrimonial home on her own volition. In these circumstances, the respondents 4 and 5 felt that the first petitioner could not part with the money as agreed by him. So the 4th respondent lodged a complaint dated 9.1.2012 before the Commissioner of Police, Egmore at Chennai, explaining the aforesaid facts. During the enquiry made by the police, 4th and 5th respondents came to know that the first petitioner had got settlement deed in his favour. Under those circumstances, the third respondent cancelled the settlement deed as the same was not executed by her and the execution was made without her consent. Therefore, the respondents 3 to 5 sought for dismissal of the writ petition.

9. I have heard the submissions made on either side.

10. The learned Counsel for the petitioners has submitted that the settlement

deed dated 11.12.2010 was an irrevocable one and therefore, the same could not be cancelled unilaterally by the third respondent by way of impugned deed dated 18.1.2012. He has relied on Section 126 of the Transfer of Property Act, in this regard. Secondly, it is submitted that the Registration Act does not provide for cancellation of Settlement deed. Thirdly, the learned Counsel has submitted that the unilateral cancellation of settlement deed is against public policy and for the same, he has relied upon the Full Bench Judgment of this Court *Latif Estate Line India Ltd., rep. by its Managing Director Mr. Habib Abdul Latif v. Hadeeja Ammal and Others* 2011 (1) LW 673 : LNIND 2011 MAD 658 : (2011) 2 MLJ 569. He has also relied upon the following judgments.

(i) *G.D. Subramaniam Vs. The Sub Registrar, P. Shanmugam, B. Dillibabu and B. Vasu,*

(ii) *P. Sivakamisundari and Another v. The Subordinate Registrar, No. II, Sub-Registrar Office, Periyakulam and Others* 2009 (5) LW 349 :

LNIND 2009 BMM 714 : (2009) 8 MLJ 1469.

(iii) *S. Ganesan Vs. Bharathirajan,*

(iv) *P. Rajagurusamy Vs. The Sub Registrar and Others,*

(v) *Nagamuthu Gounder v. Palanivel and 6 others* 2007 (1) LW 785 : LNIND 2006 MAD 1172

(vi) *S.M. Syed Mohammed Buhari Vs. The Sub Registrar (District Registrar Cadre) Triplicane, Chennai, S.M.M. Mohideen and S.M.S.*

Mohammed Mohideen,

(vii) Order in W.P. No. 17182 of 2012 and W.P. No. 5046 of 2012

11. On the other hand, the learned Counsel for the third respondent has submitted that the settlement deed dated 11.12.2010 was created by the first petitioner by committing fraud and using his position as husband. The first petitioner was not given power to present any settlement deed and according to the third respondent, the deed of power of attorney dated 27.6.2008 does not give such a power. He has further submitted that the third respondent received various amounts from 2005 onwards from the 4th and 5th respondents by way of sale agreements in respect of the properties at Guduvancherry and Chinnivakkam Village and the first petitioner was also aware of the same. In these circumstances, the third

respondent has resorted to cancel the settlement deed and also executed the sale deed in respect of 12.70 acres at Chinnivakkam Village, in favour of 4th and 5th respondents.

12. Learned Counsel appearing for 4th and 5th respondents has submitted that 4th and 5th respondents are innocent purchasers and they have parted with huge amount. It is submitted that when the first petitioner expressed his desire to repay the money for which, they were willing to accept the same. But the first petitioner went back on his words. The first petitioner neither returned money nor took steps for execution of sale deed in their favour. In these circumstances, the third respondent correctly executed the sale deed in their favour.

13. The aforesaid narration of facts would make it clear that there are disputed questions of fact involved in this case which, cannot be decided in the writ petition. The first petitioner is the husband and the third respondent is his wife. There are serious disputes between the first petitioner and the third respondent. While the first petitioner asserted the settlement deed, which was executed in his favour on 11.12.2010 out of love and affection in respect of the properties at Chinnivakkam Village as well as the properties at Guduvancherry, the same is disputed by the third respondent. According to the third respondent, the first petitioner utilised his position as husband and obtained signature from her without disclosing the contents in the documents.

14. While the first petitioner has relied on deed of power of attorney dated 27.6.2008, which was executed by the third respondent in favour of the first petitioner, the third respondent has disputed that the power does not provide for settlement deed that too in favour of the first petitioner.

15. In my view, the said submission of the third respondent could not be simply brushed aside and the same has to be tested before the competent Civil Court.

16. At this juncture, it is relevant to extract Clause (3) of the deed of power of attorney dated 27.6.2008 executed by the third respondent in favour of the first petitioner.

(3) And to present all documents like Sale Agreements, Rectification Deeds, Ratification Deeds, Cancellation Deeds, Exchange Deeds, Mortgage deeds, Receipt Deeds, Deposit of Title Deeds and any other deeds before the

concerned registering officer executed by me and to present all applications necessary for procuring the registration of the same paying the required fees.

17. While the first petitioner has relied on any other deeds, in Clause (1) and (3) of the power of attorney deed, the third respondent has stated

that any other deeds shall mean the deeds in the nature of sale deeds, Rectification deeds, ratification deeds, cancellation deeds, Exchange deeds,

Mortgage deeds, Receipt deeds, Deposit of title deeds and not the settlement deed that too in favour of the first petitioner. In my view, all these

issues have to be sorted out before the competent Civil Court.

18. The power of attorney deed dated 27.6.2008 is not clear and it is capable of two interpretations and the same shall be interpreted after

considering evidence being let in by both sides.

19. Moreover, the first petitioner has initiated divorce proceedings in O.P. No. 70 of 2012 before the First Additional Family Court, Chennai and

the matter is still pending. It is also an admitted fact that the third respondent left the matrimonial home during November/December 2011 and the

first petitioner stated that the third respondent was missing and later, the third respondent appeared before the police and gave a letter stating that

she left the matrimonial home out of her own volition and resides in her relative's house at Villivakkam. In the meanwhile, the 4th respondent gave

a complaint dated 9.1.2012 before the Commissioner of Police, Chennai, complaining that the first petitioner held talks with the 4th respondent in

the presence of his sister's husband namely, Mr. Lalith during December 2011 and he agreed to settle the entire amount viz., a sum of Rs. 1 crore

50 lakhs in three installments. The first installment was to be paid on 29.12.2011, the second installment was to be paid on 30.1.2012 and the third

installment was to be paid on 30.4.2012. But the first petitioner did not keep up his promise.

20. On the other hand, it came to light during the police enquiry, when the first petitioner lodged a complaint, he was claiming the settlement deed,

which was executed in his favour.

21. In view of the disputed questions of fact that too on the one hand between the family members and on the other hand, the 4th and 5th

respondents making certain claims, I am of the view, the entire issues shall be

agitated by the petitioners before the Civil Court.

22. The judgments relied on by the petitioners are of no use, as the facts of this case are entirely different as stated above. In most of the cases that are relied on by the petitioners, sale deeds were executed by a party, after receiving sale consideration, in favour of another party and thereafter the vendor unilaterally cancelled those sale deeds with a view to sell the same property to some other party for higher consideration and those parties are not family members.

23. However, in the matter relating to S.M. Syed Mohammed Buhari v. The Sub-Registrar (District Registrar Cadre), Triplicane, Chennai (supra), the issues arose between the family members. But in that case, the learned Judge held that the settlement can unilaterally be cancelled.

24. In another judgment dated 7.6.2012, in W.P. Nos. 17182 of 2011 and 5046 of 2012, the parties are close relatives. However, in the facts of that case, the learned Judge came to the conclusion that the cancellation deed is against public policy and the learned Judge found on fact that the judgment of this Court in W.P. No. 17400 of 2011, dated 1.12.2011, is not applicable to that case and quashed the unilateral cancellation of settlement deed. Para-33 and 36 of the said Judgment dated 7.6.2012 in W.P. Nos. 17182 of 2011 and 5046 of 2012 are extracted hereunder:

33. In support of this contention, learned Counsel for the respondents placed reliance on the decision of this Court in the case of M. Muthu Gangai

Anandi and Others v. The Sub Registrar, Nallur, Tripur District and Others (W.P. No. 17400 of 2011) decided on 1.12.2011, laying down as under:

9. In the decision relied on by the learned Counsel for the petitioners, the question referred was, whether unilateral cancellation of sale deed executed is valid or not and the registering officer is bound to register the same if other provisions like Section 32A of the Registration Act are complied with or he is obliged to reject and refuse to register the unilaterally executed deed of cancellation of sale deed without the consent of other parties. Whether the said judgment can be applied to the deed of cancellation of settlement, where there is no consideration was paid and only out of love and affection or family arrangement settlement deed was executed, is an issue, not raised before the Full Bench. In the said Full

Bench decision it is further held that it is for the Civil Court of competent jurisdiction to give declaration in favour of third party or a stranger if the

third party can claim title to the property against the purchaser, who purchased the property for valuable consideration and came into possession.

Cancellation of sale deed by the Vendor unilaterally after getting consideration was treated as fraud and opposed to public policy. Hence it was

held that cancellation of sale deed can be registered only if the said deed is presented by both Vendor and Purchaser for registration.

36. The judgment of this Court in *M. Muthu Gangai Anandi and Others v. The Sub Registrar, Nallur, Tripur District and Others* (supra) cannot

advance the case of petitioner, as in the said case, there was serious dispute of facts. The stand in the said case was that the Sub-Registrar was

empowered to revoke the settlement under the provisions of Chapter-VII of the Transfer of Property Act, 1882.

25. In my view, this case is akin to the case of *M. Muthu Gangai Anandhi and Others v. The Sub-Registrar, Nallur, Tripur District and Others*

(W.P. No. 17400 of 2011).

26. Further more, when a dispute arose between the mother and daughter relating to cancellation of deed, this Court in para-12 of the order dated

12.7.2012 made in W.P. Nos. 4180 and 4181 of 2011 and 13062 of 2012, has held as follows:

12. In this case, the additional fact is that the parties are close relatives, i.e., mother and daughter. Therefore, what transpires between them is

within their exclusive knowledge and at a later point of time, due to family differences they accused one another cannot be taken note of that too in

a writ petition under Article 226 of the Constitution. The course open to the petitioners is also well set out in paragraph 59(iv) of the full bench

judgment. Therefore, the remedy to the petitioners is to institute an appropriate civil suit and claim title over the property which was given by way

of sale deed or by way of settlement. Even in those proceedings, they can challenge the subsequent transfer of property made by her mother in

favour of the brother of the first petitioner. Under these circumstances, the petitioners filing these three writ petitions based upon the ruling of the

Full Bench is misconceived. This Court is not willing to go into the disputed question of facts especially in the contest of the litigation is between the

mother and the daughter. The matter will have to be tested by evidence of parties both oral and documentary.

27. I am of the considered view, the facts of this case are akin to the facts of the case in W.P. No. 17400 of 2011 M. Muthu Gangai Anandhi and

Others v. The Sub-Registrar, Nallur, Tripur District and Others (supra) case and W.P. Nos. 4180 and 4181 of 2011 and 13062 of 2012.

Therefore, I am of the view, the aforesaid observations made by the learned single Judge apply to this case also. For all the above said reasons,

this writ petition is dismissed. It is for the petitioners to work out their remedy before the competent Civil Court. No costs. Consequently,

connected Miscellaneous Petition is closed.