

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 20-03-2015

CORAM:

THE HONOURABLE MR. JUSTICE T.S. SIVAGNANAM

W.P.No.1046 of 2013

THILAGAVATHY

W/O.C. SRINIVASAN NO.B-3 LAKSHMI
APPARTMENTS 195 CHOLAI MEDU HIGH ROAD
RESERVE BANK EMPLOYEE QUARTERS
CHENNAI 94

...Petitioner

Vs

- 1 INSPECTOR GENERAL OF REGISTRATION
NO.100 SANTHOME HIGH ROAD
CHENNAI 100
- 2 THE SUB REGISTRAR
SUB REGISTRARS OFFICE THIRUVOTRIYUR
THIRUVALLORE DIST CHENNAI 19
- 3 K.GUNA
W/O.MR.KANNIAPPAN DOOR NO.90
5TH STREET, KAMARAJ NAGAR
ERNAVOOR VILLAGE THIRUVALUR
DIST CHENNAI 57

...Respondents

Petition filed under Article 226 of the Constitution of India praying for issue of writ of mandamus directing the 2nd respondent Sub Registrar Office Thiruvottiyur Chennai 19 to cancel the Registration of the Cancellation Deed in Doc. No. 4949 of 2000 dt 20.11.2000 and de-credit the same from the encumbrances register.

For petitioner : Mr. N. A.Kareem

For respondents : Mr. R. Vijayakumar, AGP for R2
No appearance for R3

ORDER

The relief sought for in this writ petition is for cancel the Registration of the Cancellation Deed in Doc. No. 4949 of 2000 dt 20.11.2000 and de-credit the same from the encumbrances register.

2. This Court in a similar writ petition in W.P.No.868 of 2012 dated 30-01-2015, dealt with this issue and passed the following order:

"By consent of the learned counsel on either side, the writ petition is taken up for final disposal.

2.Heard Mr.A.Jenasenan, learned Counsel appearing for the petitioner and Mr.V.Jaya Prakash Narayanan, learned Special Government Pleader for the first respondent.

3.The petitioner has come forward with the writ petition seeking for issuance of a writ of declaration to declare the cancellation of the Deed of Sale dated 22.8.1994, registered as Doc. No.4950 of 1994, on the file of the Office of the Sub-Registrar, Ambattur, the first respondent is null and void.

4.According to the petitioner, the second respondent herein had executed a Deed of General Power of Attorney to one of his son namely Sri Ramalu Naidu which was registered as Document No.3074 of 1993 dated 16.4.1993 before the the Sub Registrar, Ambattor, and that the power agent sold the above property in favour of one K.Madhavan son of P.Koren by way of sale deed dated 21.5.1993, registered as document No.3074 of 1993 and the said Madhavan executed a registered General Power of Attorney dated 19.12.2006, in favour of the petitioner herein, registered as Doc. No.2939 of 2006.

5.The petitioner would submit that when he applied for an encumbrance certificate in November 2011 commencing from January 1987, he came to know that the Sale Deed executed by the power of attorney Sriramalu Naidu in favour of Madhavan had been cancelled by the second respondent by way of registered deed of cancellation vide doc No.4950 of 1994 dated 22.8.1994, without informing to parties involved in the registration of sale deed.

6.The petitioner would contend that the sale deed executed by the second respondent in pursuance to the bilateral agreement entered between the parties to the document was duly registered under the provisions of the Registration Act; that the second respondent has no jurisdiction to unilaterally cancel the same and the first respondent erroneously accepted the registration of the unilateral cancellation without going through the documents. Further, it is submitted that the first respondent has abdicated his statutory power exercisable under section 34 of the Registration Act read with 55.

7.The Hon'ble Full Bench of this Court in the case of LATIF ESTATE LINE INDIA LIMITED v. Mrs HADEEJA AMMAL & ors [2011(2) CTC 1], considered among other issues, as to whether the sale deed could be unilaterally cancelled. The operative portion of the decision of the Hon'ble Full Bench reads as follows:

"59. After giving our anxious consideration on the questions raised in the instant case, we come to the following conclusion: -

- (i) A deed of cancellation of a sale unilaterally executed by the transferor does not create, assign, limit or extinguish any right, title or interest in the property and is of no effect. Such a document does not create any encumbrance in the property already transferred. Hence such a deed of cancellation cannot be accepted for registration.
- (ii) Once title to the property is vested in the transferee by the sale of the property, it cannot be divested unto the transferor by execution and registration of a deed of cancellation even with the consent of the parties. The proper course would be to re-convey the property by a deed of conveyance by the transferee in favour of the transferor.
- (iii) Where a transfer is effected by way of sale with the condition that title will pass on payment of consideration, and such intention is clear from the recital in the deed, then such instrument or sale can be cancelled by a deed of cancellation with the consent of both the parties on the ground of non-payment of consideration. The reason is that in such a sale deed, admittedly,

the title remained with the transferor.

- (iv) In other cases, a complete and absolute sale can be cancelled at the instance of the transferor only by taking recourse to the Civil Court by obtaining a decree of cancellation of sale deed on the ground inter alia of fraud or any other valid reasons."

8. In the light of the above decision, the deed of cancellation unilaterally executed by the transferor cannot create, assign, limit or extinguish any right, title or interest in the property and is of no effect and such document does not create any encumbrance in the property already transferred. Hence such a deed of cancellation cannot be accepted for registration.

9. In the light of the law laid down by the Hon'ble Full Bench of this Court, referred supra, the Writ Petition is disposed by declaring the cancellation of the Deed of Sale dated 22.8.1994, registered as Doc. No.4950 of 1994 on the file of the Sub-Registrar, Ambattur, is null and void and the first respondent is directed to make necessary entries in the books maintained by them. No costs. Consequently, connected miscellaneous petitions are closed."

3. In view of the above, following the above decision, this writ petition is disposed of directing the second respondent, Sub-Registrar Office, Thiruvottiyur, Chennai 19, to cancel the registration of the cancellation deed in Doc. No. 4949 of 2000 dated 20.11.2000 and de-credit the same from the encumbrances register. No costs.

Sd/-

Assistant Registrar(J)

//True Copy//

Sub Assistant Registrar

glp

To

1 INSPECTOR GENERAL OF REGISTRATION
NO.100 SANTHOME HIGH ROAD
CHENNAI 100

2 THE SUB REGISTRAR
SUB REGISTRARS OFFICE THIRUVOTRIYUR
THIRUVALLORE DIST CHENNAI 19

2 CCs to Mr. N. A.Kareem, Advocate SR.No. 16125

1 CC to the Government Pleader, SR.No. 16075

W.P.No.1046 of 2013
and M.P.No.1 of 2013

KGK (CO)
PSI (31.03.2015)



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