

In the High Court of Judicature at Madras

Dated : 09.02.2015

Coram :

The Honourable Mr.Justice V.RAMASUBRAMANIAN
and
The Honourable Mr.Justice P.R.SHIVAKUMAR

Writ Appeal No.2118 of 2012
and
M.P.No.1 of 2012

R.Syed Barakathullah
S/o.M.S.RahamathullahAppellant/Petitioner

Vs

1.The District Registrar,
South Chennai,
No.9, Jeenis Road,
Saidapet, Chennai - 15.

2.The Managing Committee,
Avadi Masjid Mubarak,
represented by President,
New Military Road,
Avadi, Chennai - 54.Respondents

APPEAL under Clause 15 of the Letters Patent against the order dated 10.07.2012 made in W.P.No.17719 of 2012.

Petition presented under Article 226 of the Constitution of India to issue a writ of certiorari calling for the records of the 1st respondent ending with proceedings in RC.5663/A1/2012 dt.7.6.12 and quash the same.

For Appellant : Mr.N.A.Nissar Ahmed
For Respondents: Mr.P.Chinnadurai,
Government Advocate [R1]
Mr.S.Senthilnathan
for Mr.N.Raja Senthoor Pandian [R2]

JUDGMENT

(Judgment was delivered by V.RAMASUBRAMANIAN,J)

This appeal arises out of an order passed by the learned Judge dismissing a challenge to a notice of enquiry issued by the District Registrar for the cancellation of a registered lease agreement.

2. Heard Mr.N.A.Nissar Ahmed, learned counsel appearing for the appellant, Mr.P.Chinnadurai, learned Government Advocate appearing for the first respondent and Mr.S.Senthilnathan, learned counsel appearing for the second respondent.

3. The President and Secretary of a Wakf, coming under the control of Tamil Nadu Wakf Board, executed a deed of lease on 26.12.2011, in favour of the appellant herein and got the same registered as document No.13928 of 2011 on the file of Sub Registrar, Avadi. Contending that the said document was brought forth by fraud, the second respondent gave a complaint to the District Registrar on 22.03.2012. On the said complaint, the District Registrar initiated an enquiry by issuing a notice dated 07.06.2012 calling upon the appellant to appear for an enquiry on 13.07.2012.

4. Challenging the said notice, the appellant filed a writ petition in W.P. No.17719 of 2012. The said writ petition was dismissed by the learned Judge by an order dated 10.07.2012, on the ground that it is always open to the petitioner/appellant to appear before the first respondent and rely upon the decision of the Full Bench of this Court in *Latif Estate Line India Limited vs. Hadeeja Ammal and others* [2011 (2) CTC 1]. Aggrieved by the dismissal of his Writ Petition, the appellant is before us.

5. The actual complaint of the second respondent dated 22.03.2012 to the District Registrar was that the lease agreement was brought forth by fraud and collusion by the office bearers, in favour of their own kith and kin running an educational institution. But, his complaint is not something that can actually be enquired into by the District Registrar, within the scope of Section 82 of the Registration Act. Therefore, the very initiation of proceedings, on the aforesaid complaint of the second respondent, is contrary to law.

6. Fraud is a complicated question of fact and law. The District Registrar cannot hold an enquiry into the same, in the circumstances under which the second respondent has given a complaint. Therefore, we are of the view that the initiation of an enquiry was not proper.

7. The learned counsel for the second respondent relied upon a decision of the Division Bench of this Court, a decision of the Full Bench of this Court and the decisions of two learned Judges.

8. In the first decision *V.K.Amalraj vs. Inspector General (Registrations) & others* [CDJ (2011) MHC 697], the case before the Division Bench arose out of a Public Interest Litigation, to direct the Inspector General of Registration to take preventive measures to stop all unlawful registrations. Therefore, the Division Bench of this Court referred to Rule 55 and held that the Registering Officer was excepted to enquire into the document brought before him. The said decision did not arise out of a case where an application was made for cancellation of the document already registered. Apart from

the fact that the said decision arose at a pre-registration stage, the Division Bench also observed that complaints of impersonation alone can be gone into when cancellation of document already registered is sought for.

9. In the decision in M/s.Latif Estate Line India Ltd. vs.Hadeeja Ammal & others [CDJ 2011 MHC 747], the Full Bench of this Court held that the cancellation at the instance of a transferor is permissible only by taking recourse to the civil Court. In paragraph 59, the Full Bench summarised its

conclusion as follows:

"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."

10. In Pandurangan vs. The Sub Registrar Reddiarpalayam & others [CDJ 2007 MHC 101], one of us [VRSJ] had an occasion to consider the scope of an enquiry under Sections 34 and 35 of the Registration Act. But, the said decision was reversed by a Division Bench of this Court.

11. The last decision is one in Ramaswamy vs. The Inspector General of Registrations [CDJ 2003 MHC 1961]. In the said case, the learned Judge held that when the document has been registered on payment of stamp duty, there is no power for the Registering

Authority to retain the document. We do not think that the decision is of any application.

12. We are concerned in this case with a complaint given post facto after registration of a document. The nature of the complaint shows that the second respondent requested the cancellation of the lease deed on the ground that the lessee was created as a benami for the office bearers of the Wakf. Such an allegation can never be gone into by a Sub-Registrar in an enquiry. Therefore, we find that the initiation of proceedings is contrary to law.

13. Hence, the order of the learned Judge passed in W.P.No.17719 of 2012 dated 10.07.2012 is set aside and the Writ Appeal is allowed quashing the initiation of proceedings. It will be open to the second respondent to work out his remedies in accordance with law before the appropriate forum. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar
Dated:27.2.15

True Copy

Sub Assistant Registrar

To

The District Registrar,
South Chennai,
No.9, Jeenis Road,
Saidapet, Chennai - 15.

+1 cc to Mr.N.A.Nissan Ahmed, Advocate,SR.6727

+1 cc to Government Pleader,SR.6772.

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krd 6/3

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