



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 08.10.2015

CORAM :

THE HONOURABLE MR.JUSTICE R.SUDHAKAR

and

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

Writ Appeal(MD) No.1044 of 2015

K.Malathi

... Appellant

Vs.

1.The Joint Sub Registrar II,
Karaikudi,
Sivagangai District.

2.Ramu @ Ramathilagam

3.Ramesh @ Anguraj

... Respondents

Writ Appeal is filed under Clause 15 of the Letters Patent against the order dated 10.07.2014 made in W.P.(MD)No.11251 of 2014 by this Hon'ble Court.

Prayer in WP(MD). 11251/ 2014 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a writ of certiorari calling for the records relating to the Impunged cancellation Deed dated 3.7.2000 and registered as document no. 2052 of 2000 in the office of the joint Sub-Registrar-II, Karaikudi, Sivagangai District, the 1st respondent herein and quash the same.

For Appellant : Mr.K.Rajeshwaran

For 1st Respondent : Mr.A.K.Baskarapandian

JUDGMENT

(Judgment of the Court was delivered by R.SUDHAKAR,J)

This writ appeal is directed against the order passed by the learned single Judge in W.P(MD)No.11251 of 2014 dated 10.07.2014.

2.The appellant purchased a plot from the second respondent by a sale deed dated 19.08.1994 which came to be cancelled by the vendor, the second respondent herein on 03.07.2000 on the ground that the entire sale consideration has not been received and that was cancelled by the competent authority on 03.07.2000 in terms of G.O.Ms.No.150, Commercial Taxes Department, dated 22.09.2000.

3.A Full Bench of this Court in *Latif Estate Line India Ltd., Vs.Hadeeja Ammal* reported in 2011 (2) CTC 1 at paragraph 59 held as follows:-

https://hcservices.ecourts.gov.in/hcservices/ 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.

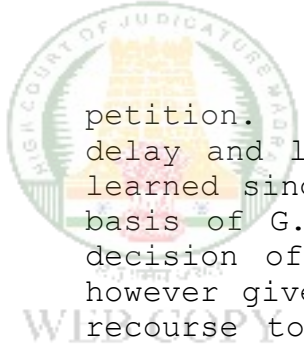
(iv) In other cases, a complete and absolute sale can be cancelled at the instance of the transferor only by taking recourse to the Civil Court by obtaining a decree of cancellation of sale deed on the ground inter alia of fraud or any other valid reasons.

4. The appellant did not pursue the matter on and from 03.07.2000 but for the first time on 27.03.2014, he gave an FIR against the private respondents herein and filed the writ petition to set aside the deed of cancellation dated 03.07.2000. By that time, 14 years had lapsed. The appellant pursued his plea on the premise that in terms of paragraph 59 of the Full Bench decision, the sale deed could have been cancelled by the private respondents only taking recourse to Civil Court and not in terms of G.O.Ms.No.150. Learned single Judge however disagreed with that view and held as follows:

"5. The Hon'ble Full Bench of this Court in the case of M/s. Latif Estate Ltd., Vs. Hadega Ammal reported in (2011) 2 CTC (FB) has held that only a civil Court can annul a registered instrument. However, the present cancellation of deed has been done much prior to the decision of the Hon'ble Full Bench and during the relevant point of time there was an administrative instruction issued by the Government in G.O.Ms.No.150 which was followed. However, as on date the only remedy available to the petitioner is that the petitioner has to approach Civil Court for setting aside the cancellation deed dated 03.07.2000. It is open to the petitioner to file a civil suit before the Court of competent jurisdiction and raise all contentions before the Court".

5. Aggrieved by the same, the present writ appeal has been filed.

6. At the outset, we find that the date of cancellation of deed is 03.07.2000 and only after a long and unexplained delay of 14 years, the appellant has filed FIR against vendor and thereafter, filed the writ



petition. The said writ petition should be dismissed on account of delay and laches. Even otherwise, we find no error in the order of the learned single Judge as we noticed that the cancellation was done on the basis of G.O.Ms.No.150 that was in force at that point of time and the decision of the Full Bench is 11.02.2011. The learned single Judge has however given liberty to the petitioner to challenge the deed by taking recourse to the Civil Court. Hence, the question of setting aside the cancellation deed without recourse to proper enquiry by a competent court more so in a writ petition under Article 226 of the Constitution of India, would not be justified.

7.Learned counsel for the appellant relied on a decision of the Supreme Court in *Rajasthan State Road Transport Corporation Vs.Bal Mukund Bairwa* reported in (2009) 4 SCC 299 for the proposition that the judgment would apply retrospectively.

8.We are of the view that the said decision is not a ground to set aside the deed of cancellation. When issues on fact have to be considered for the purpose of setting aside the cancellation of deed, the order of learned single Judge permitting the appellant to seek recourse to Civil Court cannot be faulted.

9.In view of the above, we find no merit in this appeal and it is dismissed accordingly. No costs.

Sd/-
Assistant Registrar (AS)

/TURE COPY/

Sub Assistant Registrar

sms

To

The Joint Sub Registrar II,
Karaikudi,
Sivagangai District.

+1 cc to MR.K.RAJESHWARAN, ADVOCATE, SR NO: 60341
+1 CC to M/S.SPL.GOV.T.PLEADER, SR NO: 59774

JAM /30.10.2015/JGB/3P-4C

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