

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25-02-2016

Coram :

THE HONOURABLE MR. JUSTICE R. SUBBIAH

Writ Petition No. 36149 of 2015

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Mumtaz Chelladurai

.. Petitioner

Versus

1. The Sub-Registrar
2/71, First Floor
Kazura Garden 2nd Street
East Coast Road, Neelankarai
Chennai - 600 041

2. S.P. Senthil Kumar
Managing Director
M/s. Shri Janani Homes Pvt Ltd
No.9, GF, 2nd Cross, 1st Main Road
Shri Mookambiga Nagar
Reddiyar Palayam
Puducherry - 605 010

(R2 impleaded as per the order dated 04.01.2016
made in MP No. 1 of 2015 in WP No.36149 of 2015)

.. Respondents

Petition filed under Article 226 of The Constitution of India praying for a Writ of Certiorarified Mandamus to call for the records of the respondent relating to the check slip dated 19.10.2015 bearing No. 10 of 2015, quash the same and to direct the respondent to register the deed of cancellation of power of attorney dated 15.10.2015 and release the same to the petitioner forthwith.

Petitioner : Mr. R. Bharath Kumar
For Respondent : Mrs. P. Rajalakshmi
Government Advocate for R1

Mr. Bharatha Chakravarthy
for M/s. Sai, Bharath & Ilan for R2

ORDER

The petitioner has come forward with this writ petition questioning the correctness of the order dated 19.10.2015 by which the first respondent refused to entertain the cancellation deed dated 15.10.2015 submitted by the petitioner for registration.

2. The case putforward by the petitioner, as could be revealed from the affidavit filed in support of the writ petition, is that her husband was the owner of various properties and after his demise, the properties devolved upon the petitioner and her son. One such property is comprised in Survey Nos. 286/1 to 4, 286/8B, 286/8A, 286/7, 286/5, 288/4B, 294, 293/3A, 293/2, 293/3B and 297/1A measuring 2.17 acres in Semmancherry Village, Tambaram Taluk, Kancheepuram District. During the year 2010, the second respondent approached the petitioner to convey the above said lands so that it could be developed into house sites. After deliberations, the petitioner, her son and the respondent herein have entered into a Memorandum of Understanding. Subsequently, the petitioner and her son have also executed two General Power of Attorney deed dated 08.06.2011 in favour of the second respondent which were registered as document No. 884 and 885 of 2011. As the second respondent failed and neglected to abide by the terms and conditions contained in the general power of attorney deeds dated 08.06.2011, the petitioner executed a deed of Cancellation of General Power of Attorney deed dated 30.01.2012 whereby the general power of attorney deeds dated 08.06.2011 stood cancelled. Thereafter, both the petitioner and the second respondent have entered into a Joint Development Agreement and Memorandum of Understanding dated 21.03.2013 whereby the second respondent was permitted to develop the land measuring an extent of 74936 square feet out of which the second respondent shall sell the land to an extent of 47703 square feet i.e., 60% of undivided share. According to the petitioner, the second respondent did not adhere to the terms and conditions of the subsequent contract, therefore, the petitioner and her son have executed the general power of attorney deed dated 15.10.2015 and presented it for registration with the first respondent. On presentation of the deed of cancellation, the first respondent instructed the petitioner to put the power agent on notice regarding the cancellation and accordingly, the petitioner sent a notice dated 15.10.2015 to the second respondent expressing their intention to cancel the power of attorney deed given to them. In spite of the same, the first respondent refused to entertain the Deed of Cancellation of the power of attorney deed dated 15.10.2015 presented by the petitioner as though the petitioner has unilaterally cancelled the power of attorney given in favour of the second respondent.

3. The learned counsel for the petitioner would contend that the reasons assigned by the first respondent for not entertaining the deed of cancellation of the power of attorney deed dated 15.10.2015 presented by the petitioner are contrary to the provisions of The Tamil Nadu Registration Act and the Rules made thereunder. The first respondent failed to consider that a notice dated 15.10.2015 has been given to the second respondent expressing the intention of the petitioner to cancel the power of attorney deed as well as joint venture agreement

for violation of the terms and conditions contained thereon. Therefore, it cannot be said that the petitioner is attempting to unilaterally cancel the power of attorney given to the second respondent. In any event, even if the power of attorney deed is cancelled by the petitioner unilaterally, it is not for the first respondent to go in to those details. The counsel for the petitioner further submits that even assuming that the power of attorney in favour of the second respondent is coupled with interest, Section 202 and 205 of the Indian Contract Act, 1972 only contemplates that before cancelling the power of attorney, a notice has to be given to the agent. In this case, a notice dated 15.10.2015 has been given to the second respondent and therefore, the impugned order of the first respondent has to be set aside. Further, none of the ingredients contained in Rule 162 of the Tamil Nadu Registration Rules are not attracted in this case which alone empower the registering authority to refuse registration of a document. In this context, the learned counsel for the petitioner relied on the order dated 17.12.2014 passed by the Kerala High Court in WP (C) No. 33262 of 2014 wherein it is held as follows:-

"Petitioner executed a registered power of attorney in favour of one P.S. Mehaboob. Petitioner wants to cancel the power of attorney. Petitioner submits that registering authority refused to cancel the power of attorney. Accordingly petitioner approached this Court.

2. Learned Government Pleader on instruction submits that petitioner never appeared before the registering authority.

3. Therefore petitioner shall appear before the Sub-Registrar first respondent for cancelling the registration. It is not necessary to have the presence of donee, third respondent for cancelling the registration. Petitioner shall present the cancellation deed before the first respondent and on presentation, necessary cancellation shall be carried out by the first respondent. The donee's presence or consent is not required for cancellation. This shall be done as and when petitioner present the document for registration.

4. The writ petition is disposed of. No costs.

4. Relying on the above decision of the Kerala High Court, the learned counsel for the petitioner prayed this Court to set aside the order of the first respondent and to allow this writ petition.

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5. On the contrary, the learned counsel appearing for the second respondent would contend that the power of attorney has

been executed in favour of the second respondent not only by the petitioner, but her son and two others and therefore, this writ petition filed by the petitioner is not maintainable and any decision rendered in this decision will have an adverse consequences on the other three executants of the power of attorney deed. Further, the impugned order passed by the first respondent under Section 72 of the Act is an appellable order, therefore also, the present writ petition is not maintainable. It is also stated that the petitioner has filed O.S. No. 127 of 2012 before the learned District Munsif Alandur. On notice, the second respondent has filed an application seeking reference of the dispute to an Arbitrator as per the terms and conditions of the agreement. The learned District Munsif, Alandur dismissed the said application against which the second respondent has filed CRP No. 1170 of 2012. This Court, after hearing both sides, was pleased to allow the Revision and the dispute was referred to an arbitrator. Thereafter, the petitioner filed an application in O.A. No. 575 of 2012 under Section 9 of the Arbitration and Conciliation Act, which was later withdrawn by her on 04.04.2013. According to the counsel for the second respondent, but for the non-cooperation of the petitioner, the project would have been completed by now. Now, almost 80% of the work has been completed and the project is fast progressing to complete the remaining work. At this stage, the petitioner is not entitled for seeking to cancel the power of attorney executed in favour of the second respondent inasmuch as it is expressly barred under Sections 203 and 204 of the Indian Contract Act. The learned counsel for the second respondent would further contend that if the power of attorney executed in favour of the second respondent is cancelled at this stage, the second respondent will be highly prejudiced and therefore he prayed for dismissal of the writ petition.

6. I heard the learned counsel on either side and perused the materials on record. The first respondent refused to entertain the deed of cancellation dated 15.10.2015 submitted by the petitioner on the ground that it was not signed by the second respondent in whose favour power was given by the petitioner. Thus, according to the first respondent, the cancellation sought to be made by the petitioner is an unilateral cancellation which is legally not sustainable. In this context, reference can be made to Rule 162 of the Tamil Nadu Registration Rules which alone empowers the registering authority to refuse registration of a document on the conditions mentioned therein. On going through Rule 162, it is seen that none of the conditions stipulated therein exist in this case warranting the first respondent to refuse to register the deed of cancellation submitted by the petitioner for registration. Therefore, in my considered view, the impugned order passed by the first respondent is legally not sustainable. The order passed by the first respondent is without jurisdiction and contrary to the provisions contained in the Tamil Nadu Registration Act and Rules made thereunder.

7. In the result, the impugned order passed by the first respondent is set aside. The writ petition is allowed. No costs. The first respondent is directed to entertain the Deed of Cancellation of Power of Attorney dated 15.10.2015 as and when it is presented by the petitioner and to proceed further in accordance with law.

Sd/-
Assistant Registrar(CS-VI)

//True Copy//

Sub Assistant Registrar

rsh

To

The Sub Registrar,
2/71, I Floor, Kazena Garden 2nd street,
East Coast Road, Neelankarai,
Chennai 41.

+1 cc to M/s.Sai, Bharath & Ilan, Advocate, sr.12417
+1 cc to Government Pleader, sr.12085
+1 c to Mr.R.Bharathkumar, Advocate, sr.11992

WP No. 36149 of 2015

ksj co
kra 03.03.2016

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