9 IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.09.2017

CORAM:
THE HON'BLE MR.JUSTICE S.VAIDYANATHAN

W.P.No.6329 of 2009

1. Amuthavalli
2. Manonmani
3. H.Jayakumar ... Petitioners

vs.

1. The Sub-Registrar,
   Office of the Sub-Registrar,
   Gandhipuram, Coimbatore.

2. P.Rukumani
3. P.Rangasamy
4. P.Velusamy
5. P.Maruthachalam
6. K.Pandian
7. D.Saravanan
8. R.Balasubramaniam ... Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of certiorarified mandamus, to call for the entire records in connection with the Cancellation Deed dated 20.09.2007 executed by respondents 2 to 5 and registered by the 1st respondent registered as Document No.5824 of 2007 and quash the same and consequently restrain the respondents from in any manner dealing with the said property in S.F.No.246/1 of Kalapatti Village, Gandhipuram, Sub-Registration District and Coimbatore Registration District.

For Petitioners : Mr.M.Venkatachalapathy,
Senior Counsel for
Mr.M.Sriram

For 1st Respondent : Mr.Akhil Akbar Ali,
Government Advocate

For 2nd Respondent : Ms.S.Vijayadharni

For Respondents 3 to 5 : Mr.K.Doraisamy,
Senior Counsel
for Mr.P.Saravana Sowmiyan

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For 6th Respondent : Mr.S.A.Gandhi

For 7th Respondent : Mr.S.Sivapandi

For 8th Respondent : Mr.S.Gopinathan

O R D E R

Petitioners have come forward with this Writ Petition seeking to quash the Cancellation Deed dated 20.09.2007 executed by respondents 2 to 5, registered by the 1st respondent as Document No.5824 of 2007 and consequently restrain the respondents from in any manner dealing with the said property in S.F.No.246/1 of Kalapatti Village, Gandhipuram, Sub-Registration District and Coimbatore Registration District.

2. According to the petitioners, they jointly purchased the property measuring an extent of 3.46 acres situated in S.F.No.246/1 of Kalapatti Village, Gandhipuram Sub-Registration District and Coimbatore Registration District, by a Sale Deed dated 09.03.2005, registered as Document No.1549 of 2005 on the file of the 1st respondent herein. Respondents 2 to 5 are the original owners of the property in question. A registered Power of Attorney was executed by respondents 2 to 5 in favour of the 6th respondent on 27.07.2004 and thereafter, the Sale Deed was registered. After receiving the entire sale consideration and executing necessary Power of Attorney, respondents 2 to 5 unilaterally cancelled the registered Sale Deed dated 09.03.2005 executed in favour of the petitioners.

3. It is the case of the petitioners that once there is a registration of document, unilateral cancellation is contrary to law, without jurisdiction and lacks bonafides. Thereafter, respondents 2 to 5 went to the extent of even cancelling the Gift Deeds executed in favour of Kalapatti Panchayat, which is the subject matter of the Writ Petition in W.P.No.36726 of 2007. Pursuant to the cancellation of Sale Deed, respondents 2 to 5 collusively initiated Civil Suit and transferred the properties to third parties to claim equities. The 7th respondent herein transferred a portion measuring about 25 cents under Sale Deed dated 27.02.2009 registered as Document No.305 of 2009 in favour of the 8th respondent. The purchasers, who are respondents 7 and 8 are trying to alter the physical features for ulterior purposes. According to the petitioners, the Cancellation Deed dated 20.09.2007 executed by respondents 2 to 5 through their Power of Attorney Agent is contrary to law and amounts to improper exercise of jurisdiction.

4. Respondents 2 to 5 have filed counter affidavit

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stating that the Writ Petition is not maintainable, as it has been filed only in March 2009, when the Sale Deed in question was cancelled on 20.09.2007. According to them, petitioners have accepted the cancellation of Sale Deed and also entered into various documents with the 7th respondent, to whom they have sold a portion of the property. It is also stated that they have filed a suit in O.S.No.142 of 2008 before the III Additional Sub Court, Coimbatore against the petitioners and others for declaring the Sale Deed dated 09.03.2005 executed by the 6th respondent in favour of the petitioners as null and void and the matter is in the trial stage.

5. It is further stated by respondents 2 to 5 that the property owned by them was an agricultural land to an extent of 5 acres 27 cents in S.F.No.246/1 at Kalapatti Village, Coimbatore and it was purchased by one Pappanna Gounder, husband of the 2nd respondent by virtue of a registered Sale Deed bearing No.1509/67 in Book 1, Volume 42 and at pages 267 to 274 in the Office of the Sub-Registrar, Gandhipuram, Coimbatore. He died intestate and the property was inherited by respondents 2 to 5 as per the Hindu Succession Act. Thereafter, an application was sent for getting DTCP approval. The layout roads and the land for park to an extent of 1.82 acres were settled in favour of the local Panchayat through Gift Settlement Deed dated 23.12.1997.

6. When respondents 2 to 5 were trying to get approval of the layout, they were introduced to the 6th respondent through a known person viz. C.Padmanabhan and they were informed that he knew all works regarding layout approval and hence, they requested the 6th respondent to get layout approval. For that purpose, the 6th respondent and the said Padmanabhan jointly asked respondents 2 to 5 to execute a Power of Attorney in favour of the 6th respondent to do layout approval works and accordingly, a Power of Attorney was also executed, which was registered as Document No.351 of 2004 in Book No.4 on 27.07.2004. Further, they got signatures of respondents 2 to 5 in blank papers and unfilled stamp papers, as if for filing documents regarding approval work at Chennai.

7. Later, respondents 2 to 5 came to know that the 6th respondent and C.Padmanabhan, without getting any approval, misused the General Power of Attorney, and cheated them by registering the property to an extent of 3.46 acres in the name of the petitioners vide Sale Deed registered as Document No.1549 of 2005 in Book No.1 in the office of the Sub-Registrar, Gandhipuram, for a meagre sale consideration of Rs.3,00,000/- for a property worth Rs.75,00,000/-. Thereafter, they came to know that a false Agreement for Sale was entered with one Velu Selvaraj, who is a relative of C.Padmanabhan for Rs.20,00,000/-

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and a sum of Rs.5,00,000/- was received as advance towards a portion of the above said property. Hence, respondents 2 to 5 cancelled the Power of Attorney registered as Document No.351/2004 executed in favour of the 6th respondent by executing a deed of cancellation of Power of Attorney dated 18.09.2007 registered as Doc.No.1099/2007 in the office of the Sub-Registrar, Gandhipuram, Coimbatore and on the same date, they appointed one T.K.Sasidharan as their General Power Agent and authorized him to cancel the Sale Deed registered as Document No.1549 of 2005. Immediately after cancellation of the Sale Deed and the Power of Attorney, respondents 2 to 5 sent a Legal Notice dated 06.10.2007 to the petitioners, 6th respondent and others, which were duly received by them on 09.10.2007 and similarly, they issued a Public Notice on 10.10.2007.

8. Pursuant thereto, respondents 2 to 5 cancelled the Gift Settlement Deed dated 23.12.1997 also by registering a cancellation of Gift Deed dated 21.09.2007 registered as Document No.5848/2007 in the office of the Sub-Registrar, Gandhipuram, Coimbatore. Thereafter, the 7th respondent herein approached respondents 2 to 5 during September 2007 to purchase the property in question and they sold an extent of 1 acre of the said land to the 7th respondent for valuable sale consideration vide registered Sale Deed dated 15.10.2007 bearing Document No.6257 of 2007 in the office of the Sub-Registrar, Gandhipuram, Coimbatore. The 2nd respondent herein, vide Partition Deed dated 15.10.2007 bearing Document No.6258 of 2007 relinquished her rights of share in the abovesaid properties to the other respondents 3 to 5. After becoming the absolute owners of the entire properties, they sold an extent of 1.90 acres to the 7th respondent vide registered Sale Deed dated 23.10.2007 bearing Document No.6418 of 2007 in the office of the Sub-Registrar, Gandhipuram, Coimbatore.

9. Respondents 2 to 5 lodged a complaint dated 05.10.2007 to the Inspector of Police, B6, Peelamedu Police Station, Coimbatore, but, he refused to receive it. Hence, they sent a complaint through RPAD to the Commissioner of Police, Coimbatore City and Assistant Commissioner of Police, City Crime Branch, Coimbatore. Since no action was taken on their complaint, the 5th respondent was constrained to approach this Court in Crl.O.P.No.32573 of 2007 and the same was dismissed by an order dated 12.11.2007 on the ground that a petition enquiry has been conducted and it has been concluded that the dispute is of civil in nature. Aggrieved by the said order, respondents 2 to 5 preferred Special Leave Petition before the Apex Court and the same was also dismissed. Thereafter, they filed a private complaint in C.C.No.301 of 2008 before the Judicial Magistrate No.VI, Coimbatore and it is pending. Further, respondents 2 to 5 filed a Civil Suit in O.S.No.142 of 2008 before the III

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Additional Subordinate Court, Coimbatore to declare the Sale Deed bearing No.1549 of 2005, dated 09.03.2005 executed by the 6th respondent in favour of the petitioners as null and void and also for permanent injunction and the suit is pending.

10. It is the case of respondents 2 to 5 that exercising their right in cancelling the Sale Deed and Power of Attorney are within the ambit of law and there is no illegality. As per Section 22A of the Registration Act (G.O.Ms.No.150, Commercial Taxes Department, dated 22.09.2000), the express consent of the parties to the document has to be obtained. But, the Apex Court in the case of State of Rajasthan vs. Basant Nahata, (2005) 4 CTC 606, has invalidated Section 22A of the Registration Act, 1908. G.O.Ms.No.150, dated 22.09.2000 was issued by the Government of Tamil Nadu in pursuance of Section 22A. Since Section 22A itself was invalidated by the Apex Court, this Court has quashed the said Government Order in a number of Writ Petitions and the same was also confirmed in appeal by this Court. Thus, according to respondents 2 to 5, the express consent of the other parties is not required and the document presented by them for registration is in accordance with law and liable to be registered and therefore, the 1st respondent has got jurisdiction to register the cancellation of Sale Deed.

11. Mr.Venkatachalapathy, learned Senior Counsel appearing for the petitioners submitted that the petitioners are the owners of the properties in question and that they purchased the properties by means of a Sale Deed dated 09.03.2005 from respondents 2 to 5 through their Power of Attorney, viz. the 6th respondent. It is his contention that when there was a sale which has been concluded, there cannot be unilateral cancellation. He drew the attention of this Court to the provisions of Sections 22A and 34 of the Registration Act and contended that there cannot be any unilateral cancellation, when the Cancellation Deed has got to be signed by both parties.

12. According to the learned Senior Counsel for the petitioners, a conjoint reading of Sections 22A and 34 of the Registration Act would make it clear that both parties shall be present at the time of cancelling a Sale Deed and even assuming that it can be read independently, as there is no provision for unilateral cancellation and that the petitioners have become owners of the properties, once the Sale Deed is executed, there cannot be any cancellation, muchless unilateral cancellation. He further submitted that though the Registration Act does not contain any provision to cancel the Sale Deed that has been executed, unilateral cancellation is not permissible.

13. To substantiate his stand, learned Senior Counsel appearing for the petitioner relied on the following decisions:

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(i) a Full Bench decision of this Court in the case of Latif Estate Line India Ltd. vs. Hadeeja Ammal, (2011 (2) CTC 1)

> "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."

(ii) a decision of this Court in the case of P.A.G.Kumaran vs. Inspector General of Registration, CDJ 2017 MHC 5259

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"16. In view of the fact that the unilateral cancellation of the settlement deed made by the first and second respondents is bad, this Court declares that the said cancellation of document, namely Deed of Cancellation of Settlement deed, registered as Document No.3328 of 2014, dated 10.11.2014, is illegal and in view of the same, the first and second respondents are directed to remove the entries in the Register and the subsequent transaction, namely settling the property in favour of the son of the third respondent, made pursuant to the unilateral cancellation of settlement deed, is also null and void. All the entries have got to be removed and this has got to be done within one month from the date of receipt of a copy of this order. This Court makes it clear that this order will not prevent the third respondent from approaching the Civil Court and establish her right over the property in question and if done, the Civil Court shall decide the matter without being influenced by any of the observations made in this writ petition touching on the merits of the matter. As this Court has held that the cancellation of settlement deed is illegal and without jurisdiction, and declared the same as null and void, if any suit is filed, the same has got to be decided by the Civil Court in accordance with law, including the issue of limitation. If the third respondent goes before appropriate forum with regard to the cancellation of settlement deed, which is the subject matter of this Writ Petition, this Court expects that the said civil forum to decide the matter as expeditiously as possible, from the date of initiation of such suit, and the matter shall not be adjourned beyond seven working days at any point of time. The petitioner shall co-operate in the trial if such suit is filed."

14. In reply, Mr.K.Doraisamy, learned Senior Counsel appearing for respondents 3 to 5 submitted that the Sale Deed which was executed on 09.03.2005 was cancelled on 20.09.2007. He further submitted that Section 22A originally sought to be introduced was set at naught by the Apex Court and that G.O.(Ms) No.150, Commercial Taxes Department, dated 22.09.2000 empowers cancellation of sale deeds without the express consent of the parties to the documents. The said condition was revoked by subsequent Government Order vide G.O.(Ms) No.139, Commercial Taxes Department, dated 25.07.2007. He added that unilateral cancellation was done on 20.09.2007 and that a Circular was

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issued by the Inspector General of Registration on 05.10.2007 insisting both the parties to be present at the time of registration of cancellation of any Deed and that the said Circular cannot be retrospective and the cancellation made on 20.09.2007 is in accordance with the provisions of the Act. More particularly, when respondents 2 to 5 have been betrayed by the 6th respondent/Power of Attorney, the Deed of Power of Attorney issued to the 6th respondent as also the Gift Settlement Deed dated 23.12.1997 were cancelled.

15. Learned Senior Counsel appearing for respondents 3 to 5 also drew the attention of this Court to the decision rendered by the Apex Court in the case of Satya Pal Anand vs. State of Madhya Pradesh reported in 2016 (10) SCC 767, relevant paragraphs of which are extracted hereunder:

> "42. In absence of any express provision in the 1908 Act mandating the presence of the other party to the extinguishment deed at the time of presentation for registration, by no stretch of imagination, such a requirement can be considered as mandatory. The decision in Thota Ganga Laxmi [Thota Ganga Laxmi v. State of A.P., (2010) 15 SCC 207 : (2013) 1 SCC (Civ) 1063] is with reference to an express provision contained in the Andhra Pradesh Rules in that behalf. That Rule was framed by the State of Andhra Pradesh after the decision of Full Bench [Yanala Malleshwari v. Ananthula Sayamma, AIR 2007 AP 57 : 2006 SCC OnLine AP 909] of the High Court. Therefore, the dictum in this decision cannot have universal application to all the States (other than the State of Andhra Pradesh). It is apposite to reproduce paras 4 and 5 of the said judgment which read thus: (Thota Ganga Laxmi case [Thota Ganga Laxmi v. State of A.P., (2010) 15 SCC 207 : (2013) 1 SCC (Civ) 1063] , SCC pp. 208-09)
>
> "4. In our opinion, there was no need for the appellants to approach the civil court as the said cancellation deed dated 4-8-2005 as well as registration of the same was wholly void and non est and can be ignored altogether. For illustration, if A transfers a piece of land to B by a registered sale deed, then, if it is not disputed that A had the title to the land, that title passes to B on the

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registration of the sale deed (retrospectively from the date of the execution of the same) and B then becomes the owner of the land. If A wants to subsequently get the sale deed cancelled, he has to file a civil suit for cancellation or else he can request B to sell the land back to A but by no stretch of imagination, can a cancellation deed be executed or registered. This is unheard of in law.

5. In this connection, we may also refer to Rule 26(k)(i) relating to Andhra Pradesh under Section 69 of the Registration Act, 1908, which states:

'26. (k)(i) The registering officer shall ensure at the time of preparation for registration of cancellation deeds of previously registered deed of conveyances on sale before him that such cancellation deeds are executed by all the executant and claimant parties to the previously registered conveyance on sale and that such cancellation deed is accompanied by a declaration showing natural consent or orders of a competent civil or High Court or State or Central Government annulling the transaction contained in the previously registered deed of conveyance on sale:

Provided that the registering officer shall dispense with the execution of cancellation deeds by executant and claimant parties to the previously registered deeds of conveyances on sale before him if the cancellation deed is executed by a Civil Judge or a government officer competent to execute government orders declaring the properties contained in the previously registered conveyance on sale to be government or assigned or endowment lands or properties not registerable by any provision of law.'

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A reading of the above Rule also supports the observations we have made above. It is only when a sale deed is cancelled by a competent court that the cancellation deed can be registered and that too after notice to the parties concerned. In this case, neither is there any declaration by a competent court nor was there any notice to the parties. Hence, this Rule also makes it clear that both the cancellation deed as well as registration thereof were wholly void and non est and meaningless transactions."

43. No provision in the State of Madhya Pradesh enactment or the Rules framed under Section 69 of the 1908 Act has been brought to our notice which is similar to the provision in Rule 26(k)(i) of the Andhra Pradesh Registration Rules framed in exercise of power under Section 69 of the 1908 Act. That being a procedural matter must be expressly provided in the Act or the Rules applicable to the State concerned. In absence of such an express provision, the registration of extinguishment deed in question cannot be labelled as fraudulent or nullity in law. As aforesaid, there is nothing in Section 34 of the 1908 Act which obligates appearance of the other party at the time of presentation of extinguishment deed for registration, so as to declare that such registration of document to be null and void. The error of the Registering Officer, if any, must be regarded as error of procedure. Section 87 of the 1908 Act postulates that nothing done in good faith by the Registering Officer pursuant to the Act, shall be deemed invalid merely by reason of any defect in the procedure. In the present case, the subject extinguishment deed was presented by the person duly authorised by the Society and was registered by the Registering Officer. Once the document is registered, it is not open to any Authority, under the 1908 Act to cancel the registration. The remedy of appeal provided under the 1908 Act, in Part XII, in particular Section 72, is limited to the inaction or refusal by the Registering Officer to register a document. The power conferred on the Registrar by virtue of Section 68 cannot be invoked to

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cancel the registration of documents already registered."

16. According to the learned Senior Counsel, once the Sale Deed is cancelled, it is for the aggrieved person to approach the Civil Court and the Writ petition is not the proper remedy. He further submitted that there is no provision under the Registration Act, 1908 mandating persons of other party to the Extinguishment Deed at the time of presentation for registration and by no stretch of imagination, the said requirement is considered to be mandatory and that it is only the procedural aspect that has got to be considered by the Registering Officer and in the absence of any express provision under the Registration Act, 1908, registration of Cancellation Deed cannot be labelled as fraudulent or nullity in law. He went on to contend that after the Cancellation Deed, which the petitioners were aware, the properties have devolved upon the 7th respondent and as there is a dispute with regard to the property in question, the remedy lies before the Civil Court and this Court cannot adjudicate disputed questions of fact.

17. While so, learned counsel appearing for the 8th respondent submitted that the property in question has been purchased from the 7th respondent and the Sale Deed was executed by writ petitioners 1 and 2, who are the Power Agents of the 7th respondent. He contended that knowing that there is a Cancellation Deed and that the property has been purchased, the 8th respondent should not be put into a disadvantageous position for the dispute between the writ petitioners and respondents 2 to 5. For no reason whatsoever, the registration of Sale Deed, cancellation of Power of Attorney and Gift Deed will not affect the rights of the 8th respondent that devolved upon him by proper registration of the Sale Deed executed in his favour by the writ petitioners, who are Power Agents of the 7th respondent.

18. Heard the learned counsel on either side and perused the material documents available on record.

19. The sum and substance of the issue to be decided in this Writ Petition is with regard to the cancellation of Sale Deed dated 20.09.2007 registered in the Sub-Registrar Office, Gandhipuram, Coimbatore. It is not in dispute that the Sale Deed was executed in 2005 and the same was cancelled on 20.09.2007. It is also not in dispute that Section 22-A of the Registration Act was held to be bad by the Apex Court. Though G.O.(Ms) No.150, Commercial Taxes Department, dated 22.09.2000 empowers cancellation of sale deeds without the express consent of the parties to the documents, the same was recalled by a subsequent Government Order vide G.O.(Ms) No.139, Commercial Taxes

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Department, dated 25.07.2007. There was a subsequent Circular dated 05.10.2007 by the Inspector General of Registration insisting upon the parties to be present at the time of the registration of documents.

20. For better appreciation of the case, Section 22A of the Registration Act, 1908, inserted by Tamil Nadu Act 2 of 2009, which came into force on 20.10.2016, is extracted hereunder:

> "22A. Refusal to register certain documents: Notwithstanding anything contained in this Act, the registering officer shall refuse to register any of the following documents, namely:—
>
> (1) instrument relating to the transfer of immovable properties by way of sale, gift, mortgage, exchange or lease,—
>
> (i) belonging to the State Government or the local authority or Chennai Metropolitan Development Authority established under section 9-A of the Tamil Nadu Town and Country Planning Act, 1971;
>
> (ii) belonging to, or given or endowed for the purpose of, any religious institution to which the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 is applicable;
>
> (iii) donated for Bhoodan Yagna and vested in the Tamil Nadu State Bhoodan Yagna Board established under section 3 of the Tamil Nadu Bhoodan Yagna Act, 1958; or Central Act XVI of 1908. Substitution of section 22-A. Tamil Nadu Act 35 of 1972. Tamil Nadu Act XV of 1958.
>
> (iv) of Wakfs which are under the superintendence of the Tamil Nadu Wakf Board established under the Wakf Act, 1995,
>
> unless a sanction in this regard issued by the competent authority as provided under the relevant Act or in the absence of any such authority, an authority so authorised by the State Government for this purpose, is produced before the registering officer;
>
> (2) instrument relating to the transfer of

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ownership of lands converted as house sites without the permission for development of such land from planning authority concerned:

Provided that the house sites without such permission may be registered if it is shown that the same house site has been previously registered as house site.

Explanation I.—For the purpose of this section 'local authority' means,—

(i) any Municipal Corporation constituted under any law for the time being in force; or

(ii) a Municipal Council constituted under the Tamil Nadu District Municipalities Act, 1920 ; or

(iii) a Panchayat Union Council or a Village Panchayat constituted under the Tamil Nadu Panchayats Act, 1994 ; or

(iv) any other Municipal Corporation, that may be constituted under any law for the time being in force.

Explanation II.—For the purpose of this section 'planning authority' means the authority constituted under section 11 of, and includes the Chennai Metropolitan Development Authority established under section 9-A of the Tamil Nadu Town and Country Planning Act, 1971; (Tamil Nadu Act 35 of 1972);

(3) instrument relating to cancellation of sale deeds without the consent of the person claiming under the said sale deed.".

Section 34-A of the Registration Act, 1908 reads as under:

34-A. Person claiming under document for sale of property also to sign document: Subject to the provisions of this Act, no document for sale of property shall be registered under this Act unless the person claiming under the document has also signed such document.

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21. When the Sale Deed and the cancellation of Sale Deed in question were executed, Section 34-A of the Registration Act was already in force. The reason for introducing Section 34-A was to ensure that both the transferor and the transferee have obliged to sign the document for sale of property. Only if both the parties sign, it becomes a valid document. The reason for introduction of Section 34-A is to restrict or minimize forgery and fraud that may be committed to the parties to the document and ensure the legal sanctity of the said document, i.e. the registration in accordance with the provisions of the Act. The said registered document is unconditional and cannot be revoked, unless it is against the public policy and if there is any dispute, the parties will have to approach the appropriate Civil Court.

22. A Full Bench of this Court in Latif Estate Line India case (cited supra) has considered the issue with regard to the cancellation of Settlement Deed and held that the Registrar cannot unilaterally cancel the Settlement Deed. The same principle applies to this case also and this Court has applied the said principle in P.A.G.Kumaran's case (cited supra). Though the authorities have agreed with this, this Court has not considered the ratio laid down in Satya Pal Anand's case (cited supra). The said case pertains to cancellation of a registered document and the Apex Court has held that the Civil Court alone has got powers to go into the question. The case arose under Madhya Pradesh Act. There was no provision brought to the attention of the Court with regard to the cancellation of Deed that was sought to be registered without the consent of the purchaser.

23. A reading of the decision of the Apex Court in Satya Pal Anand's case makes it clear that the Supreme Court has proceeded on the basis of the M.P. Act and not based on the provisions of the Tamil Nadu Amendment Act. That apart, the transferor cannot retain any part of his interest in the property so transferred by way of a sale, once the Sale Deed is executed and registered. Even though the arguments of the learned Senior Counsel appearing for the respondents in the case on hand appears to be sound, when the sale deed was cancelled even prior to the Circular dated 05.10.2007 issued by the Inspector General of Registration, there is no logic in the submission.

24. At this juncture, this Court feels it appropriate to rely on the Apex Court decision in the case of Padma Sundara Rao v. State of T.N., (2002) 3 SCC 533, wherein, it is held as under:

"9. Courts should not place reliance on

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> decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed. There is always peril in treating the words of a speech or judgment as though they are words in a legislative enactment, and it is to be remembered that judicial utterances are made in the setting of the facts of a particular case, said Lord Morris in Herrington v. British Railways Board. Circumstantial flexibility, one additional or different fact may make a world of difference between conclusions in two cases."

25. The intention of the registration, more particularly, the amendment, that too Section 34-A of the Registration Act, which came into force with effect from 2001, empowers that the parties shall be present at the time of registration. In the case on hand, on the date of registration of the document by the Power of Attorney viz. the 6th respondent in favour of the petitioners, the Power of Attorney was in force and the Sale Deed has been executed and registered and that the petitioners became the owners of the property. When such a sale had to be cancelled, the consent of the owners, viz. the writ petitioners is required and unilateral cancellation cannot be done. Even assuming that respondents 2 to 5 have been defrauded by the 6th respondent, it is he who has to approach the Civil Court to get the Sale Deed registered as null and void and cancelled. There is no need for the writ petitioners to approach the Civil Court to get a copy of the judgment and decree in their favour. If the contention of the respondents 2 to 5 is accepted, it would amount to putting a cart before the horse. Once title to the property is transferred by means of a Sale Deed, it cannot be cancelled by means of a Deed of Cancellation without the consent of the parties.

26. The only remedy is for the purchaser to re-convey the land purchased by them. If the purchaser fails to re-convey the property to the seller or the owner, the remedy to the owner is to knock at the doors of the Civil Court. The contention of respondents 2 to 5 that the Writ Petition is not maintainable may not be correct, as it is an admitted position that a Deed of Cancellation was made without the consent of the petitioners and this Court is empowered to exercise such extraordinary jurisdiction in interfering with the cancellation of Sale Deed. Hence, I find much force in the contentions of the writ petitioners and the Writ Petition is allowed, setting aside the Cancellation Deed dated 20.09.2007 executed by respondents 2 to 5 and registered by the 1st respondent as Document No.5824 of 2007.

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27. Before parting with, this Court makes it very clear that if respondents 2 to 5 are aggrieved by any other action done by the 6th respondent fraudulently or in any manner that he has colluded with the petitioners, the observation in this order will not preclude them from agitating all the issues before the appropriate forum, where the civil suits are pending and the same yardstick will apply to the 8th respondent, who has admittedly purchased the property from the 7th respondent, after the Deed of Cancellation.

28. Last, but not the least, this Court observes that wherever suits are pending, such Courts are expected to take up the cases and proceed with the same on a day-to-day basis without adjourning the matter beyond seven working days at any point of time, as the Sale Deed in question is of the year 2005 and that the cancellation of Sale Deed is of the year 2007 and more than a decade had passed. No costs. Consequently, connected W.M.Ps. are closed.

Sd/-
Assistant Registrar(CS-II)

//True Copy//

Sub Assistant Registrar

(aeb)

To:

The Sub-Registrar,
Office of the Sub-Registrar,
Gandhipuram, Coimbatore.

+1cc to the Government Pleader, S.R.No. 65660
+1cc to Mr.P.SARAVANA SOWMIYAN Advocate, S.R.No. 65015
+1cc to Mr.S.GOPINATHAN Advocate, S.R.No. 65262
+1cc to Mr.SRIRAM Advocate, S.R.No. 65262(10/01/2018)

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Order in
W.P.No.6329 of 2009

TR(24/11/2017)

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