

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.01.2017

CORAM:

THE HONOURABLE MR. JUSTICE D.KRISHNAKUMAR

W.P.No.2810 of 2011
and
M.P.No.1 of 2011

S.Palanisamy

.. Petitioner

vs.

1.The Sub-Registrar,
Nallur, Tiruppur District.

2.Mrs.D.Lakshmi

.. Respondents

Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari calling for the records of the impugned Deed of Cancellation dated 10.11.2009, executed by the 2nd respondent, presented to and registered by the first respondent as Doc.No.4010 of 2009 and quash the same.

For petitioner : Mr.M.Arun
for Mr.T.K.S.Gandhi

For 1st respondent : Mr.S.Navaneethan,
Additional Government Pleader

For 2nd respondent : Mr.N.Manokaran

सत्यमेव जयते
ORDER

The petitioner has filed the present Writ Petition against the impugned order of Cancellation Deed dated 10.11.2009 executed by the second respondent, presented and registered before the first respondent as Document No.4010 of 2009.

2. The learned counsel for the petitioner submitted that the Punja lands comprised in Survey No.263/5, 264, as per Sub-Division Survey No.264/8, Survey No.265 (as per Sub-Division Survey No.265/3B) and Survey No.266/1 (as per Sub-Division Survey No.266/1A) belonged to the petitioner's father Subramania Gounder, having purchased the same under a Sale Deed in the year 1968. The petitioner's father died intestate, leaving behind

his wife, Ammani, and two daughters, namely, Mrs.Lakshmi and Mrs.Saraswathi, who are petitioner's mother and sisters respectively, and himself as legal heirs. They succeeded the estate left behind by late Subramania Gounder as per the Hindu Succession Act. After his father's death, his mother and two sisters decided to release and relinquish all their 3/4th right, title and interest over the property in his favour, for which, he agreed to pay a total sum of Rs.3,00,000/- to all of them, each being entitled to receive Rs.1,00,000/- from him. Accordingly, the petitioner's mother and two sisters, namely, (1) Mrs.Ammani, (2) Mrs.Lakshmi and (3) Mrs.Saraswathi, jointly executed a Deed of Release dated 23.12.2008, registered as Document No.5344/Bk.1 of 2008 in the Office of the Sub-Registrar of Nallur, the second respondent herein, releasing their 3/4th right, title and interest over the property described in the schedule thereunder. On date of execution and registration of the said Release Deed, he paid the sum of Rs.3,00,000/- to the releasers and the receipt which was duly acknowledged in the said Release Deed. Ever since the date of execution of the Release Deed in his favour, he has been in possession and enjoyment of the property. While so, all of a sudden, without giving any notice to the petitioner or any members in the family, the second respondent chose to cancel the Release Deed executed in favour of the petitioner vide a Deed of 'Cancellation of Release Deed' dated 10.11.2009, which was registered in the Office of the first respondent as Doc.No.4010 of 2009. The petitioner was not aware of the action of the 2nd respondent in cancelling the Release Deed executed by her along with his mother and another sister and he came to know only in October, 2010 and immediately, he approached the Office of the first respondent to cancel the Cancellation Deed executed by the second respondent. However, the first respondent informed that the Deed can be cancelled only by the executant and not the beneficiary. Aggrieved by the action of the first respondent in accepting the 'Cancellation of Release Deed' and registering it, the petitioner has preferred the present Writ Petition. In support of his contention that Deed of Cancellation cannot be sustained in law being against public policy, the learned counsel for the petitioner relied on judgment of this court rendered in D.V.Loganathan v. The Sub-Registrar, reported in 2014 (3) CTC 113.

3. On the contrary, the learned counsel appearing for the second respondent submitted that 'Cancellation of Release Deed' dated 10.11.2009 was executed by the second respondent and registered as Document No.4010 of 2009 before the first respondent. Therefore, the petitioner cannot challenge the said registration of 'Cancellation of Release Deed' before this Court under writ proceedings under Article 226 of the Constitution of India. If the petitioner is really aggrieved,

he has to approach a competent Civil Court. In support of his contention, the learned counsel for the second respondent relied on the Judgment of Hon'ble Supreme Court in Satya Pal Anand vs. State of Madhya Pradesh and others reported in (2016) 10 Supreme Court Cases 767.

4. Heard the learned counsel for the petitioner and the learned counsel for the second respondent.

5. It is not in dispute that the second respondent executed Deed of Cancellation of Release without informing the petitioner. Some irregularity in the procedure committed during the registration process, held, would not amount to a fraudulent action per se. Whether the irregularity was done deceitfully to cause loss and harm to the other party to the deed, is a question of fact which must be pleaded and proved by the party making such allegation. That fact cannot be presumed. Party aggrieved by such registration of document is free to challenge its validity before the Civil Court. The Andhra Pradesh High Court in Yanala Malleshwari reported in AIR 2007 AP 57 was called upon to consider whether a person can nullify the sale by executing and registering a cancellation deed and whether the Registering Officer like District Registrar and/or Sub-Registrar appointed by the State Government is bound to refuse registration when a cancellation deed is presented. The fact remains that if the stipulation contained in Sections 17 and 18 of the 1908 are fulfilled, the Registering Officer is bound to register the document. The Registering Officer can refuse to register a document only in situations mentioned in sections such as Sections 19 to 22, 32 and 35. At the same time, once the document is registered, it is not open to the Registering Officer to cancel that registration even if his attention is invited to some irregularity committed during the registration of the document. The aggrieved party can challenge the registration and validity of the document before the Civil Court. The majority view of the Full Bench was that if a person is aggrieved by extinguishment deed or its registration, his remedy is to seek appropriate relief in the Civil Court and a Writ Petition is not the proper remedy. The same was referred in the Judgment of Hon'ble Supreme Court in Satya Pal Anand vs. State of Madhya Pradesh and others reported in (2016) 10 Supreme Court Cases 767.

6. In the light of the decision Satya Pal Anand vs. State of Madhya Pradesh and others reported in (2016) 10 Supreme Court Cases 767 cited supra, the Writ Petition is liable to be dismissed and accordingly, dismissed. Liberty is granted to the petitioner to approach the competent Civil Court if so

advised, within a period of four weeks from the date of receipt of a copy of this order. Connected Miscellaneous Petition is closed. No costs.

sd/
Assistant Registrar(CO)

/true copy/

Sub Assistant Registrar

asvm

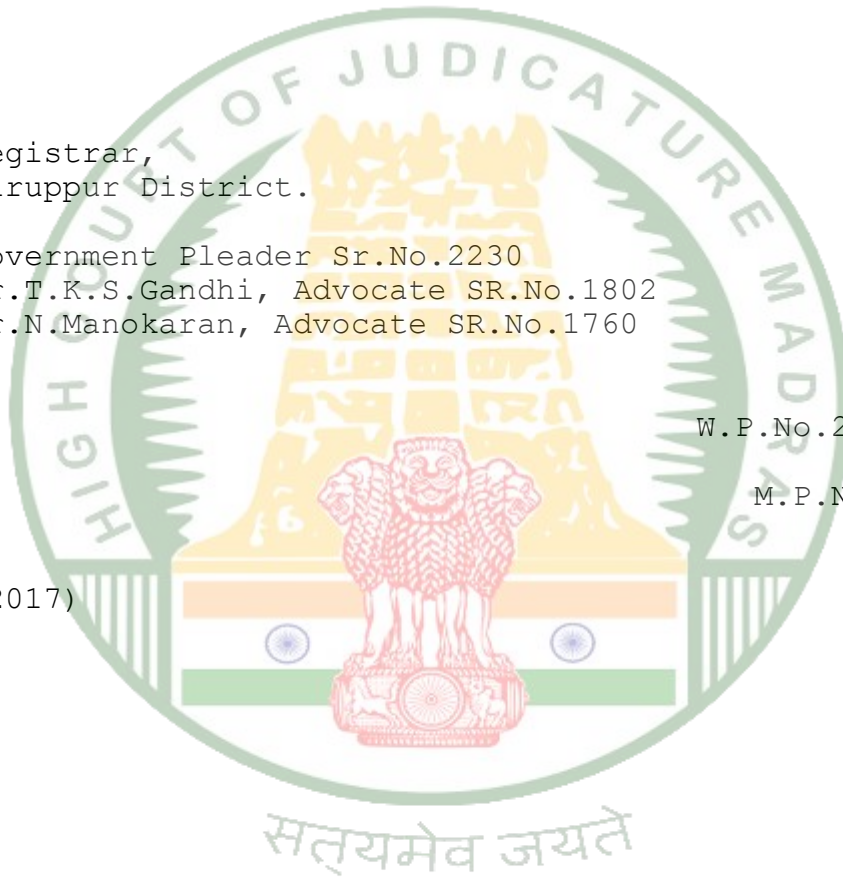
To

The Sub-Registrar,
Nallur, Tiruppur District.

+1cc to Government Pleader Sr.No.2230
+1cc to Mr.T.K.S.Gandhi, Advocate SR.No.1802
+1cc to Mr.N.Manokaran, Advocate SR.No.1760

W.P.No.2810 of 2011
and
M.P.No.1 of 2011

PPA(CO)
GN(01/03/2017)



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