

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.01.2017

CORAM

THE HONOURABLE MR. JUSTICE D.KRISHNAKUMAR

W.P.No.3275 of 2011

and

M.P.No.2 of 2011

T.C.Subramanian

...Petitioner

-Vs-

The Sub Registrar,
O/o. Registration,
Tiruvannamalai,
Tiruvannamalai District.

...Respondent

Writ Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus to call for the entire records relating to the impugned order passed by the respondent in his proceedings No.XXX, dated 21.01.2011 and quash the same and consequently, direct the respondent to receive the errata sale deed dated 20.01.2011 and register the same.

For Petitioner : Mr.C.Prakasam

For Respondent : Mr.S.Diwakar,
Special Government Pleader

O R D E R

The writ petitioner has filed this writ petition to direct the respondent to receive the errata sale deed dated 20.01.2011 and register the same and also quash the impugned order dated 21.01.2011 passed by the respondent.

2. The case of the petitioner is as follows:

(i)The petitioner purchased a plot to an extent of 1800 sq.ft from one Boominathan in T.S.No.155/3, Thendral Nagar, Vengikal Panchayat, Thiruvannamalai Taluk and the same was

registered under Document No.3760, dated 29.12.1989.

(ii)At the time of preparing the sale deed, the schedule of property has been mistakenly mentioned as 30 feet West to East and 60 feet North to South, instead of 60 feet West to East and 30 feet North to South and the petitioner and his vendor were unaware of the same. When the petitioner made an attempt to construct a house in the said plot, he recognised that the schedule of property has been wrongly mentioned in the sale deed. Hence, the petitioner presented the errata sale deed before the respondent for correcting the measurement of the schedule of property as 60 feet West to East and 30 feet North to South instead of 30 feet West to East and 60 feet North to South, but, the same was returned by the respondent by his proceedings No.XXX, dated 21.01.2011 for the reason that as per the circular No.2024/C1/1999 issued by the Inspector General, the vendor should sign in the errata sale deed. Hence, the petitioner has come forward with the present writ petition.

3.The learned counsel for the petitioner would submit that the petitioner has purchased the plot to an extent of 1800 sq.ft. from one Boominathan, but at the time of registering the sale deed, the schedule of the sale deed has been mistakenly mentioned as 30 feet West to East and 60 feet North to South instead of 60 feet West to East and 30 feet North to South. Hence, the petitioner presented the errata sale deed dated 20.01.2011 to the respondent for correction. The respondent returned the same to the petitioner stating that the vendor of the petitioner or on the demise of vendor, his legal heirs should sign in the errata sale deed.

4.The learned counsel for the petitioner further submitted that one Dhanabal, sold the property to one Boominathan and in turn, he sold the same to the petitioner. Unfortunately, at the time of presenting the errata sale deed before the respondent, both Dhanabal and Boominathan already expired. Hence, the petitioner could not get the signature from the vendors for registering the errata sale deed. Moreover, when the mistake was committed by the vendors of the petitioner, the petitioner need not suffer. Hence, the learned counsel prayed to allow the writ petition.

5.The learned Special Government Pleader appearing for the respondent, on the basis of the counter affidavit, submitted that in order to rectify the mistake, the petitioner himself executed a deed of rectification dated 20.1.2011 without getting the signature from the original vendor or from his legal representatives and presented the same for registration. Hence, the respondent returned the same with a check slip as laid down under Rule 27 (iii) of the Registration Rules, pointing out that

as per the Inspector General's Order No.2024/C1/1999, by which the vendor of the principal deed should also execute the deed of rectification along with the purchaser. In the absence of the signature of the vendors of the document, the respondent refused to register the rectification deed executed by the petitioner.

6.In support of his submissions, the learned Special Government Pleader relied on a decision of this Court in the case of M/s.Latif Estate Line India Ltd., vs. Mrs.Hadeeja Ammal and others (2011-1-LW 673), wherein it is held as follows:

"A sale is essentially an executed contract between two parties on mutually agreed conditions. Question is as to whether such contract can be unilaterally rescinded, particularly, in a case of sale deed. In this context, we may refer to Section 62 of the Indian Contract Act, 1872 which provides that contract which need not be performed. By that provision, any novation, rescission and alteration of a contract can be made only bilaterally. A deed of cancellation will amount to rescission of contract and if the issue in question is viewed from the application of Section 62 of the Indian Contract Act, any rescission must be only bilaterally."

7.Therefore, the learned Special Government Pleader submitted that the deed of rectification, the subject matter of writ petition has to be executed with the signature of the vendor or on his demise, with the signature of the legal heirs of the vendor, along with the purchaser. If the vendor or his legal heirs has not executed the rectification deed or the petitioner could not trace out the legal heirs of the vendor, the petitioner shall work out his remedy before the appropriate Civil Court. Hence, as far as the respondent is concerned, there is no provision under the Registration Act and further as per the Inspector General of Registration's Order No.2024/C1/1999, dated 26.3.2000 in order to register the rectification or errata deed dated 20.01.2011 the vendor must also sign. Hence, the writ petition is liable to be dismissed.

8.Heard the learned counsel appearing for the petitioner and the learned Special Government Pleader appearing for the respondent and perused the materials available on record.

9.On a perusal of the records, it is seen that the petitioner presented the rectification or errata deed to the respondent for registration and the same has been returned for

the reason that the vendor of the petitioner has not executed the said rectification or errata deed dated 20.01.2011.

10.As rightly pointed out by the learned Special Government Pleader if any deed of cancellation or deed of rectification is executed as per the Order No.2024/C1/1999 issued by the Inspector General of Registration, the vendor of the principal deed should also execute the deed of rectification along with the purchaser. Further, in the light of the decision in the case of M/s.Latif Estate Line India Ltd., vs. Mrs.Hadeeja Ammal and others (cited supra), it is seen that, any novation, rescission and alteration of a contract can be made only bilaterally and a deed of cancellation will amount to rescission of contract and the same shall be done only bilaterally.

11.In the present case, the petitioner has presented the errata or rectification deed dated 20.01.2011 without the signature of the vendor of the principal deed or his legal heirs. Hence, the writ petition is liable to be dismissed in the light of the decision cited supra.

12.In the result, the writ petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed. The petitioner is at liberty to file a suit before the appropriate civil Court to work out his remedy.

-s/d-

Assistant Registrar (CS-IX)

True Copy

Sub-Assistant Registrar

To

The Sub Registrar,
O/o. Registration,
Tiruvannamalai,
Tiruvannamalai District.

+1 CC to Mr. C. Prakasam, Advocate sr 2692

W.P.No.3275 of 2011

GJ (CO)
sp/28/3