

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31.07.2017

CORAM:

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

W.P.No.7725 of 2015

P.A.G.Kumaran

.. Petitioner

Vs.

1. Inspector General of Registration,
Santhome,
Chennai.

2. The Sub-Registrar,
Office of Sub-Registrar,
Santhome,
Chennai.

3. K.Subhashini

... Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Declaration to declare that the impugned Deed of Cancellation, dated 10.11.2014, registered as Document No.3328 of 2014 on the file of the second respondent, as null and void and non-est in law.

For Petitioner :Mr.A.Jenasenan

For Respondents:Mr.Akhil Akbar Ali,

Govt. Advocate for RR-1 & 2

Mr.A.S.Kailasam for

M/s.A.S.Kailasam and Associates R-3

ORDER

The petitioner has come forward with this Writ Petition praying for issuance of a Writ of Declaration to declare that the impugned Deed of Cancellation, dated 10.11.2014, registered as Document No.3328 of 2014 on the file of the second respondent, as null and void and non-est in law.

2. According to the petitioner, the respondents 1 and 2 ought not to have registered the impugned cancellation deed, cancelling the settlement deed already registered, when the property in question has devolved upon the petitioner by means

of settlement deed, dated 10.06.2005. It is true that the property was purchased on 27.10.1983 by the third respondent. According to the petitioner, there was no notice from the Registrar Office and that when there is disputed questions of fact involved, the same has got to be resolved only in the Civil Court. Further, it is the case of the petitioner that he married the third respondent in 1977 and after their marriage, the third respondent purchased the property, which is the subject matter of the dispute that had been settled in his favour and thereafter, the cancellation of deed, cancelling the settlement deed, was registered by the second respondent. The property was registered by means of an irrevocable clause in the settlement deed, dated 10.06.2005, registered as Document No.1577 of 2005 in the office of the second respondent and the petitioner took possession of the property, that there was mutation of the records and the petitioner has been paying the charges to the Government authorities after the said registration of the settlement deed. It is submitted that as per the settlement deed, it is clear that the property has been vested with the petitioner and the same was settled in his name by means of love and affection, as the petitioner being the husband of the third respondent, in a sound mind and without any coercion from any quarters and that the settlee, namely the petitioner was put in possession of the said property with all powers of alienation and that the property hereby settled was free from encumbrance, lis-pendens, etc. It is further submitted that when once the property has been settled in the name of the petitioner by the third respondent, unilateral cancellation of the settlement deed by the respondents 1 and 2 on 10.11.2014 after a decade is illegal and that this Court may issue a Writ of Declaration that the deed of cancellation dated 10.11.2014, registered as Document No.3328 of 2014 on the file of the second respondent, is null and void.

3. Per contra, learned counsel for the third respondent, by filing counter affidavit, contended that believing that the petitioner would be a genuine person and to meet out the loan to enable him to commence the business, the settlement deed was effected and that the property has been purchased out of her own funds and savings, and at no point of time, the petitioner has contributed any money. It is true that the third respondent married the petitioner on 02.09.1977. The third respondent was working in the Tamil Nadu Electricity Board and out of her own earnings, she has purchased the property in 1983 by means of sale deed in document No.1358 of 1983, registered in the Sub-Registrar Office, Mylapore. The contention of the petitioner that he helped the third respondent to put up superstructure over the property, is not correct and that when the building was in a dilapidated condition, the third respondent, out of her funds, took efforts to demolish the building and reconstructed

the same. Due to misunderstanding between the petitioner and the third respondent, that the petitioner has not shown any love and affection to the family members, that there was a disruption in the family, that the petitioner has started living in Tiruvannamalai, that the petitioner has duped the third respondent and usurped the property by means of settlement deed, that the property belongs to the third respondent and that the first and second respondents are empowered to cancel the settlement deed, which was given to the petitioner out of love and affection and not for any consideration. It is further submitted that the principle that applies to the sale deed, cannot be made applicable to the cases like settlement deed, release deed and gift deed, as under these three categories, there is unilateral transfer of property to the beneficiary, whereas in case of the sale deed, both parties will have to sign the documents and if a person is not interested in the sale of the said document, another sale deed has got to be executed to transfer the suit property, which is not the case in the said three categories.

4. It is further submitted by the third respondent that she has left the job under Voluntary Retirement Scheme (VRS) on 16.04.2001. At the request of the petitioner, the petitioner started business and ultimately, without any rhyme or reason, he has not shown any interest and after the closure of the business, another partnership firm was constituted in the same address where the property in dispute is situated under the name and style of K.G.R.Transport and that finally, after retirement on VRS, the third respondent became the owner just to make it as a proprietary concern.

5. It is further submitted by the learned counsel for the third respondent that as the petitioner wanted bank loan and that the house property could be settled in his name to avail the bank loan, and hence, the settlement deed was effected and that after the cancellation of the unilateral settlement, the property has been settled in the name of her son Lokeshkumar by means of settlement deed, dated 10.11.2014, which has been registered as Document No.3329 of 2014 before the SRO, Mylapore. According to the third respondent, she came to know that the petitioner has suppressed that he was already married to one Sundari and having a child, which fact was not brought to her notice and even the legal status of the third respondent's marriage is in serious doubt. It is further submitted that since she has purchased the property out of her own earnings, and that the petitioner has not contributed any money, much less the help as stated by the petitioner to put the superstructure and that the attitude of the petitioner towards the third respondent and family members, is not healthy and even the settlement sought to be cancelled by the third respondent, was

accepted by the respondents 1 and 2 and the cancellation was also registered as cancellation deed on 10.11.2014. Thereafter, the settlement deed was effected in favour of her son.

6. Learned Government Advocate appearing for the respondents 1 and 2 has also filed counter affidavit and argued the matter.

7. Heard both sides and perused the materials available on record.

8. The sum and substance of the issue on hand without the disputed questions referred to supra, is that the property was purchased by the third respondent from out of her own funds, as she was employed in the TNEB in 1983 and in 2005, the settlement deed was executed in favour of the petitioner by the third respondent in respect of the property in question. There was unilateral cancellation of the said settlement deed by the respondents 1 and 2 by registering the cancellation deed on 10.11.2014, which is the subject matter in dispute in this writ petition.

9. Mr. Kailasam, learned counsel for the third respondent vehemently contended that the Full Bench decision of this Court, relied on by the learned counsel for the petitioner, reported in 2011 (2) CTC 1 (Latif Estate Line India Ltd. Vs. Hadeeja Ammal) may not be applicable to the facts of the present case, as the Full Bench has considered the issue with regard to the sale deed and since the sale deed being a bilateral contract, cannot be unilaterally cancelled and that in order to avoid fraud in the registered document, Sections 32-A and 34-A of the Registration Act were introduced well under the transfer of ownership of immovable property and the photographs and fingerprints of the buyer and seller have got to be affixed in the document. It is manifest that for the purpose of amendment, it is restricted or at least minimise the forgery and fraud committed by the parties to the document. The Full Bench in the said decision, also referred to Sections 17 and 18 of the Registration Act and it is submitted by the learned counsel for the third respondent that the two provisions deal with the registration of documents and Section 17 specifies that the documents that are got to be compulsorily registered and Section 18 deals with the documents wherein the registration is optional. Learned counsel for the third respondent further drew the attention of this Court to the following paragraphs in the said decision of the Full Bench:

"4. A Division Bench of this Court while hearing the appeals found that the learned single Judge relied on the earlier decision passed in W.P.No.8567 of 2008 where the learned Single Judge held that the cancellation of sale deed executed by mutual consent by all the parties to the sale deed, if presented for

registration, the Registering Officer is bound to register the same, if other provisions of Section 32-A of the Registration Act have been complied with.

5. Doubting the correctness of the judgment rendered in W.P.No.8567 of 2008, as also the Division Bench judgment in W.A.No.194/2009, these appeals have been referred to a Full Bench for deciding the correctness of these judgments, and also for deciding the following questions formulated by the Bench.

(i) Whether cancellation of a registration of a registered sale deed of a immovable property having valuation of more than one hundred rupees can be registered either under Sections 17 or 18 or any other provision of the Registration Act ?

(ii) Whether for such cancellation of a registered sale deed, signature of person claiming under the document for sale of property is required to sign the document, if no such stipulation is made under the Act? and

(iii) Whether the decisions of the single Judge dated 10.02.2009 made in W.P.No.8567 of 2008 and the Division Bench dated 1.4.2009 made in W.A.No.194 of 2009 amount to amending the provisions of the Registration Act and the Rules framed thereunder, by inserting a clause for extinguishing right, title or interest of a person on an immovable property of value more than Rs.100/- in a manner not prescribed under the Rules?

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8. In W.P.No.8567 of 2008, the facts of that case are that the Writ Petitioner purchased the property by means of a registered Sale Deed dated 14.07.2006 from the second respondent through the third respondent and was put in possession of the said property. Subsequently, the third respondent entered into a Sale Agreement with the fourth respondent, who is the brother of the third respondent agreeing to sell the very same property to the fourth respondent. Thereafter, the third respondent without the knowledge and consent of the purchaser/writ petitioner executed a Deed of Cancellation nullifying the Sale Deed dated 14.07.2006. The writ petitioner's case was that by virtue of the Sale Deed executed by the third respondent, the petitioner acquired absolute right and title in the said property, and therefore, the unilateral cancellation of the Sale Deed by the third

respondent is null and void and opposed to public policy. The learned Single Judge formulated a question for decision i.e. Whether, registration of a Deed of Cancellation, unilaterally executed by the vendor to nullify the earlier sale validly made, is sustainable in law ? The learned Single Judge after considering the relevant provisions of the Registration Act, and other clauses applicable thereto, allowed the Writ Petition and quashed the Deed of Cancellation by coming to the following conclusion:

"31. Out of the foregoing discussions, the emerging conclusions are summed up as follows:

(i) Challenging registration of a unilaterally executed Deed of Cancellation of a sale, a Writ Petition is maintainable under Article 226 of the Constitution of India.

(ii) A Deed of Cancellation of a sale executed by mutual consent by all parties to the Sale Deed, if presented for registration, the Registering Officer is bound to register the same provided the other requirements like Section 32-A of the Registration Act have been complied with.

(iii) The Registering Officer is obliged legally to reject and to refuse to register a Deed of Cancellation of a sale unilaterally executed without the knowledge and consent of other parties to the Sale Deed and without complying with Section 32-A of the Registration Act."

... ..

31. Sections 17 & 18 deals with the registration of documents. Section 17 of the Act enumerates documents, which are to be compulsorily registered. Section 18 deals with documents of which registration is optional. In a nut shell, Section 17 inter alia provided that all non-testamentary instruments which purport or operate to create, declare, assign, limit or extinguish, whether in present or in future, any right, title or interest, whether vested or contingent, of the value of one hundred rupees and upwards, to or in immovable property requires compulsory registration. All other documents not enumerated under Section 17 and comes under Section 18 could be registered at the option of the parties.

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38. At this juncture, we would like to refer some of the provisions of the Registration Act. Section 32 of the Act provides that every document other than the document referred to in Sections 31, 88 and 89,

shall be presented before the Registering Office for registration whether compulsory or optional by some person executing or claiming under the said document or by representative or assign of such person or by the agent of such person or representative duly authorized by the Power of Attorney. Section 32-A of the Act was inserted in the Registration Act by Amendment Act 48/2001. By the said provision, affixing of passport size and finger prints have been made compulsory. Section 32-A of the Act reads as under:

"32-A: Compulsory affixing of photograph etc.-- Every person presenting any document at the proper registration-office under Section 32 shall affix his passport size photograph and fingerprints to the document:

Provided that where such documents relates to the transfer of ownership of immovable property, the passport size photograph and fingerprints of each buyer and seller of such property mentioned in the document shall also be affixed to the document."

39. One more amendment brought in by the said Act is by inserting Section 34-A, which provides that person claiming under the document for sale of the property shall also have to sign the document:

"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" -- Tamil Nadu Act 28 of 2000. Section 4."

... ..

40. From a reading of the aforesaid provision together with the amended provision, it is manifest that the purpose of amendment is to restrict or atleast minimise the forgery and fraud committed by the parties to the document, and to give legal sanctity once the document is registered according to the provisions of the Registration Act.

41. In the case of E.R.Kalaivan Vs. Inspector General of Registration, Chennai, 2009 (4) CTC 618 (DB) : 2009 (6) MLJ 1009, the question came up for consideration before the Division Bench of this Court is as to whether the Registrar, who is empowered to register the document under the Indian Registration

Act, could register a document unilaterally executed by the vendor cancelling the earlier sale made. The Division Bench after elaborately discussing the provisions of Section 34-A and the G.O.Ms.No.150, Commercial Taxes Department dated 22.09.2000, subsequent G.O.Ms.No.139, Commercial Taxes and Registration (J1) Department, dated 25.07.2007 and the ratio decided by the Supreme Court in the case of State of Rajasthan Vs. Basant Nahata, 2005 (4) CTC 606 : 2005 (12) SCC 77 observed as under:

"9. From the above judgments, all that we could read and understand is that in the absence of any guidelines defining what is "public policy" or documents which are "as opposed to public policy", the Courts had to declare Section 22-A is null and void. In our opinion, a reading of those judgments does not indicate that by the judgments it is also directed that a registration of a Cancellation Deed is permissible even in the absence of both the parties before the Registrar. The question as to whether such documents can be entertained should be considered in the light of the other provisions of the Act as well.

... ..
12. In this content, we may also refer to Section 32-A of the Indian Registration Act providing that all such deeds shall be signed by the vendor as well as the purchaser and the same shall also bear the finger prints and photographs. Section 34 of the Act also needs a reference, whereby the Registering Authority is mandated to hold an enquiry in respect of the validity of the document present for registration. Having regard to the above provisions, in our opinion, a registered Sale Deed, if sought to be cancelled, registration of such deed must be at the instance of both the parties viz., bilaterally and not unilaterally. Section 34-A of the Act, whereby the Registering Authority is to enquire whether or not such document was executed by the persons by whom it purports to have been executed. 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 Indian Contract Act, any rescission must be only bilaterally. (See City Bank N.A. Vs. Standard Chartered Bank and others, AIR 2003 SC 4630 : 2004 (1) SCC 12).

... ..

19. That apart, on the facts of this case, our attention is not drawn to any of the specific provision under the Registration Act empowering the Registrar to entertain a document of cancellation for registration on the ground that the sale consideration was not paid and consequently, received by the vendor. Further, in our opinion, when the Registrar satisfied himself on the perusal of the document, wherein it is stated that the full sale consideration is received and on such satisfaction, entertain the document for registration, cannot thereafter be conferred with a power of cancellation of the deed on the ground that the full sale consideration was not paid and received by the vendor. Conferring such power on the Registrar would tantamount to conferring a power to decide the disputed questions. That apart, as already stated, in the absence of any provision specifically empowering the Registrar to entertain a document of cancellation for registration, without the signature of both the vendor and the purchaser, the deed cannot be entertained. For the said reason, we find no infirmity in the impugned circular issued by the Inspector General of Registration."

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43. In the case of G.D.Subramaniam Vs. The Sub-Registrar, Office of Konnur Sub-Registrar, Sidco Nagar, Chennai 49 & others, 2009 (1) CTC 709, a Single Bench of this Court (S.Nagamuthu,J) formulated a question as to whether the registration of a Deed of Cancellation unilaterally executed by the vendor to nullify the earlier sale validly made is sustainable in law. Firstly, the Bench held that although Section 34 of the Registration Act does not specifically provide that the Registering Officer should hold an enquiry in respect of the validity of the document presented for registration. But, reading Rule 55 of the Registration Rules one can infer without any doubt that the

Registering Officer either on enquiry or without an enquiry, should, besides other things, prima facie be satisfied that the document is neither illegal nor void and then to register the same, provided the other requirements are satisfied. If the document is ipso facto illegal or void, then, he is not obliged to register the same and instead he should refuse to register the said document. The Bench observed: (para-17)

"17. A plain reading of the above provision would disclose that all non-testamentary instruments declaring a right or title over immovable properties word Rs.100/- and upwards shall be registered. A Deed of Cancellation of a sale falls within the purview of such an instrument declaring right and title for an immovable property. If any such document cancelling the sale is presented for registration, since, the same is compulsorily registrable under Section 17, the Registering Officer is obliged to register the same, provided the execution of the said document is validly made by mutual consent of the parties and the same is not illegal or void. To constitute a valid execution, it should be executed by all parties to the earlier sale. Needless to say that unless there is valid execution by competent persons, the Registering Officer has to necessarily refuse or register the document. Thus, in a situation where the document is either void or illegal or there is no valid execution, the Registering Officer is bound to refuse to register the same. De hors such a position, if the Registering Officer proceeds to register the said document, then the said registration would be without jurisdiction and not valid."

44. The Bench further disagreed with the view taken by the Full Bench of the Andhra Pradesh High Court in Yanala Malleshwari and others Vs. Ananthula Sayamma and others, 2007 (1) CTC 97 and held as under: (para-21):

"21. With respect, I am unable to subscribe myself to the said view taken by the majority for the reasons which follow. Though in para 54 of the judgment, a reference has been made to Section 32-A of the Indian Registration Act, which was recently introduced, the learned Judge had not dealt with the same elaborately. Nobody can have any quarrel over the legal position that

a Deed of Cancellation of a sale of immovable property of value Rs.100/- and upwards, is a document which needs compulsory registration. But the learned Judge has taken the view that to revoke a sale or to cancel the same, the consent or knowledge of the purchaser is not at all required. In my considered opinion, as I have already stated, a sale being a bilateral contract, more particularly in view of Section 32-A of the Indian Registration Act, if to be cancelled, it should be done bilaterally by both the parties to the sale. The learned Judge has expressed the apprehension that if the law is so interpreted so as to hold that the Registering Officer has power to refuse to register a Cancellation Deed, then, it would render Section 126 of the Transfer of Property Act, which enables the donor of a gift to cancel it or revoke the same, ineffective. With respect, I am of the view, that such apprehension has no basis. Section 126 of the Transfer of Property Act is a special provision dealing with the power of the donor to revoke a Gift Deed in certain circumstances. Such kind of revocation does not require the consent of the beneficiary of the gift. Basically, such a gift is not a contract in terms of the definition of contract as found in the Indian Contract Act, since gift is a transfer made voluntarily without consideration, whereas, a sale of an immovable property is a contract entered into between two parties where consideration is a sine-qua-non. Therefore, revocation of a Gift Deed cannot be equated to cancellation of a Sale Deed. Both operate on different spheres. A reference has also been made in the judgment to Section 23-A of the Registration Act. In my considered opinion, Section 23-A which speaks of re-registration of certain documents, has nothing to do with cancellation of a validly executed document. It is not to say that invariably in all cases, the Registering Officer should refuse to register a Cancellation Deed. We cannot generalize all deeds of cancellation as illegal or void so as to say that such documents cannot be registered at all. All I would say is that such Cancellation Deeds which are executed bilaterally by both the parties to the earlier document can be registered by the Registering Officer, provided the other requirements of the Indian Registration Act are

satisfied. But those Cancellation Deeds executed unilaterally by one party to the earlier transaction, without the consent of the other party and without complying with the requirements of Section 32-A of the Indian Registration Act, alone are to be rejected by the Registering Officer."

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59. After giving our anxious consideration on the questions raised in the instance 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.

10. The learned counsel for the third respondent also drew the attention of this Court to the judgment of this Court in the case of D. Joseph Jayaram Vs. The Inspector General of Registration and others in W.P.Nos.6230 and 6231 of 2011, dated 02.09.2014, wherein, I have considered the case with regard to the settlement deed and by referring to the decision of the Apex Court reported in 2014 (4) CTC 572 (SC) (Renikuntla Rajamma (D) by LRs. Vs. K.Sarwanamma) which relates to a gift deed, and the learned counsel submitted that the said decision of the Supreme

Court has been followed by this Court, and the said decision of the Supreme Court cannot be the authority for registration, as in that case, the validity of the document alone was mainly decided and not with regard to the registration of cancellation of a document unilaterally, more particularly, the document executed by means of settlement deed, gift deed or release deed. It is further submitted that under these three categories, it is the voluntary act of the persons giving the property to the beneficiary by executing the same.

11. Learned counsel for the third respondent further submitted that there is no hard and fast rule for unilateral cancellation of the settlement deed, when it has been brought to the attention of the authority concerned about the conduct of the beneficiary and that it is based on the wish and will of the person who has settled the property in favour of the beneficiary and decided to cancel the settlement deed.

12. Learned counsel for both parties referred to the above said decision of mine dated 02.09.2014 in W.P.Nos.6230 and 6231 of 2011 (D.Joseph Jayaraman Vs. The Inspector General of Registration and others) and more particularly referred to paragraphs 8 and 9 therein, which reads as follows:

"8. In reply, the writ petitioner relied upon the recent decision of the Apex Court in Renikuntla Rajamma (D) by LRs Vs. K.Sarwanamma (2014 (4) CTC 572 (SC)) wherein a donor executed a registered gift deed retaining the possession of the property for enjoyment by donor her lifetime, the issue that was decided by the Supreme Court whether the retention of possession of property by the donor would invalidate the gift. The Supreme Court held that the retention of right to use property during the lifetime of the donor does not in any way affect the transfer of ownership in favour of the Donee and there is no need for actual delivery of possession to the Donee by the Donor. Though the decision referred to by the petitioner arose from a civil suit, the principles laid down therein squarely applies to the facts of the present case on hand.

9. The writ petitioner has also relied upon the Full bench decision of this Court in Latif Estate Line India Ltd. Vs. Hadeeja Ammal (2011 (2) CTC 1) wherein this Court has also laid down certain conditions in paragraphs 55 to 59 which reads as under:

"55. From the reading of the aforesaid provision, it is manifest that three conditions are requisite for the exercise of jurisdiction to cancel an instrument i.e. ---

(1) An instrument is avoidable against the

plaintiff;

(2) The plaintiff may reasonably apprehend serious injury by the instrument being left or outstanding; and

(3) In the circumstances of the case, the Court considers it proper to grant this relief of preventive justice.

56. A Full Bench of the Madras High Court in the case of Muppudathi Pillai Vs. Krishnaswami Pillai, 1959 (2) MLJ 225 : AIR 1960 Madras 1, elaborately discussed the provision of Section 39 (New Section 31) and held:

"12. The principle is that such document though not necessary to be set aside may, if left outstanding, be a source of potential mischief. The jurisdiction under Section 39 is, therefore, a protective or a preventive one. It is not confined to a case of fraud, mistake, undue influence, etc. and as it has been stated it was to prevent a document to remain as a menace and danger to the party against whom under different circumstances it might have operated. A party against whom a claim under a document might be made is not bound to wait till the document is used against him. If that were so he might be in a disadvantageous position if the impugned document is sought to be used after the evidence attending its execution has disappeared. Section 39 embodies the principle by which he is allowed to anticipate the danger and institute a suit to cancel the document and to deliver it up to him. The principle of the relief is the same as in quia timet actions."

57. There is no dispute that a third party can claim title to the property against the purchaser who purchased the property for valuable consideration and came into possession of the same. But it is the Civil Court of competent jurisdiction to give such declaration in favour of a third party or a stranger.

58. It can also not be overlooked or ignored that a unilateral cancellation of a Sale Deed by registered instrument at the instance of the vendor only encourages fraud and is against public policy. But there are circumstances where a Deed

of Cancellation presented by both the vendor and the purchaser for registration has to be accepted by the Registrar if other mandatory requirements are complied with. Hence, the vendor by the unilateral execution of the Cancellation Deed cannot annul a registered document duly executed by him as such an act of the vendor is opposed to public policy.

59. After giving our anxious consideration on the questions raised in the instance 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."

13. According to the learned counsel for the petitioner, it is not only based on the judgment of the Apex Court reported in 2014 (4) CTC 572 (SC) (cited supra) that this Court has rendered a finding with regard to the cancellation of settlement deed, in W.P.No.6230 and 6231 of 2011 (cited supra), but also referring to the judgment of the Full Bench of this Court reported in 2011

(2) CTC 1 (cited supra) to show that when once the property is settled, it cannot be over-ruled or ignored that a unilateral cancellation at the instance of the person who has settled the property, can be cancelled, unless and otherwise it establishes fraud or against the public policy.

14. Though it has been vociferously contended by the learned counsel for the third respondent that the deed of cancellation can be done by the respondents 1 and 2 and in view of the judgment of the Full Bench of this Court reported in 2011 (2) CTC 1 (cited supra), as could be seen from paragraphs quoted therein above, it is no doubt true that the Writ Petition is maintainable, provided there are no disputed questions of fact. In this case, there is clear evidence to show that there are disputed questions of facts, namely that after the property has been settled in favour of the petitioner, under the guise of family dispute, the registration of the property was sought to be cancelled.

15. Though it is not in dispute that the property was purchased by the third respondent, as admitted by the petitioner, there is subsequent development which led to the settlement of the property in favour of the petitioner by the third respondent. Naturally, to avoid any stamp duty, such registration has taken place between the husband and wife and when the dispute arose, it comes to light as to under what circumstances, the property has been settled in favour of one person by the spouse. Since, as narrated by the third respondent in the counter that there are disputed questions of facts, the matter has got to be resolved only before the civil forum. This Court cannot render any finding based on the disputed questions of fact, as the parties will have to let in evidence.

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.

17. With the above observations and directions, the Writ Petition is allowed. No costs.

Sd/-

Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

cs

Copy to

1. The Inspector General of Registration,
Santhome,
Chennai.
2. The Sub-Registrar,
Office of Sub-Registrar,
Santhome,
Chennai.

+ 1 cc to Government Pleader Sr.55267
+ 1 cc to Mr. A.S. Kailasam & Associates SR.54132
+ 1 cc to Mr. A. Jenasenani, Advocate SR.54110

W.P.No.7725 of 2015

SSI(CO)
EU 12.09.17