



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 30.10.2017

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**THE HONOURABLE MR.JUSTICE R.MAHADEVAN**W.P(MD) No.19054 of 2015andMP(MD)No.2 of 2015andWMP(MD)No.14323 of 2016

1.Anitha Sabarinathan

2.Mala Sivaprasath

.. Petitioners

Vs.

1.The Inspector General of Registration,  
No.100, Santhome High Road,  
Pattinapakkam, Chennai - 600 028.

2.The Joint Sub Registrar - III,  
Town Hall,  
Tiruchirapalli - 620 002.

3.N.Padmini

4.N.Shanmugam

.. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus directing the 2nd respondent to strike off the registration of cancellation deed dated 10.7.2015 executed by the third respondent bearing Doc. No. 2478/2015/BK.1 on the file of the second respondent in respect of the property bearing door No.38 & 39, Kottai Mettu Street, East Bouliward Road Western Side, Trichy.

|                |   |                                                           |
|----------------|---|-----------------------------------------------------------|
| For Petitioner | : | Mrs.N.Krishnaveni, Senior Counsel<br>for Mr.P.Thiagarajan |
| For RR - 1 & 2 | : | Mr.J.Gunaseelan Muthiah<br>Government Advocate            |
| For RR - 3 & 4 | : | Mr.G.Thiruvarutselvan                                     |

**O R D E R**

This writ petition has been filed seeking a direction to the second respondent to strike off the registration of cancellation deed dated 10.7.2015 executed by the third respondent bearing Document No.2478/2015/BK.1 on the file of the second respondent in respect of the property bearing door Nos.38 & 39, Kottai Mettu Street, East Bouliward Road Western Side, Trichy.



2. Heard the learned counsel for the petitioners, the learned Government Advocate for the respondents 1 and 2 and the learned counsel appearing for the respondents 3 and 4.

3. The case of the petitioners is that their mother, the third respondent herein has executed a settlement deed dated 27.07.2011 in respect of the property bearing door Nos.38 and 39, Kottai Mettu Street, East Bouliward Road Western Side, Trichy in their favour and the document was registered with the second respondent as document No.2956/2011. Pursuant to the same, the said property has been equally divided and possession of the respective portion has been handed over to them. While so, they came to know that the settlement deed executed in their favour was cancelled unilaterally by the third respondent by a cancellation deed dated 10.07.2015. Hence, they have made a representation to the second respondent but the second respondent has directed them to approach the Civil Court and they have also filed a declaration suit in O.S.No.784 of 2015 on the file of the District Munsif Court, Trichirapalli and the same is pending. The unilateral cancellation of the settlement deed dated 27.07.2011 is not legally sustainable and in order to cancel the registration of cancellation deed dated 10.07.2015, the present petition has been filed.

4. In the counter affidavit filed by the second respondent, it is contended that the second respondent, being the statutory authority, has registered the deed of cancellation of settlement and there is no bar for registering the cancellation deed and therefore, the present petition deserves to be dismissed.

5. The learned counsel appearing for the petitioners submitted that the cancellation of the settlement deed dated 27.07.2011 executed by the third respondent is not legally valid and *non est* in law, as it has been unilaterally executed without notice to the petitioners. Further, the registration of cancellation of settlement deed is against public policy and the second respondent has no power to register the same. Therefore, the deed of cancellation dated 10.07.2015 is liable to be cancelled.

6. The learned Government Advocate appearing for the respondents 1 and 2 submitted that there is no illegality in registering the cancellation deed dated 10.07.2015 by the second respondent and the petitioners can very well work out their remedy before the civil forum where, the suit is pending already and therefore, he prayed for the dismissal of this writ petition.

7. I have considered the rival submissions and perused the materials available on record.

8. The short point that comes up for consideration in the present writ petition is as to whether the third respondent can unilaterally cancel the settlement deed dated 27.07.2011 executed by her in favour of the petitioners?

9. According to the learned counsel for the petitioners, the third respondent has executed a settlement deed in favour of the petitioners, but, subsequently, without notice as well as consent obtained from them, unilaterally cancelled the same which is invalid in law. In support of her contention, learned counsel for the petitioners relied upon the decision rendered by this Court reported in **2017 - 4 - L.W. 523 [P.A.G. Kumaran vs. Inspector General of Registration, Santhome, Chennai & Ors.]**, wherein, this Court has held that the unilateral cancellation of the settlement deed made by the respondents 1 and 2 therein is bad and the deed of cancellation of settlement is declared as illegal.

10. This Court, in yet another decision reported in **(2015) 7 MLJ 10 [Nambikkai Mary Vs. Sub Registrar -II, Sub Registrar Office, Pattukottai, Thanjavur District and another]**, at paragraph - 10, has held as follows:

"10. At this juncture, it is just and proper to refer the decision of the Full Bench of this Court in **Latif Estate Line India Ltd. v. Hadeeja Ammal** reported in **2011 (2) CTC 1**, wherein similar issue has been elaborately considered and it is held as follows:

"52. Now the question that falls for consideration is as to whether once a sale is made absolute by transfer of ownership of the property from the vendor to the purchaser, such transfer can be annulled or cancelled by the vendor by executing a deed of cancellation. This question came up for consideration before the four Judges of the Privy Council (Viscount Haldane, Lord Phillimore, Sir John Edge and Sir Robert Stout) in **Md. Ihtishan Ali v. Jamna Prasad**, AIR 1922 PC 56. The fact of that case was that one Ehsan Ali Khan, being in possession of a bazaar called Ehsaganj mortgaged it to one Sheo Prasad by a mortgage deed dated 9th November, 1873 and further encumbered it with charges in favour of the mortgagee. In the year 1882, the said Ehsan Ali sold the property, subject to the mortgage and charges to the appellants predecessors in title. Dispute arose with regard to the devolution of interest, and said Ehsan Ali cancelled the deed and retained his interest and that he, in fact, dealt with it subsequently by further charges in favour of the mortgagee and by professing to sell it over again to Wasi-uz-Zaman. While deciding the issue, His Lordship Lord Phillimore, speaking for the Bench, observed and held as under: (page 58)

"While making these comments, their Lordships reserve their opinion as to the value of a defence founded upon such a transaction as the defendants set up. Certainly in law, no title would pass under it, for immovable property of this value can only be transferred



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by a registered deed, and when a deed of sale has been once executed and registered, it can only be avoided by a subsequent registered transfer. Whether in some form of suit (not this one) between some parties any equitable relief could be got out of such a transaction, it is unnecessary to pronounce, for in their Lordships opinion it was not proved.

As to the alleged subsequent dealings by Ehsan Ali Khan with the property, they could not, if regarded as declarations in his own favour, be received in evidence on behalf of those claiming under him, any more than they could be received if he were himself the defendant. They could not be regarded as acts of ownership so as to prove adverse possession, because he never was in possession, the possession remaining in the mortgagee."

53. A similar question came up for consideration before the Orissa High Court in the case of **Michhu Kuanr and Ors v. Raghu Jena and Ors.** reported in AIR 1961 Ori. 19, as to the effect of cancellation of sale deed by the vendor on the allegation that consideration amount was not paid. While considering the question the Bench observed:-

*"The question of intention could only arise if no consideration passed in the context of this back ground and the surrounding circumstances the subsequent deed of cancellation is irrelevant. Once by the registered sale deed Ex. 1 title had passed to the vendees, the subsequent deed of cancellation Ex.A certainly could not nullify the effect of the already completed sale deed Ex.1."*

54. There is no provision in the Transfer of Property Act or in the Registration Act, which deals with the cancellation of deed of sale. The reason according to us is that the execution of a deed of cancellation by the vendor does not create, assign, limit or extinguish any right, title or interest in the immovable property and the same has no effect in the eye of law. A provision relating to the cancellation of a document is provided in Section 31 of the Specific Relief Act, 1963 (Old Section 39). Section 31 reads as under:-

*"31. When cancellation may be ordered:-*

*(1) Any person against whom a written instrument is void or voidable, and who has reasonable apprehension that such instrument, if left outstanding, may cause him serious*



injury, may sue to have it adjudged void or voidable, and the Court may, in its discretion, so adjudge it and order it to be delivered up and cancelled.

(2) If the instrument has been registered under the Indian Registration Act, 1908 (16 of 1908), the Court shall also send a copy of its decree to the officer in whose office the instrument has been so registered; and such officer shall note on the copy of the instrument contained in his books the fact of its cancellation."

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, 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 the 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 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.

60. Having regard to the conclusions arrived at as aforesaid, the questions referred are answered accordingly.



The appeals are referred back to the concerned Court for deciding the case on merits."

11. In the case on hand, since the petitioners herein have already filed O.S.No.784 of 2015 on the file of the District Munsif Court, Tiruchirapalli, seeking the relief of declaration, declaring the cancellation deed dated 10.07.2015, unilaterally executed by the third respondent is not legally valid and the same is pending, the relief as sought for by the petitioners cannot be granted. Hence, this writ petition is disposed of, leaving it open to the petitioners and the third respondent to work out their remedy before the civil Court regarding the cancellation of the settlement deed dated 10.07.2015 in the pending suit in O.S.No.784 of 2015 on the file of the District Munsif Court, Tiruchirapalli and till such a decree is passed by the civil Court, the third respondent shall not press into service the alleged deed of cancellation of settlement dated 10.07.2015. No costs. Consequently, MP(MD)No.2 of 2015 and WMP (MD)No.14323 of 2016 are closed.

Sd/-

Assistant Registrar(C.O)

/True Copy/

Sub Assistant Registrar

To

1. The Inspector General of Registration,  
No.100, Santhome High Road,  
Pattinapakkam, Chennai - 600 028.

2. The Joint Sub Registrar - III,  
Town Hall,  
Tiruchirapalli - 620 002.

+1cc to Mr.P.THAGARAJAN Advocate in SR. No. 84536

+1cc to Mr.G.THIRUVARUTSELVAN Advocate in SR. No. 84305

MJ

JS/JC/SAR.1/22.12.2017/ 7P-5C

W.P(MD) No.19054 of 2015  
30.10.2017