



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.5248 of 2015

and

MP (MD) No.1 of 2015

K.V.Ganesan

.. Petitioner

Vs.

1.The Inspector of Registration,
Door No.100, Santhome High Road,
Pattinapakkam, Chennai - 28.

2.The District Registrar,
(Administraion, Tenkasi Old RTO Office,
nearyby TVS show room,
Tenkasi, Tirunelveli District.

3.The Sub Registrar,
Idaikal, Tenkasi Taluk,
Tirunelveli District.

4.K.Velayutha Nadar

.. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus calling for the records pertaining to the Proceedings made in Na.Ka.No.1043/Aa2/2015 dated 12.03.2015 issued by the 2nd respondent and quash the same and consequently direct the respondents 1 to 3 to cancel the unilateral cancellation deed dated 01.12.2012 on the file of the third respondent.

For Petitioner : Mr.Pala Ramasamy

For RR - 1 to 3 : Mr.J.Gunaseelan Muthiah
Government Advocate

For R - 4 : No appearance

O R D E R

This writ petition has been filed seeking to quash the impugned proceedings of the second respondent in Na.Ka.No.1043/Aa2/2015 dated 12.03.2015 and consequently direct the respondents 1 to 3 to cancel the unilateral cancellation deed dated 01.12.2012 registered with the third respondent.



2. Heard the learned counsel for the petitioner and the learned Government Advocate for the respondents 1 to 3.

3. The case of the petitioner is that his father Velayutha Nadar, the fourth respondent herein has gifted the scheduled mentioned property as mentioned in the gift deed dated 07.04.2010 in his favour and the document was registered with the third respondent as document No.1207/2010 and in view of the gift deed executed, the petitioner has taken possession of the property and he has been enjoying the same. While so, he came to know that his father has unilaterally cancelled the said gift dated 07.04.2010 vide the cancellation deed dated 01.12.2012. Hence, he made a representation to the respondents 1 to 3 and in pursuance of the same, the second respondent has passed the impugned order on 12.03.2015, directing the petitioner to approach the Civil Court for appropriate relief. Challenging the same, the petitioner is before this Court.

4. The learned counsel appearing for the petitioner submitted that the deed of cancellation of the gift deed executed by the fourth respondent is invalid in law as it has been unilaterally executed without notice to the petitioner. Further, the transferor has no right at all to cancel the same by way of cancellation deed and therefore, the order passed by the third respondent is illegal and arbitrary and the same is liable to be set aside.

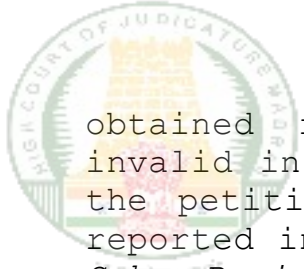
5. The learned Government Advocate appearing for the third respondent submitted that there is no flaw in the impugned order passed by the third respondent and the petitioner has to work out his remedy only before the competent civil forum and therefore, he prayed for the dismissal of this writ petition.

6. Despite notice has been issued to the fourth respondent and name has also been printed in the cause list, no representation was made on the side of the fourth respondent. Under such circumstances, this writ petition is disposed of on merits on the basis of the contentions put forth on the side petitioner as well as the respondents 1 to 3.

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 gift deed dated 07.04.2010 executed by him in favour of the petitioner?

9. According to the learned counsel for the petitioner, the fourth respondent has executed a gift deed in favour of the petitioner, but, subsequently, without notice as well as consent



obtained from him, unilaterally cancelled the same which is invalid in law. In support of his contention, learned counsel for the petitioner relied upon the decision rendered by this Court reported in (2015) 7 MLJ 10 [Nambikkai Mary Vs. Sub Registrar -II, Sub Registrar Office, Pattukottai, Thanjavur District and another], wherein this Court 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 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 the 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."

10. This Court in yet another decision reported in 2017 - 4 - L.W. 523 [P.A.G.Kumaran vs. Inspector General of Registration, Santhome, Chennai & Ors.] has held that the unilateral cancellation of the settlement deed made by the first and second respondents therein is bad and the deed of cancellation of settlement deed is declared as illegal.

11. Following the above judgments and considering the fact that the above said judgments are squarely applicable to the facts of the present case, I am of the considered view that the deed of cancellation of gift dated 01.12.2012 which has alleged to have been unilaterally executed by the fourth respondent does not create, assign, limit or extinguish any right, title or interest in the property and is of no effect and accordingly, it does not create any encumbrance in the property already transferred and therefore, it could not be accepted for registration. However, in the case on hand, the third respondent has registered the said cancellation deed.

12. Therefore, this writ petition stands disposed of, holding that the impugned unilateral cancellation of gift deed, dated 01.12.2012, in Document No.4477/2012, registered with the third respondent, is bad in law. However, it is open to the fourth respondent to work out his remedy before the competent civil Court regarding the cancellation of the gift deed dated 01.12.2012 and till such a decree is passed by the Civil Court, the fourth respondent shall not press into service the alleged deed of cancellation of gift dated 01.12.2012, as it has no force in law. No costs. Consequently, MP(MD)No.1 of 2015 is closed.

Sd/-

Assistant Registrar(ADII)

/True Copy/

Sub-Assistant Registrar

To

1. The Inspector of Registration,
Door No.100, Santhome High Road,
Pattinapakam, Chennai - 28.
2. The District Registrar,
(Administraion, Tenkasi Old RTO Office, nearyby TVS show room,
Tenkasi, Tirunelveli District.
3. The Sub Registrar, Idaikal, Tenkasi Taluk, Tirunelveli District.
+One cc to Mr.Pala Ramasamy, Advocate, SR.No.84491