

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	27/03/2018
Delivered on	14/09/2018

CORAM:

THE HONOURABLE MR. JUSTICE K.KALYANASUNDARAM

W.P.No.21984 of 2013

M.Vijaya Ragunathan,
6930 Magnolia Ave,
Elkridge, MD-21075, USA
Rep. by his Power agent,
Dr.M.Palaniappan,
S/o.V.M.Muthulingam,
Residing at C/o.G.K.Jai Ganesh,
20-30 Bangaru Street,
Flat B1 Suprabat Apartment,
Ayanavaram, Chennai - 600 023. ... Petitioner

Vs.

- 1.The Sub Registrar,
Office of the Sub Registrar,
Anna Nagar, Chennai - 600 102.
- 2.The Inspector General of Registration,
Office of the Inspector General of Registration,
Santhome, Chennai - 600 004.
- 3.Manimegalai
- 4.M.Chitra .. Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Declaration, declaring that the registration of the deed of revocation of the release deed dated 09.04.2013 registered as Doc.No.1586 of 2013 on the file of SRO of Anna Nagar, the first respondent in respect of the property bearing Plot No.3386, Old Door No.36, New No.4, E-Block, 3rd Street, Anna Nagar East, Chennai - 600 102, comprised in Survey No.44 part of Periakudal Village, T.S.No.100, Block Nos.1 and 3 part of Mullam Village, T.S.No.375, Block No.3, measuring one ground and 1280 sq.ft., is illegal and against the provisions of the Registration Act and quash the same.

For Petitioner : Mr.R.Manickavel

For Respondents: Mr.V.Shanmuga Sundar
Special Government Pleader for R1 and R2

Mrs.Hema Sampath, Senior Counsel
For Mr.A.R.Palanisamy for R4

O R D E R

Heard Mr.R.Manickavel, learned counsel for the petitioner; Mr.V.Shanmuga Sundar, learned Special Government Pleader for the respondents 1 and 2; Mrs.Hema Sampath, learned Senior Counsel, representing Mr.A.R.Palanisamy, learned counsel on record for the fourth respondent and perused the materials available on record.

2. The petitioner has come forward with this Writ Petition praying for issuance of Writ of Declaration, declaring that the registration of the deed of revocation of the release deed dated 09.04.2013 registered as Document No.1586 of 2013, on the file of SRO, Anna Nagar, Chennai is illegal and against the provisions of Registration Act and quash the same.

3. The case of the petitioner is that his father Muthuramalingam became the absolute owner of the property bearing Old Door No.36, New No.4, E-Block, 3rd Street, Anna Nagar East, Chennai (hereinafter referred as "Anna Nagar Property"), by virtue of a sale deed dated 02.08.1980 and he also owned another property in Thirumoorthy Nagar, 1st Street, Nungambakkam, Chennai (hereinafter referred as "Nungambakkam Property"), apart from the agricultural lands in Senthangudi Village, Alangudi Taluk.

4. The petitioner would further state that his father died intestate on 14.07.2007, leaving behind him, his wife, the third respondent herein, the petitioner and the fourth respondent as his legal heirs. During the life time, his father decided to allot Anna Nagar property to the petitioner and the Nungambakkam property to his daughter, the fourth respondent herein, but even before execution of document, he passed away. Thereafter, it was decided that in respect of Anna Nagar property, the third and fourth respondents shall execute a release deed releasing their 2/3rd share in favour of the petitioner, who in turn along with the third respondent shall jointly execute a release deed, releasing their right in respect of Nungambakkam property in favour of the fourth respondent. Accordingly, the petitioner and his mother executed release deed in favour of the fourth respondent releasing their 2/3rd share in respect of Nungambakkam property to the fourth respondent and the third and

fourth respondents have jointly executed a release deed dated 21.07.2011 releasing all their right and share in Anna Nagar property in favour of the petitioner.

5. According to the petitioner, on the date of registration of the release deed, possession in respect of Nungambakkam property was handed over to the fourth respondent and the possession of Anna Nagar property was handed over to the petitioner along with all original title deeds. Thereafter, property tax, CMWSS Board tax and charges and patta were transferred in the name of the petitioner and he also inducted two tenants in Anna Nagar property. The further case of the petitioner is that he is employed and residing in USA and asked his sister to collect rents to deposit in his account, as such, the fourth respondent was depositing rent for a period of three months and thereafter, she failed to do so and she besides misappropriating the rent also committed fraud of grabbing the property of the petitioner and executed the revocation of the release deed on 09.04.2013. According to the petitioner, the unilateral cancellation of the release deed is illegal and contrary to the public policy.

6. The fourth respondent has filed a counter affidavit denying the allegations made by the petitioner and it is further stated that the release deed dated 21.07.2011 was executed by threat, coercion and undue influence. The case of the fourth respondent is that the petitioner is employed in USA for over several years and during global recession, the petitioner apprehended that he may lose job in USA and informed her that he is likely to start a venture on his own in the software field and to secure Solvency Certificate to the tune of Rs.3 Crores, requested her to execute the subject release deed promising to re-transfer his title over the subject property soon after obtaining the said Solvency Certificate. However, later on realising that the petitioner is unwilling to re-transfer the property to her (fourth respondent) on 09.04.2013, the cancellation of release deed was executed. It is further stated that in view of the pendency of the suit in C.S.No.135 of 2014, the Writ Petition is not maintainable.

7. The learned counsel for the petitioner while reiterating the grounds raised in the writ petition urged that the facts of the case would establish the petitioner was cheated by the private respondents. It is the submission of the learned counsel that the private respondents having accepted the release deed in respect of Nungambakkam property and made no whisper about the released deed, no moral or legal right to oppose this Writ Petition.

8. The learned counsel for the petitioner by placing

reliance upon the decisions of this Court reported in 2011 (2) CTC 1 [Latif Estate Line India Ltd., V. Hadeeja Ammal], CDJ 2012 MHC 1517 [E.R.Jothieswari Vs. Sarjoini & Others] and <http://www.indiankanoon.org/doc/14682041/> [C.R.Gandhi & others vs. The Inspector General of Registration, Chennai & others] would contend that the unilateral cancellation / revocation deed of release is liable to be set aside.

9. Per contra, the learned Senior Counsel for the private respondents would contend that the petitioner having knowledge about the cancellation of the release deed had executed a settlement deed in favour of his wife on 22.04.2013 and on the basis of the settlement deed, the suit in C.S.No.135 of 2014 came to be filed seeking declaration of their title to the property and facts are in dispute, the parties can be relegated to work out their remedy before the Competent Civil Court, by citing the judgment of the Hon'ble Supreme Court in AIR 2016 SC 4995 [Satya Pal Anand vs. State of M.P. and Ors] and an unreported judgment of this Court in W.P.No.3773 of 2012, dated 03.09.2012.

10. In the case on hand, admittedly, the father of the writ petitioner viz., Muthuramalingam had died intestate on 14.07.2007 and he was the absolute owner of Anna Nagar and Nungambakkam properties. The case of the petitioner is that even during his life time, he wanted to settle Anna Nagar property in favour of the petitioner and the Nungambakkam property in favour of his daughter, the fourth respondent herein. The execution of the release deed dated 21.07.2011 is not in dispute. The petitioner along with his mother, the third respondent had released their 2/3rd share in Nungambakkam property in favour of the fourth respondent and the third and fourth respondents have released their right in Anna Nagar property to the petitioner. It is also not in dispute that the mutation of revenue records had taken place and the petitioner was recognized as a owner of Anna Nagar property.

11. Though the fourth respondent has filed a counter stating that she executed release deed in respect of Anna Nagar property for the purpose of securing Solvency Certificate and the petitioner had promised to re-transfer his right, it is not disputed that in respect of Nungambakkam property, the petitioner along with his mother, the third respondent herein have released their right in favour of the fourth respondent. It is not the case of the fourth respondent that the petitioner had cancelled the release deed in respect of Nungambakkam Property and he is claiming share over the same. In the judgments relied on by the learned counsel for the petitioner, the Full Bench of this Court in 2011 (2) CTC 1 [referred supra], has held as follows:-

"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."

12. In the case of E.R.Jothieswari Vs. Sarjoini & Others [CDJ 2012 MHC 1517], learned Single Judge, a number of decisions

of the Hon'ble Supreme Court and this Court has held that if the gift deed is irrevocable and unconditional, it is not open to the respondents to register the cancellation deed, being opposed to be public policy and the relevant paragraphs would run thus:-

10. On consideration, I find that this writ petition deserves to succeed, as per Section 156 of Transfer of Property Act, except for the condition stipulated therein, the Gift deed is irrevocable. It is not disputed that the non of the condition entitling revoking of Gift Deed exists in this case, as the Gift Deed was irrevocable and unconditional. It was not open to respondent no.2 to register the cancellation deed, being opposed to the public policy. The impugned order of registration, therefore, cannot be sustained in law, in view of the decision of the Hon'ble Full Bench of this Court, and decision of the Hon'ble Kerala High Court in *Latif Estate Line India Limited vs. Hadeeja Ammal* (supra).

11. The judgment of this Court in *M.Muthu Gangai Anandi and Others vs. The Sub Registrar, Nallur, Tripur District and Others* (supra) cannot advance the case of petitioner, as in the said case, there was serious dispute of facts. The stand was that the Sub-Registrar was empowered to revoke the settlement under the provisions of Chapter-VII of the Transfer of Property Act, 1882. There is no such plea, rather the ground raised is, that the respondent no.1 had no right to execute the Gift Deed with respect to the ancestral property and on allegations of fraud. It is for the respondent no.1 or persons drawing their title under her or to the property to challenge the Gift Deed in the Civil Suit, but certainly it could not be revoked by way of cancellation deed, once the case did not fall under the exceptions, under Section 126 of the Transfer of Property Act."

13. The same view was taken by this Court in the case of *C.R.Gandhi & others vs. The Inspector General of Registration, Chennai & others* and the relevant paragraphs are extracted hereunder:-

12. This Court in the judgment reported in 2012 (5) MLJ 169 (*D.Mohan and another Vs. Sub Registrar, Chennai and others*) has held that in the case of gift, the donor after executing the gift deed when it is accepted by the donee, is left with no interest in the property, therefore, it was not open to the respondent to get the cancellation deed registered, as she could have challenged it by filing civil suit and proving the allegations of fraud. Further, a gift deed could

not be revoked by way of cancellation deed, once the case did not fall within the exceptions, under Section 126 of the Transfer of Property Act and a person having no right in the property cannot get it cancelled by getting it registered.

13.Further, in the judgment reported in 2014 (3) CTC 113 (D.V.Loganathan Vs. The Sub Registrar, Chennai and another) has held that the registration of cancellation of the settlement deed is against the public policy as it was not open to the Sub Registrar to register the cancellation of the deed, when the settlement deed is unconditional and irrevocable. If at all the party who has executed the document is aggrieved by the settlement deed he could have very well approached the Civil Court to set it aside, but certainly not unilaterally cancel it by getting the deed of cancellation registered with the Sub Registrar. The cancellation deed and its registration, therefore, being without jurisdiction is liable to be set aside.

14.In yet another judgment reported in (2012) 1 MLJ 216 (K.A.Shanmugam and another Vs. Tamilarasi and others), this Court has held that mentioning of handing over of possession in settlement deed itself is sufficient to come to a conclusion that the settlement deed has been acted upon.

15.The dictum laid down in the above judgments are squarely applicable to the facts of this case. Though the learned counsel for the respondents submitted that as per Section 127 of the Transfer of Property Act, a gift deed can be revoked by way of a cancellation deed, if it falls within the exception under Section 126 of the Transfer Property Act, in my considered opinion, whether it falls within the exception under Section 126 of the Transfer of the Property Act or not is purely a matter of evidence. The same has to be adjudicated only before the Civil Court. The Registrar is not a competent person to register the unilateral cancellation deed by deciding the question whether it falls within the exception under Section 126 of the Transfer of Property Act, since he is not the competent authority to decide the disputed question of facts. Further, in my considered opinion, by executing a registered settlement deed in

favour of 1st petitioner / settlee, the settlor/4th respondent herein had lost her right in the property. Unless the said right is restored by setting aside the settlement deed executed by the settlor in favour of the settlee by a competent Court, the Sub-Registrar is not competent to register the unilateral cancellation of settlement deed."

14. The learned Senior Counsel for the respondents relied on the judgment of the Hon'ble Supreme Court reported in AIR 2016 SC 4995 [Satya Pal Anand vs. State of M.P. and Ors.], in support of her contention that the Writ Petition is not maintainable. In my considered opinion that the judgment cannot advance the case of the petitioner for the reasons that in that case, a house plot was allotted to the appellant's mother by Punjabi Housing Cooperative Society Limited through a registered deed. The Society, later executed a deed of extinguishment, thereby cancelling the said allotment on the ground of violation of by-laws of the Society for not raising construction on the plot within the prescribed time. Thereafter, the Society sold the property in favour of the fifth respondent in that case. The appellant objected the said transfer, however, the matter was compromised between the parties and the appellant whereunder received certain considerations. Thereafter, he approached the Registrar of the Society to cancel the deed of extinguishment. The Sub Registrar (Registration), rejected the application and there against, the appeal preferred before the Inspector General of Registration under Section 69 of the Registration Act was rejected and the order was challenged in a Writ proceedings. In the above backdrop of the case, the Hon'ble Supreme Court has held as follows:-

14. Having considered the rival submissions, including keeping in mind the view taken by the two learned Judges of this Court on the matters in issue, in our opinion, the questions to be answered by us in the fact situation of the present case, can be formulated as under:

"(a) Whether in the fact situation of the present case, the High Court was justified in dismissing the Writ Petition?

(b) Whether the High Court in exercise of writ jurisdiction under Article 226 of the Constitution of India is duty bound to declare the registered Deeds (between the private parties) as void ab initio and to cancel the same, especially when the aggrieved party (appellant) has already resorted to an alternative efficacious remedy under Section 64 of the Act of 1960 before the competent Forum whilst questioning the action of the Society in cancelling the allotment of

the subject plot in favour of the original allottee and unilateral execution of an Extinguishment Deed for that purpose?

(c) Even if the High Court is endowed with a wide power including to examine the validity of the registered Extinguishment Deed and the subsequent registered deeds, should it foreclose the issues which involve disputed questions of fact and germane for adjudication by the competent Forum under the Act of 1960?

(d) Whether the Sub-Registrar (Registration) has authority to cancel the registration of any document including an Extinguishment Deed after it is registered? Similarly, whether the Inspector General (Registration) can cancel the registration of Extinguishment Deed in exercise of powers under Section 69 of the Act of 1908?

(e) Whether the Sub-Registrar (Registration) had no authority to register the Extinguishment Deed dated 9th August 2001, unilaterally presented by the Respondent Society for registration?

(f) Whether the dictum in the case of Thota Ganga Laxmi (supra) is with reference to the express statutory Rule framed by the State of Andhra Pradesh or is a general proposition of law applicable even to the State of Madhya Pradesh, in absence of an express provision in that regard?"

Regarding Issue Nos. (a) to (c):

15. The answer to the first three questions will have to be given in the backdrop of the factual matrix of the present case. Indisputably, the appellant entered into a compromise deed and accepted the consideration amount of Rs.6.50 Lakh. Despite that, he chose to file a dispute under Section 64 of the Act of 1960 before the Deputy Registrar, Cooperative Societies challenging the action of the Society in unilaterally executing and causing registration of the subject Extinguishment Deed dated 9th August 2001 and also the allotment of the subject plot to third party. Pending that dispute, he filed an application before the Sub-Registrar (Registration) for the same relief of cancellation of registration of the Extinguishment Deed and the subsequent deeds in favour of third

parties. In addition, the appellant resorted to criminal complaint with reference to the same Extinguishment Deed and the subsequent deeds in favour of third parties. In this backdrop, the High Court declined to entertain the Writ Petition filed by the appellant, which was essentially to challenge the same Extinguishment Deed and subsequent deeds. It is a well established position that the remedy of Writ under Article 226 of the Constitution of India is extraordinary and discretionary. In exercise of writ jurisdiction, the High Court cannot be oblivious to the conduct of the party invoking that remedy. The fact that the party may have several remedies for the same cause of action, he must elect his remedy and cannot be permitted to indulge in multiplicity of actions. The exercise of discretion to issue a writ is a matter of granting equitable relief. It is a remedy in equity. In the present case, the High Court declined to interfere at the instance of the appellant having noticed the above clinching facts. No fault can be found with the approach of the High Court in refusing to exercise its writ jurisdiction because of the conduct of the appellant in pursuing multiple proceedings for the same relief and also because the appellant had an alternative and efficacious statutory remedy to which he has already resorted to. This view of the High Court has found favour with Justice Dipak Misra. We respectfully agree with that view.

16. The other view of Justice V. Gopala Gowda, however, is that it was the duty of the High Court to answer the matters in issue because of the unilateral registration of the Extinguishment Deed by the Society without authority and a nullity. Ordinarily, if the party had not resorted to any other remedy provided by law and had straightway approached the High Court to question the action of the statutory Authority of registering a document improperly and in particular in disregard of the prescribed procedure, that would stand on a different footing. In the present case, however, the appellant not only entered into a compromise deed with the Society and the subsequent purchaser but also resorted to statutory remedy. Having entered into a compromise deed, it is doubtful whether the appellant can be heard to complain about the irregularity in the registration of the Extinguishment Deed, if any. It is noticed that the appellant has not disputed the execution of the compromise deed, nor has he paid any heed to the

notice given by the other party to refund the amount accepted by him in furtherance of the compromise deed. No Court can be party to a speculative litigation much less the High Court in exercise of writ jurisdiction. Having said this it must necessarily follow that the Writ Petition filed by the appellant deserved to be dismissed, as was rightly dismissed by the High Court."

15. A careful perusal of the judgment would show that the observations in fact supports the case of the petitioner. The learned Single Judge of this Court in the judgment cited by the learned Senior Counsel for the respondents has held that the disputed question of fact could be decided only after appreciation of evidence by the competent Civil Court. In the instant case, the present Writ Petition was filed in the year 2013 and the suit in C.S.No.135 of 2014 came to be filed on the basis of the settlement deed dated 22.04.2013, seeking declaration that the second plaintiff, who is the wife of the petitioner is the owner of the property and for consequential reliefs. It is not the case of the private respondents that the suit was instituted suppressing the pendency of the Writ Petition.

16. Taking note of the facts that the two settlement deeds have been executed in respect of Anna Nagar and Nungambakkam properties in the year 2011 and the private respondents have chosen to cancel the release deed in the year 2013 in respect of Anna Nagar property maintaining silence in respect of Nungambakkam property and mutation in the revenue records had taken place, in my considered opinion that the decisions relied on by the learned counsel for the petitioner would squarely apply to the facts of this case and the judgment of the Hon'ble Supreme Court is also in favour of the petitioner.

17. I opine that the validity of unilateral cancellation, of course, has to be decided on the facts of each case. For the above stated reasons, the petitioner is entitled to succeed in this Writ Petition. In fine, the Writ Petition is allowed. There is no order as to costs.

Sd/-

Assistant Registrar(CS-VIII)

//True Copy//

Sub Assistant Registrar

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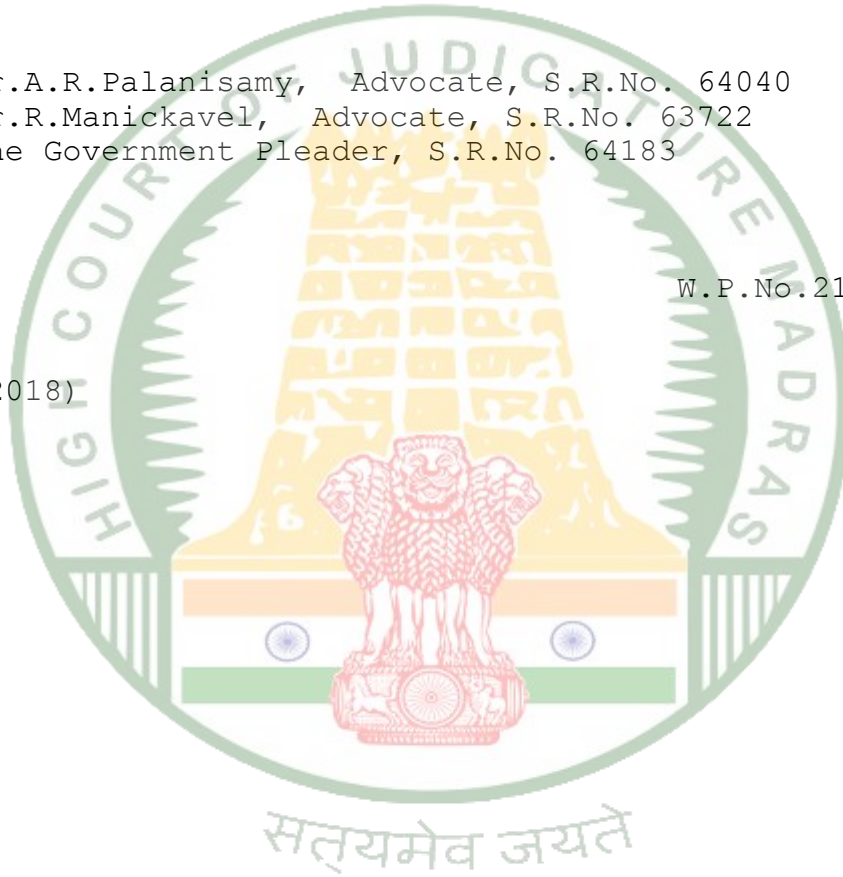
To

- 1.The Sub Registrar,
Office of the Sub Registrar,
Anna Nagar, Chennai - 600 102.
- 2.The Inspector General of Registration,
Office of the Inspector General of Registration,
Santhome, Chennai - 600 004.

+1cc to Mr.A.R.Palanisamy, Advocate, S.R.No. 64040
+2cc to Mr.R.Manickavel, Advocate, S.R.No. 63722
+1cc to the Government Pleader, S.R.No. 64183

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