

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.08.2018

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA

W.P.No.19001 of 2018

V.Balakrishnan

.. Petitioner

vs

1. The Inspector General of Registration
No.100, Santhome High Road
Chennai 600 028
2. The District Registrar
Coimbatore District Collectors Office Campus
102, State Bank Road
Gopalapuram
Coimbatore 641 018
3. The Joint-I Sub Registrar
Coimbatore
Coimbatore District
4. Mr.A.Palanisamy .. Respondents

Petition under Article 226 of the Constitution of India, praying for the issue of a Writ of Certiorarified Mandamus, calling for the records relating to the proceedings dated 29.05.2017 in Na.Ka.No.8544/A1/2012 on the file of the second respondent and quash the same and further issue a direction directing the second respondent to annul the release deed dated 08.06.1981 registered as Doc.No.3627 of 1981 on the file of Joint-I Sub Registrar, Coimbatore in view of the consent accorded by executor and beneficiary of the release deed before the second respondent to cancel the said release deed dated 08.06.1981 by exercising the power delegated to the second respondent vide Circular No.41530/U1/2017 dated 08.11.2017 issued by the first respondent superseding the previous circular No.67 dated 03.11.2011 issued by the first respondent.

For Petitioner
For Respondents

:: Mr.A.Kalaivanan
:: Mr.T.M.Pappiah
Special Government Pleader
for R1 to 3

ORDER

The petitioner seeks for issuance of a writ of certiorarified mandamus, calling for the records relating to the proceedings dated 29.05.2017 in Na.Ka.No.8544/A1/2012 on the file of the second respondent, to quash the same with a consequential direction to the second respondent to annul the release deed dated 08.06.1981 registered as Doc.No.3627 of 1981 on the file of Joint-I Sub Registrar, Coimbatore in view of the consent accorded by executor and beneficiary of the release deed before the second respondent to cancel the said release deed dated 08.06.1981 by exercising the power delegated to the second respondent vide Circular No.41530/U1/2017 dated 08.11.2017 issued by the first respondent superseding the previous circular No.67 dated 03.11.2011 issued by the first respondent.

2. Heard the learned counsel for the petitioner and the learned Special Government Pleader for the respondents.

3. Since both the parties, namely, the executant and the beneficiary of the release deed have given consent for cancellation of the release deed, the ratio laid down by a Full Bench of this Court in M/s Latif Estate Line India Ltd., rep.by its Managing Director Mr.Habib Abdul Latif v. Mrs.Hadeeja Ammal and others, 2011 (2) CTC 1, which is given as under,

"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.",

will squarely apply to the case of the petitioner. In view of that, this Court finds no hesitation to direct the second respondent to apply the said ratio. Accordingly, the second respondent is directed to do the needful in accordance with law and cancel the release deed dated 8.6.1981 within a period of four weeks from the date of receipt of a copy of this order. The writ petition is disposed of accordingly. Consequently, W.M.P.Nos.22392 & 22393 of 2018 are closed. No costs.

Sd/-

Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

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To

1. The Inspector General of Registration
No.100, Santhome High Road
Chennai 600 028
2. The District Registrar
Coimbatore District Collectors Office Campus
102, State Bank Road
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Coimbatore 641 018
3. The Joint-I Sub Registrar
Coimbatore
Coimbatore District
+lcc to Mr.A.Kalaivanan, Advocate, S.R.No.53332
+lcc to the Government Pleader, S.R.No.54059

W.P.No.19001 of 2018

KK(CO)

GSP(28/08/2018)