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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.07.2018

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THE HONOURABLE MR. JUSTICE R.MAHADEVAN

Writ Petition No.28 of 2010

M.Jayaprakash

... Petitioner

vs.

1.The Joint Sub Registrar,
Office of the Kundrathur Sub Registrar,
Kundrathur,
Chennai-69.

2.C.Shanmugam

... Respondents

Writ petition filed under Article 226 of the Constitution of India, praying for a Writ of Certiorari, to call for the records of the impugned deed of cancellation of sale deed dated 03.02.1999 executed by the second respondent and presented to and registered by the first respondent as Document No.366/1999 on the file of the first respondent and quash the same.

For Petitioner :	Mr.Parthasarathy, SC for Mr.C.Veeraragavan
For R1 :	Mr.J.Ramesh, AGP
For R2 :	Mr.V.Balakrishnan & S.Yuvaraj

ORDER

The prayer made in this writ petition is to issue a writ of Certiorari, to call for the records of the impugned deed of cancellation of sale deed dated 03.02.1999 executed by the second respondent, which was registered by the first respondent as Document No.366/1999 and quash the same.

2.It is the case of the petitioner that originally, the second respondent was the owner of the schedule mentioned property and he executed a sale deed in favour of the petitioner for a sale consideration of Rs.1,74,680/-, which was registered by the first respondent as Document No.3397/1997 on payment of the entire sale consideration by the petitioner. Since the petitioner was residing in Delhi at that time and the second respondent is his best friend, he requested the second



respondent to develop the property and handed over the sale deed of the said property to the second respondent. After the petitioner settled down at Udumalpet, he tried to contact the second respondent for getting back his property, whereas, the second respondent evaded to contact him. Later, he came to understand that the second respondent without the knowledge and consent of the petitioner, unilaterally cancelled the sale deed by a cancellation deed dated 03.02.1999, which was registered by the first respondent as Document No.366/1999. Aggrieved over the same, the petitioner has come up with the present writ petition for the above stated relief.

3.The learned counsel for the petitioner submitted that when the sale deed executed by the second respondent in favour of the petitioner is valid in law, the second respondent has no power or authority to cancel the same by a deed of cancellation, that too, unilaterally, without the knowledge and consent of the petitioner. The learned counsel further submitted that the issue involved herein had already been decided by the Full Bench of this Court in *Latif Estate Line India Ltd v. Hadeeja Ammal and others* [2011 (2) CTC 1], wherein, it has been held 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. Therefore, the learned counsel prayed to set aside the said unilateral cancellation of the sale deed.

4.The learned Additional Government Pleader appearing for the first respondent fairly conceded the submissions so made by the learned counsel for the petitioner. Heard the learned counsel appearing for the second respondent, who tried to justify the action so taken by the second respondent.

5.This Court considered the submissions made by the learned counsel on either side and perused the materials placed before it.

6.Admittedly, the second respondent, after the execution of the registered sale deed in favour of the petitioner, unilaterally cancelled the same by a deed of cancellation, that too, without notice to the petitioner. The said issue was referred to the Full Bench of this Court in *Latif Estate Line India Ltd* (cited supra), which extensively considered the same and came 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.



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(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."

7. Following the aforesaid decision, this Court has no hesitation to hold that the unilateral cancellation of registered sale deed executed by the second respondent cannot be sustained in law, being against public policy. Hence, the registration of the cancellation deed vide Document dated 03.02.1999 bearing No.366/1999 on the file of the first respondent, thereby cancelling the sale deed executed by the second respondent in favour of the petitioner vide Doc.No.3397 of 1997 dated 10.07.1997, is quashed.

8. Accordingly, the writ petition stands allowed. However, the second respondent is at liberty to seek appropriate remedy before the competent Civil Court. No costs. Consequently, connected Miscellaneous Petition is closed.

s/d-
Assistant Registrar (CS-V)

True Copy

Sub-Assistant Registrar



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To

1. The Joint Sub Registrar,
Office of the Kundrathur Sub Registrar,
Kundrathur,
Chennai-69.

+1 CC to Govt. Pleader sr 48073.
+1 CC to Mr.C. Veeraraghavan, Advocate sr 47854.
+1 CC to Mr.V. Balakrishnan Advocate sr 48234.

W.P.No.28 of 2010

SSI (CO)
SP (05/09/2018)