

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.06.2018

CORAM

THE HONOURABLE Mr.JUSTICE V.PARTHIBAN

W.P.No.2950 of 2012

S.Ravikumar

... Petitioner

Vs

1. The Inspector General of Registration,
Santhome High Road,
Santhome, Chennai-600 028.

2. The Sub Registrar,
Tambaram,
Chennai-600 045.

3. B.Pari

4. Krishnakumar U. Menon
Rep. by his Power of Attorney,
M.G.Balaraman
No.50, Thiruvalluvar Street,
Oonamancheri, Chennai-600 048.

.... Respondents

PRAYER : Petition filed under Article 226 of the Constitution of India, praying to issue a writ of Certiorarified Mandamus calling for the records of the 2nd respondent culminating in registration of the Cancellation Deed dated 19.12.1994-Doc.No.4149/1994; S.R.O., Tambaram, quash the same and forbear the respondents from registering any Deed of Cancellation.

For Petitioners : Mr.Sriram for
M.s.A.S.Kailasam

For Respondents : Mr.Pothiraj,
Spl. Govt. Pleader for R1&R2
R3-No appearance
Mr.R.Sundaramurthy for R4

O R D E R

Heard Mr.Sriram, learned counsel for the petitioner and Mr.Pothiraj, learned Special Government Pleader appearing for the respondents 1 and 2 and Mr.R.Sundaramurthy, learned counsel for the fourth respondent.

2. The petitioner has approached this Court, seeking the following relief:

"To issue a writ of Certiorarified Mandamus calling for the records of the 2nd respondent culminating in registration of the Cancellation Deed dated 19.12.1994-Doc.No.4149/1994; S.R.O., Tambaram, quash the same and forbear the respondents from registering any Deed of Cancellation."

3. The case of the petitioner is as follows:-

The petitioner has purchased a property from fourth respondent by a registered sale deed dated 06.10.2010, vide Document NO.8259/2008, registered on the file of Sub Registrar Office, Tambaram. The 4th respondent acquired his title to sell the property to the petitioner, having purchased the same by registered sale deed, dated 17.08.1994, vide document No.3421/1994, Sub Registrar Office, Tambaram, from the third respondent. After purchasing of the property, the petitioner was put in possession and has been enjoying the same without any interference. At the time when property was purchased, the petitioner had obtained encumbrance certificate for the period from 01.01.1987 to 09.07.2006 and found that there were only two entries made, viz., 1st sale in favour of the 3rd respondent dated 07.08.1991 and subsequent sale by 3rd respondent in favour of 4th respondent dated 17.08.1994.

4. After purchasing of the property, the petitioner had applied for transfer of patta in his name on 15.11.2011. However, the application for transfer of patta was kept pending for a considerable period and when enquiry was made as to why the application was kept pending without issuing of patta to the petitioner, he was informed that 3rd respondent who had executed the sale deed in favour of 4th respondent on 17.08.1994, had subsequently executed a Deed of Cancellation on 19.12.1994, vide Doc.No.4149/1994. Later, on further enquiry, it was found that 3rd respondent had unilaterally cancelled the sale deed in favour of the 4th respondent without any information or intimation either to 4th respondent or to his power agent who sold the property to the petitioner. In view of the cancellation of the sale deed in favour of 4th respondent, the title which was conferred on the petitioner for the subject property was sought to be taken away by the said unilateral action of the third respondent. Therefore, the Cancellation Deed on 19.12.1994, by the 3rd respondent is put to challenge in the present writ petition.

5. Mr.K.Sriram, the learned counsel appearing for the petitioner would submit that such cancellation of sale deed by the vendor unilaterally was not authorized by any rules and also

contrary to various decisions of this Court particularly decisions of the Division Bench and as well as the Full Bench of this Court. He would draw the attention of this Court to a decision in the case of "E.R.KALAIVAN V. THE INSPECTOR GENERAL OF REGISTRATION & ANOTHER, reported in 2009-4-L.W.408, wherein the Division Bench of this Court has held that any cancellation of the sale must be at the instance of both parties, viz., bilaterally and not unilaterally. He would also rely on yet another decision of the Division Bench of this Court in the case of "SUDHA RAVI KUMAR AND ANOTHER V. THE SPECIAL COMMISSIONER AND COMMISSIONER, CHENNAI-34 & OTHERS" reported in 2017-1-Writ.L.R.481, wherein, this Court has held that Cancellation of registration is not within the powers of the Registrar. More so, the learned counsel would draw the attention of this Court to the Full Bench decision of this Court in the case of "LALIF ESTATE LINE INDIA LTD. V. HADEEJA AMMAL" reported in 2011 (2) CTC 1, wherein, after advertng to various materials, the Full Bench has held in paragraph 59 as follows:

"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.

Therefore, the learned counsel would submit that the matter is squarely covered by the above cited ruling of the Full Bench as well as the decisions relied on by him.

6. Upon notice, Mr. J. Pothiraj, the learned Special Government Pleader entered appearance for respondents 1 and 2 and Mr. R. Sundaramurthy, the learned counsel entered appearance for 3rd respondent and filed a counter affidavit.

7. The learned Special Government Pleader cannot have any quarrel with the legal position as laid down by the Division Bench as well as the Full Bench of this Court and its applicability to the present case. Since this Court is bound by the decision of the Full Bench and the Division Bench, the impugned Deed of Cancellation is to be declared as illegal as the same being contrary to the well defined law laid down by this Court.

8. Therefore, the impugned Deed of Cancellation dated 19.12.1994, vide Document No. 4149/1994, on the file of Sub Registrar Office, Tambaram, is hereby set aside. Accordingly, the writ petition is allowed as prayed for. No costs.

s/d-

Assistant Registrar (CS-III)

True Copy

Sub-Assistant Registrar

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To

1. The Inspector General of Registration,
Santhome High Road,
Santhome, Chennai-600 028.

WEB COPY

2.The Sub Registrar,
Tambaram,
Chennai-600 045.

+1 CC to Govt. Pleader sr 35851

W.P.No.2950 of 2012

SP(18/06/2018)



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