

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.11.2018

CORAM

THE HONOURABLE MR. JUSTICE R.MAHADEVAN

W.P.No.29125 of 2018

S.Alamelu

... Petitioner

Vs

1.The District Revenue Officer,
Chennai District,
Chennai.

2.The Tahsildar,
Purasaiwalkam - Perambur Taluk,
Chennai District.

3.Mr.Ashok

.... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a writ of mandamus, directing the 1st respondent to dispose the proceedings No.04/28364/2011, dated 12/2012, within the time frame fixed by this Court, by taking into consideration the settled proposition of law that irrevocable settlement deed cannot be canceled as held by this Court in 2015(2) CTC 465 and 2014(3) CTC 113 and by taking into consideration that a Sale Deed can be cancelled only by parties to it or by a Court of law as held in 2011 (2) MLJ 569.

For Petitioner : Mr.S.Prabhakaran

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

ORDER

Mr.V.Shanmuga Sundar, learned Special Government Pleader takes notice for the respondents 1 and 2. By consent of both parties, the writ petition is taken up for final disposal at the admission stage itself.

2. The prayer sought for in this writ petition is for a mandamus, directing the first respondent to dispose of the proceedings No.04/28364/2011, dated 12/2012, within the time frame fixed by this Court.

3. The grievance of the petitioner is that she purchased the property situated at Plot No.30, Shanthi Nagar, Kolathur Village, Purasawalkam, Perambur Taluk, Chennai District vide Sale Deed dated 07.10.1996 from one Chandra Ramachandran. However, the same was transferred in the name of the third respondent based on the fabricated documents. Hence, the petitioner submitted an appeal before the District Collector. Thereafter, the first respondent has taken up the appeal on file and issued the proceedings in No.04/28364/2011, dated 12/2012, calling upon the petitioner as well as the third respondent to appear for enquiry. Thereafter, no progress was made with regard to the claim of the petitioner. Hence, the present writ petition.

4. The learned counsel for the petitioner submitted that the sale deed executed by the said Chandra Ramachandran in favour of the petitioner was cancelled, without the consent and knowledge of the petitioner, vide cancellation deed dated 28.08.2000 bearing Doc.No.5245/2000. According to him, the said unilateral cancellation cannot be sustained in the eye of law, as held 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 as follows:

"(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."

However, the learned counsel submitted that it would suffice, if a direction is issued to the first respondent to dispose of the appeal filed by the petitioner, for which, the learned Special Government Pleader appearing for the respondents has no serious objection.

5. Considering the facts and circumstances of the case and having regard to the submissions made by the learned counsel on either side, this Court, without going into the merits of the case, directs the first respondent to dispose of the appeal filed by the petitioner and pass appropriate orders, on merits and in accordance with law, after affording due opportunity of personal hearing to the petitioner, third respondent as well as any other interested parties, within a period of eight weeks from the date of receipt of a copy of this order.

6. With the above direction, the writ petition stands disposed of. No costs.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1.The District Revenue Officer,
Chennai District,
Chennai.

2.The Tahsildar,
Purasaiwalkam - Perambur Taluk,
Chennai District.

+1cc to Mr.S.Prabhakaran, Advocate, S.R.No.75868

+1cc to the Government Pleader, S.R.No.76425

W.P.No.29125 of 2018

KJ(CO)
GSP(10/12/2018)



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