

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.11.2019

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P. No. 8230 of 2009
and
M.P. Nos. 2 & 3 of 2009

V. Ravikumar

... Petitioner

Vs.

1. The Sub-Registrar,
Office of the Sub-Registrar,
Ganapathi, Coimbatore - 641 006.

2. P. Elango
3. P. Bharath
4. S. Chandran
5. D. Saravanan
6. K.R. Sivaraman
7. K.R. Alagappan
8. A.L. Neela
9. S. Meenal

... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, to call for the records relating to the impugned Cancellation Deed dated 09.10.2009 executed by the Respondents 2 to 4 and registered as Document No.6165/2006 on the file of the First Respondent and quash the same and consequently forbearing the Respondents 2 to 9 or any person claiming under them from in any manner dealing with the properties in T.S.No. 11/1311 in Ganapathy Village to an extent of 1089 Sq.ft., S.F. No.708/2B to an extent of 0.30 1/3 acre of Kalapatti Village and S.F. No. 478 to an extent of 4320 Sq.ft of Veerapandi Village, Coimbatore District purchased by the Petitioner by registered Sale Deed dated 13.07.2006 under Document No.3951/2006 on the file of the First Respondent.

For Petitioner : Mr. M. Kalyanasundaram
Senior Advocate
for Mr. S. Gopinathan

For R1 : Mr. T.M. Pappiah
Special Government Pleader
For R2 to R4 : Mr. R. Nagasundaram
For R6 to R9 : Mr. K. Shyamsundar

ORDER

The Petitioner had filed this writ petition, seeking for issuance of a Writ of Certiorarified Mandamus, to call for the records relating to the impugned Cancellation Deed dated 09.10.2009 executed by the Respondents 2 to 4 and registered as Document No.6165/2006 on the file of the First Respondent and quash the same and consequently forbearing the Respondents 2 to 9 or any person claiming under them from in any manner dealing with the properties in T.S.No. 11/1311 in Ganapathy Village to an extent of 1089 Sq.ft., S.F. No.708/2B to an extent of 0.30 1/3 acre of Kalapatti Village and S.F. No. 478 to an extent of 4320 Sq.ft of Veerapandi Village, Coimbatore District purchased by the Petitioner by registered Sale Deed dated 13.07.2006 under Document No.3951/2006 on the file of the First Respondent.

2. The case of the petitioner is that he purchased landed property from respondents 2 to 4 who were the original owners of the said property, through their Power of Attorney, 5th respondent herein, for a total consideration of Rs.20 lakhs by way of a registered sale deed dated 13.07.2006 and the same was registered as Document No.3159 of 2006. After purchase, the petitioner was put in possession of the property. However, after purchase, since respondents 2 to 4 along with others came and attempted to interfere with his possession, the petitioner moved a civil suit in O.S.No.2231 of 2006 before the District Munsif Court, Coimbatore for permanent injunction. In the said suit, a written statement was filed by respondents 2 to 4, wherein, while admitting the execution of Power of Attorney in favour of 5th respondent, the respondents 2 to 4 denied the suit on other grounds. Later in the year 2007, the petitioner learnt through his counsel that the respondents 2 to 4 cancelled the sale deed.

3. According to the petitioner, originally the owners filed the document to cancel his sale deed, but the same was not accepted by the 1st respondent, however, 3rd respondent filed a Writ Petition before this Court in W.P.No.39673 of 2006 and pursuant to the orders passed by this Court in the said writ petition, cancellation of sale deed was effected. The petitioner was not aware of the writ proceedings since in the said writ petition, the petitioner was not impleaded as respondent and no notice was served on him. Consequent to the cancellation of the sale deed, respondents 2 to 4 sold one of the properties to respondents 6 to 9. Aggrieved by the unilateral cancellation deed dated 9.10.2006, the petitioner has come forward with the present Writ Petition, seeking to quash the same.

4. A counter affidavit has been filed on behalf of the 1st respondent wherein, it has been stated that initially the

document filed by the owners of the property to cancel the sale deed was not accepted and rejection order was also passed by the 1st respondent, however, challenging the same, 3rd and 4th respondents filed a writ petition in W.P.No.39673 of 2006 wherein, the 1st respondent was made as a party, seeking to quash the rejection order and consequential direction to the 1st respondent to register the cancellation deed dated 9.10.2006. By order dated 19.10.2006, this Court allowed the Writ Petition and directed the 1st respondent to register the cancellation deed dated 9.10.2006. In such circumstances, in order to comply with the direction of this Court, the 1st respondent was constrained to register the deed of cancellation received by him on 02.11.2006. Therefore, according to the 1st respondent, he acted on direction of this Court and he had not exercised arbitrarily or in a fraudulent manner.

5. A counter affidavit has been filed on behalf of the 3rd respondent wherein, it has been stated that the 5th respondent misused the power deed executed in his favour by the respondents 2 to 4 since the sale deed executed in favour of the petitioner by the 5th respondent was out of fraud and collusion committed by the petitioner along with 5th respondent and after coming to know, the respondents 2 to 4 presented cancellation deed for registration and since the same was acceded by the 1st respondent, the respondents 3 and 4 were constrained to move this Court by way of Writ Petition in W.P.No.39673 of 2006 and this Court has rightly passed orders directing the 1st respondent to register the cancellation deed and accordingly, pursuant to the direction of this Court, 1st respondent registered the cancellation deed and therefore, the same need not to be interfered with.

6. Heard the learned counsel for the Petitioner and the learned Special Government Pleader for the First Respondent and perused the materials available on record.

7. The learned counsel appearing for the Petitioner would contended that having received the sale consideration for a sum of Rs. 20,00,000/- (Rupees Twenty Lakhs), the Respondents 2 to 4 have sold the said property in favour of the Petitioner through their Power of Attorney-the Fifth Respondent herein, and however subsequently behind back of the Petitioner, the Respondents 2 to 4 have unilaterally cancelled the Sale Deed dated 09.10.2006, which is nothing but an ingenious method adopted by them in nullifying valid and registered sale deed executed in favour of the Petitioner and this would amount to transgression of civil rights in an arbitrary and fundamental rights. He would also contend that the unilateral Cancellation by the Respondents 2 to 4 is contrary to law and affect the very fundamental right guaranteed under Article 21 of the Constitution of India to the Petitioner who is the purchaser of

the property.

8. The learned counsel would also contend that though at the first instance the Respondent-Sub Registrar was not inclined to register the document filed by the Respondents 2 to 4 to cancel the Sale Deed executed in favour of the Petitioner, in compliance of the order of this Court passed in W.P. No. 39673 of 2006, the First Respondent was constrained to register the Cancellation Deed presented by the Respondents 2 to 4 and it is without jurisdiction and is in violation of principles of natural justice and the same cannot be sustained.

9. Learned counsel appearing for the respondents 2 to 4 would contend that absolutely, the writ petition is not maintainable and the so-called Power of Attorney, 5th respondent misused the power deed executed in his favour by the respondents 2 to 4 since the sale deed executed in favour of the petitioner by the 5th respondent was out of fraud and collusion, which prompted the respondents to unilaterally cancel the same by presenting cancellation deed and that when it was presented, it is incumbent upon the 1st respondent to register the same and it is not within his realm to analyze the rights of the parties and investigate into the title or ascertain their interest while receiving and registering. The obligation of the Registrar is to register all the documents that are presented before him for registration and at first instance, when he refused, respondents 2 to 4 approached this Court and pursuant to the direction of this Court, the first respondent has registered the deed of cancellation and therefore, the same does not require to be interfered with.

10. It is not in dispute that the respondents 2 to 4 are the original owners and they executed a power of attorney in favour of 5th respondent, who in turn executed the registered sale deed in favour of the petitioner in respect of subject property and that a total sale consideration of Rs.20 lakhs have also been paid by the petitioner. While so, without knowledge of the petitioner, behind his back, the respondents 2 to 4 have unilaterally cancelled the sale deed by presenting the deed of cancellation before the 1st respondent. According to the respondents 2 to 4, their power of attorney and the petitioner have colluded each other and the sale deed came to be executed in favour of the petitioner, which is not valid one. It is pertinent to note that at the time of registration of the cancellation deed on 9.10.2006, the purchaser, i.e. the petitioner was not present before the 1st respondent. In fact, G.O.Ms.No.150 Commercial Taxes Department dated 22.9.2000 was issued by the Government of Tamil Nadu declaring the registration of certain documents which were notified in the Appendix attached to the said G.O. was opposed to public policy and accordingly, directed the Registering Officers not to

register those documents which are opposed to public policy and once such document as found in Clause (3) of the Appendix is that "cancellation of sale deeds without the express consent of the parties to the documents". The above said G.O. was in force when the deed of cancellation was presented for registration on 9.10.2006 before the first respondent. In fact, based on the said G.O., the first respondent at first instance refused to register the deed of cancellation, however, he was constrained to register the same in obedience to the direction issued by this Court in W.P.No.39673 of 2006. It is also pertinent to note that as against their Power of Attorney, 5th respondent, respondents 2 to 4 have not proceeded against him when according to them, he misused the power of attorney and colluded with the petitioner. Further, Section 32-A of the Indian Registration Act providing that all such deeds shall be signed by the vendor as well as the purchaser and the same shall also bear the finger prints and photographs and Section 34 of the Act also needs a reference, whereby the Registering Authority is mandated to hold an enquiry in respect of the validity of the document presented for registration. Therefore, as per these provisions, a registered sale deed if sought to be cancelled, registration of such deed must be at the instance of both the parties, viz., bilaterally and not unilaterally. In this case, admittedly, the respondents 2 to 4 had unilaterally cancelled the registered sale deed executed by their power of attorney. It is well settled that a sale is essential an executed contract between two parties on mutually agreed conditions and such contract cannot be unilaterally rescinded, particularly in case of sale deed and by virtue of Section 62 of the Indian Contract Act, 1872, any novation, rescission and alteration of contract must be only bilaterally. In this regard, it worthwhile to refer a decision of a Full Bench of this Court reported in "2011 (2) CTC 1 (Latif Estate Line India Ltd., rep. by its Managing Director, Mr.Habib Abdul Latif versus Haddadja Ammal and others), wherein, the Full Bench of this Court while dealing with similar issue as regards whether once a sale is made absolute by transfer of ownership of the property from the vendor to the purchase, such transfer can be annulled or cancelled by vendor by executing a Deed of Cancellation, it has been held in paragraphs 48, 58 and 59 which are extracted as under:

"48. Section 54 of the Transfer of Property Act defined the word Sale, which means transfer of ownership by one person to another. In other words, sale is transfer of all rights, title and interest in the properties which are possessed by the transferor to another person namely, the purchaser. In case of transfer by way of sale, the transferor cannot retain any part of his interest or right in that property. Such transfer of ownership must be for a price paid or promised or part-paid and part-promised. Even if the whole

price is not paid, but the document is executed and registered, the sale would be complete. The transfer is complete and effective upon the completion of the registration of the sale deed. Once the vendor is divested himself of his ownership of the property, then he retains no control or right over the said property.

"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.

11. For the foregoing reasons, the Writ Petition stands allowed. The cancellation Deed dated 09.10.2009 executed by the respondents 2 to 4 and registered as Document No.6165/2006 on the file of the first respondent is hereby quashed. However, liberty is granted to the subsequent purchasers, viz., respondents 6 to 9 to workout their remedy against respondents 2 to 4 in the manner known to law before appropriate forum. No costs. Consequently, connected MPs are closed.

Sd/-

Assistant Registrar (CS-III)

//True Copy//

Sub Assistant Registrar

arb

To

1. The Sub-Registrar,
Office of the Sub-Registrar,
Ganapathi,
Coimbatore - 641 006.

+1cc to Mr.Shyam Sundar, Advocate, S.R.No. 95886
+2cc to Mr.R.Nagasundaram, Advocate, S.R.No.96727
+1cc to the Government Pleader, S.R.No. 96090

W.P. No. 8230 of 2009
and

M.P. Nos. 2 & 3 of 2009

WEB COPY

GP(CO)
GN(11/12/2019)