

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.08.2019

CORAM

THE HON'BLE MR.JUSTICE P.D.AUDIKESSAVALU

W.P. No. 5498 of 2019

E. Ganapathy

... Petitioner

-Vs-

1. The Inspector General of Registration,
Registration Head Office,
Santhome, Chennai- 28.
2. The District Registrar,
Registration Office, Kallakurichi,
Villupuram District.
3. The Sub-Registrar,
Sub-Registration Office,
Kallakurichi,
Villupuram District.
4. Radhakrishnan ... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Mandamus, directing the Second and Third Respondents to consider the Petitioner's representation dated 14.12.2018 consequently direct the Second and Third Respondents to cancel the settlement deed of cancellation vide Doc. No. 2792/2009 and Will Doc. No. 3 of 2010.

For Petitioner : Mr. S.N. Subramani

For Respondents : Mr. T.M.Pappiah for R1 to R3,
Special Government Pleader
Mr. B. Mohan for R4

O R D E R

Heard Mr. S.N. Subramani, Learned Counsel for the Petitioner, Mr. T.M. Pappiah, Learned Special Government Pleader appearing for the First to Third Respondents and Mr. B. Mohan, Learned Counsel appearing for the Fourth Respondent and perused

the materials placed on record, apart from the pleadings of the parties.

2. The Writ Petition has been filed for a direction to the Second and Third Respondents to consider the representation dated 14.12.2018 made by the Petitioner and consequently direct the Second and Third Respondents to cancel the settlement deed of cancellation bearing Document No. 2792/2009 and will Document No. 3 of 2010.

3. Having regard to the aforesaid relief sought by the Petitioner in the representation dated 14.12.2018 for disposal of which direction is claimed, the question that arises for examination is whether the Second and Third Respondents are empowered by any law to cancel registration of documents.

4. In this regard, reference may be made to the decision of the Hon'ble Supreme Court of India in Satya Pal Anand -vs- State of Madhya Pradesh [(2016) 10 SCC 767], in which it has been held as follows:-

"40.At the same time, once the document is registered, it is not open to the Registering Officer to cancel that registration even if his attention is invited to some irregularity committed during the registration of the document. The aggrieved party can challenge the registration and validity of the document before the Civil Court...."

5. The Full Bench of this Court in M/s. Latif Estate Line India Ltd. -vs- Hadeeja Ammal [(2011) 2 CTC 1 (FB)], has held that there is no provision in the Transfer of Property Act, 1882, or in the Registration Act, 1908, which deals with the cancellation of deed of sale and that the provision relating to cancellation of document is provided in Section 31 of the Specific Relief Act, 1963, which reads as follows:-

"31. When cancellation may be ordered:-

(1) Any person against whom a written instrument is void or voidable, and who has reasonable apprehension that such instrument, if left outstanding may cause him serious injury, may sue to have it adjudged void or voidable; and the court may, in its discretion, so adjudge it and order it to be delivered up and cancelled.

(2) If the instrument has been registered under the Indian Registration Act, 1908 (16 of 1908), the court shall also send a copy of its decree to the officer in whose office the instrument has been so registered; and such officer shall note on the copy of the instrument contained in his books the fact of its

cancellation."

In the aforesaid decision, it has been held that three conditions are required for exercise of jurisdiction to cancel an instrument, which are the following:-

- "(1) An instrument is avoidable against the plaintiff;
- (2) The plaintiff may reasonably apprehend serious injury by the instrument being left or outstanding; and
- (3) In the circumstances of the case, the Court considers it proper to grant this relief of preventive justice."

6. The earlier Full Bench of this Court in Muppudathi Pillai -vs- Krishnaswami Pillai (AIR 1960 Madras 1) while considering Section 39 of the Specific Relief Act, 1877 (corresponding to Section 31 of the Specific Relief Act, 1963), has held as follows:-

"12. The principle is that such document though not necessary to be set aside may, if left outstanding, be a source of potential mischief. The jurisdiction under Section 39 is, therefore, a protective or a preventive one. It is not confined to a case of fraud, mistake, undue influence, etc. and as it has been stated it was to prevent a document to remain as a menace and danger to the party against whom under different circumstances it might have operated. A party against whom a claim under a document might be made is not bound to wait till the document is used against him. If that were so he might be in a disadvantageous position if the impugned document is sought to be used after the evidence attending its execution has disappeared. Section 39 embodies the principle by which he is allowed to anticipate the danger and institute a suit to cancel the document and to deliver it up to him. The principle of the relief is the same as in quia timet actions."

The Division Bench of this Court in P. Rukamani -vs- Amudhavalli (Judgment dated 17.07.2019 in W.A. No. 229 of 2018), has observed as follows:-

"9. Considering the submissions made at the bar, we are of the clear opinion that in a case relating to execution of a conveyance deed or a sale deed or cancellation thereof, if there is any dispute about the rights of the parties involved therein, the only appropriate remedy for the parties is to approach the Civil Court by way of civil suit. The act of

registration of a document is a consequential act which will be subject to decree of Civil Court in case such a dispute arises.

10. We are of the clear opinion that such a relief could not have been sought or granted in Writ Jurisdiction under Article 226 of the Constitution of India. The civil rights of the parties based on relevant evidence can only be determined by a Civil Court by a competent Civil Court and not by the writ Court under Article 226 of the Constitution of India. Such private rights of the parties cannot be made a subject matter of writ jurisdiction. The writ petitions under Article 226 of the Constitution of India lie only against the State or instrumentality of the State as defined under Article 12 of the Constitution of India. Therefore, such determination of private civil rights of the parties cannot be made subject matter of writ petition."

7. On a conspectus of the aforesaid binding decisions viz-a-viz statutory provisions, the following legal position would emerge:-

- (i) it is not open to the Registering Authority to cancel the registration of a document which has already taken place, even if there is some irregularity committed during the registration of the document;
- (ii) the aggrieved party has to challenge the validity and registration of the document before the jurisdictional Civil Court invoking Section 31 of the Specific Relief Act, 1963; and
- (iii) if the jurisdictional Civil Court finds in such suit instituted that the registered instrument is void, it shall send a copy of that decree to the Registering Authority, who shall note on the copy of the instrument contained in its books the fact of its cancellation.

8. In this context, reference may be made to the dictum laid down by the Hon'ble Supreme Court of India in Director of Settlements, A.P. -vs- M.R. Apparao [(2002) 4 SCC 638], in which it has been held as follows:-

"17.One of the conditions for exercising power under Article 226 for issuance of a mandamus is that the Court must come to the conclusion that the aggrieved person has a legal right, which entitles him to any of the rights and that such right has been infringed. In other words, existence of a legal right of a citizen and performance of any corresponding legal duty by the State or any public authority, could be enforced by issuance of a writ of mandamus. "Mandamus" means a command. It differs from the writs

of prohibition or certiorari in its demand for some activity on the part of the body or person to whom it is addressed. Mandamus is a command issued to direct any person, corporation, inferior courts or Government, requiring him or them to do some particular thing therein specified which appertains to his or their office and is in the nature of a public duty. A mandamus is available against any public authority including administrative and local bodies, and it would lie to any person who is under a duty imposed by a statute or by the common law to do a particular act. In order to obtain a writ or order in the nature of mandamus, the applicant has to satisfy that he has a legal right to the performance of a legal duty by the party against whom the mandamus is sought and such right must be subsisting on the date of the petition (Kalyan Singhv. State of U.P. [AIR 1962 SC 1183]). The duty that may be enjoined by mandamus may be one imposed by the Constitution, a statute, common law or by rules or orders having the force of law...."

As the Petitioner has not established any legal right to require the Second and Third Respondents to dispose his representation dated 14.12.2018, it would obviously mean that the relief sought by the Petitioner in the Writ Petition could not be granted and that his remedy for the same is elsewhere as set out supra.

9. Accordingly, the Writ Petition is dismissed. It is made clear that no view has been expressed by this Court on the correctness or entitlement on the merits of the claim made by the Petitioner. No costs.

Sd/-

Assistant Registrar (Insp Cell)

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सत्यमेव जयते

Sub Assistant Registrar

vji

To

1. The Inspector General of Registration,
Registration Head Office,
Santhome, Chennai- 28.
2. The District Registrar,
Registration Office, Kallakurichi,
Villupuram District.

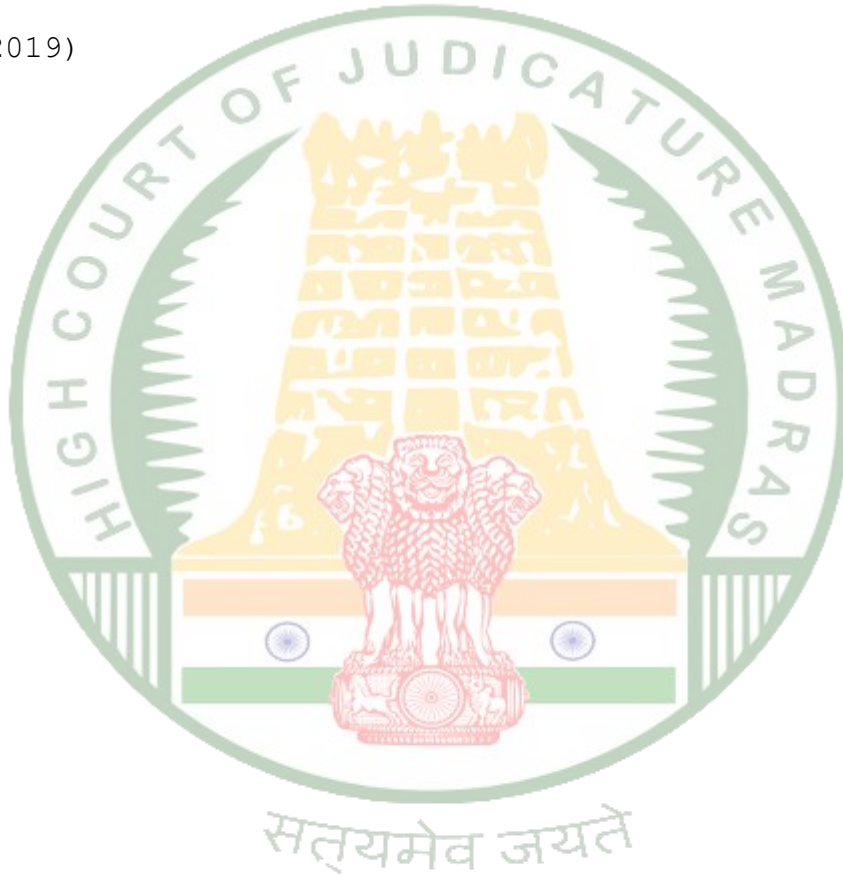
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3. The Sub-Registrar,
Sub-Registration Office,
Kallakurichi, Villupuram District.

+1cc to Mr.B.Mohan, Advocate, S.R.No. 70807
+1cc to Mr.S.N.Subramanian, Advocate, S.R.No. 70351
+1cc to the Government Pleader, S.R.No. 70844

W.P. No. 5498 of 2019

SSI (CO)
GN(30/09/2019)



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