

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.03.2019

CORAM

THE HONOURABLE MR. JUSTICE T.RAJA

W.P.No.7525 of 2019

N.Moorthy

...Petitioner

Versus

1. The Inspector General of Registration,
Santhome High Road,
Santhome, Chennai-28.
2. The Registrar,
Tindivanam Registrar Office,
Tindivanam.
3. The Sub-Registrar,
Office of S.R.O.,
Gingee,
Villuaram District.

... Respondents

Prayer: Writ petition is filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus, directing the 1st respondent to direct the respondents 2 and 3 herein to cancel the Sale Deed Document No.2194/2007 dated 17.9.2007 and another Document No.323/2011 dated 14.2.2011 with regard to Survey No.4/6A3 at Jayamkondan Village, Gingee Taluk registered in the Office of the 3rd respondent herein.

For Petitioner
For Respondents

: Mr.V.K.Rajagopalan
: Mr.T.M.Pappiah,
Spl. Govt. Pleader

ORDER

The present Writ Petition has been filed seeking to issue a Writ of Mandamus, directing the 1st respondent to direct the respondents 2 and 3 herein to cancel the Sale Deed Document No.2194/2007 dated 17.9.2007 and another Document No.323/2011 dated 14.2.2011 with regard to Survey No.4/6A3 at Jayamkondan Village, Gingee Taluk registered in the Office of the 3rd respondent herein.

2. Heard the learned Counsel appearing for the petitioner and the learned Special Government Pleader appearing for the respondents.

3. The prayer in the Writ Petition is neither permissible in law nor maintainable in view of the ratio laid down by the Supreme Court in a reported judgment in **(2016) 10 Supreme Court Cases 767** in **Satya Pal Anand vs. State of Madhya Pradesh and others** wherein it is held that the power conferred on the Registrar by virtue of Section 68 of the Registration Act cannot be invoked to cancel the registration of documents already registered. It is further held that High Court in exercise of jurisdiction under Article 226 of the Constitution of India, cannot foreclose issues involving disputed questions of fact and germane for adjudication by competent forum under Section 64 of Co-operative Societies Act, 1960. That apart, a Full Bench of our High Court in its reported judgment in **2011(2) CTC**

1 in **Latif Estate Line India Limited rep. by its Managing Director Mr.Habiv Abdul Latif, No.14 Temple Road, Secretariat Colony, Kilpauk, Chennai-10 vs. Hadeeja Ammal and two others** 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 into the transferor by execution and registration of a Deed of Cancellation even with the consent of the parties. The proper course would be to reconvey 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 case, 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, in the light of paragraph 59(ii) of the Full Bench decision of this Court cited above, the Writ Petition stands dismissed leaving it open to the parties to work out their remedy in the manner known to law. Consequently, the representation of the petitioner dated 27.11.2018 to the respondents is also rejected. No costs.

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Index:Yes/No
Internet:Yes/No
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To

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Santhome, Chennai-28.
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**T.RAJA, J.
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