



246/1 of Kalapatti Village Gandhipuram Sub-Registration District and Coimbatore Registration District.

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For Appellants : Mr. P.Saravana Sowmiyan
For RR 1 to 3 : Mr. M.Sriram
For R4 : Mr.T.M.Pappaiah
Special Government Pleader

J U D G M E N T
(Delivered by DR.VINEET KOTHARI, J)

This Appeal has been filed by the appellants P.Rukumani, P.Rangasamy, P.Velusamy and P.Maruthachalam aggrieved by the Order of the learned Single Judge dated 07.09.2017 in W.P.No. 6329 of 2009 filed by one Amudhavalli, Manonmani and H.Jayakumar against the Sub Registrar, Coimbatore and the present four appellants and also against K.Pandian, husband of respondent No.1 Amudhavalli and D.Saravanan, the subsequent purchaser and R.Balasubramaniam, subsequent agreement holder of D.Saravanan.

2. The Writ Petition was filed by Amudhavalli, Manonmani, H.Jayakumar, seeking cancellation of cancellation Deed dated 25.09.2007 by which the Sale Deed dated 09.03.2005 in favour of the respondents on the ground that the respondent No. 5 K.Pandian, husband of Amudhavalli, had misused the Power of Attorney given to him by the present Appellants and he executed the Sale Deed in question on 09.03.2005 in favour of his own wife Amudhavalli and two others. The said sale deed dated 09.03.2005 was therefore cancelled by them on 20th September 2007. The said Cancellation Deed was offered for registration before the Sub Registrar, Coimbatore and was also registered. This registration was challenged by the writ petitioners Amudhavalli and two others before the learned Single Judge. The learned Single Judge allowed the Writ Petition filed by the said writ petitioners with the following observations:-

"26. The only remedy is for the purchaser to re-convey the land purchased by them. If the purchaser fails to re-convey the property to the seller or the owner, the remedy to the owner is to knock at the doors of the Civil Court. The contention of respondents 2 to 5 that the Writ Petition is not maintainable may not be correct, as it is an admitted position that a Deed of Cancellation was made



5. Per contra, the learned counsel appearing for the respondents 1 to 3 Mr.M.Sriram relied upon the Full Bench decision of this Court in the case of Latif Estate Line India Ltd., Vs. Hadeeja Ammal and others reported in 2011 (2) CTC 1 wherein the Full Bench of this Court held as under:-

"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.



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60. Having regard to the conclusions arrived at as aforesaid, the questions referred are answered accordingly. The appeals are referred back to the concerned Court for deciding the case on merits."

[Emphasis supplied]

6. We have heard the learned counsels at length.

7. The Hon'ble Supreme Court in *Satya Pal Anand Vs. State of Madhya Pradesh and Others* (supra) in paragraph No. 40 held as under:-

"The Andhra Pradesh High Court, in the case of *Yanala Malleshwari* was called upon to consider whether a person can nullify the sale by executing and registering a cancellation deed and whether the Registering Officer like District Registrar and/or Sub-Registrar appointed by the State Government is bound to refuse registration when a cancellation deed is presented. The fact remains that if the stipulation contained in Sections 17 and 18 of the Act of 1908 are fulfilled, the Registering Officer is bound to register the document. The Registering Officer can refuse to register a document only in situations mentioned in Sections such as 19 to 22, 32 and 35. 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. The majority view of the Full Bench was that if a person is aggrieved by the Extinguishment Deed or its registration, his remedy is to seek appropriate relief in the Civil Court and a Writ Petition is not the proper remedy. "

8. It was also stated at the bar that a civil suit, namely, O.S.No. 142 of 2008 has already been filed by the present Appellants P.Rukumani and others seeking the cancellation of the said sale deed dated 09.03.2005 which was later on cancelled by the another cancellation deed dated



20.09.2007 against the present respondents Amudhavalli and others, who have been arrayed as defendants and the said civil suit is pending trial in the Court of III Additional Sub Court, Coimbatore.

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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 the 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.

11. The act of the Sub Registrar in such cases will naturally depend upon the determination of the rights of the respective parties once adjudicated by the competent civil Court and therefore prematurely also such writ jurisdiction cannot be invoked, against Sub Registrar.

12. The Judgment of the Full Bench in Latif Estate Line India Ltd., (supra) relied by the learned counsel for the respondents 1 to 3 Mr. M.Sriram, vide paragraph No. 59 quoted above, has not laid down that in such cases Writ Jurisdiction can be invoked or is an appropriate remedy to be invoked. On the contrary, Clause (iv) of Paragraph 59 quoted above clearly stipulates that the complete and absolute sale can be cancelled at the instance of the transferor only by taking course by way of civil Court by obtaining decree of cancellation of sale deed on the ground of fraud or other valid reasons. This Judgment of the Full Bench, with great respects, strengthens the view which we have taken above.

13. On the contrary, the Judgment relied by the learned counsel for the appellants in the case of Satya Pal Anand Vs.



State of Madhya Pradesh and Others (supra) in paragraph No. 40 again clearly stipulates the view that aggrieved party in such cases can approach only the civil Court. Therefore, we are of the clear and fortified view that the Writ Petition in this case by the respondents/writ petitioners was a misconceived remedy and prematurely invoked by them seeking the cancellation of the Cancellation Deed dated 20th September 2007 and the learned Single Judge has erred, with great respects, in granting that relief.

14. Therefore, in our opinion, the present Writ Appeal deserves to be allowed and the same is accordingly allowed and the order of the learned Single Judge dated 07.09.2017 is set aside. No costs.

Sd/-

Assistant Registrar (CS-III)

//True Copy//

Sub Assistant Registrar

vsg

To

The Sub-Registrar
Office of the Sub-Registrar
Gandhipuram
Coimbatore.

+lcc to Mr.Sriram, Advocate, S.R.No. 60553
+lcc to Mr.Saravana Sowmiyan, Advocate, S.R.No. 60626
+lcc to the Government Pleader, S.R.No. 61904

W.A.No. 229 of 2018

MG (CO)
GN (08/08/2019)