

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.04.2019

CORAM

THE HONOURABLE Mrs. JUSTICE PUSHPA SATHYANARAYANA

W.P.Nos.3620 and 3621 of 2016

K.Umadevi .. Petitioner in
W.P.No.3620/2016

P.Karthikeyan .. Petitioner in
W.P.No.3621/2016

Vs.

1. The Sub Registrar,
Office of the Sub Registrar,
Uthangarai Taluk,
Krishnagiri District.
2. The District Registrar,
Office of the District Registrar,
Uthangarai Taluk,
Krishnagiri District.
3. G.Vimala .. Respondents in both the W.Ps.

* * *

Prayer : Writ Petitions filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus calling for the records of the first respondent in his proceedings Ref.Nos.289-2/2015 and 289-1/2015 respectively to quash the impugned orders dated 27.11.2015 and consequently direct the first respondent to register the pending document Nos.P-11 and P-10, dated 26.07.2013 presented before him on 26.04.2013.

* * *

For Petitioner in : Mr.M.Balasubramanian
both W.Ps.

For Respondents : Mr.T.M.Pappiah,
in both W.Ps. Special Govt. Pleader for RR 1 and

2

Mr.R.Srinivasan for R3

C O M M O N O R D E R

The writ petitioners, who are the purchasers of the property, aggrieved by the orders of refusal to register the documents of sale, have filed the above writ petitions.

2. The property originally belonged to one Rathinam @ Gurusamy. He had settled the same in favour of his daughter, Vimala, who is the third respondent, by way of an Irrevocable Settlement Deed dated 11.02.2009, which is registered as Document No.515/2009. The Settlement Deed was also signed by the mother and the sister of the third respondent as witnesses. After the settlement deed, the third respondent had mutated the revenue records and obtained patta in her name. The third respondent also availed a loan from the State Bank of India, Uthangarai Branch, by executing an equitable mortgage on 19.08.2009. When she was unable to clear the dues to the Bank, she offered to sell the property to the petitioners. Accordingly, the third respondent sold the property in favour of the petitioners on 26.04.2013, by executing the sale deeds, which were pending before the first respondent, as pending Documents No.11 and 10 of 2013 respectively.

3. While so, the sale deeds were rejected on 26.07.2013 by the first respondent by merely stating "Registration Refused". The first respondent had written the reasons for refusal in the original sale deeds themselves on 26.07.2013 and also served a copy of the impugned proceedings in Se.Mu.No.P.11/2013. The reason given in the orders of refusal to register is that the third respondent's father had unilaterally cancelled the settlement given in her favour by a registered document dated 23.12.2012 in Document No.936/2012. Appeal Nos.2 and 3 of 2013 were filed by the petitioners before the District Registrar under Section 72 of the Registration Act, 1908, stating that the impugned orders passed by the first respondent are in violation of the principles of natural justice. The District Registrar also confirmed the orders of the first respondent without independent application of mind and dismissed the appeals on 11.10.2013.

4. Aggrieved against the order, the petitioners had preferred W.P.Nos.30203 and 30204 of 2013 and this Court by order dated 22.07.2015 allowed the writ petitions and set aside the orders of the official respondents and directed the first respondent to conduct an enquiry and after affording an opportunity to all the parties shall pass

suitable orders. Accordingly, the first respondent, after giving sufficient notice and opportunity to the petitioners and others, conducted an enquiry and passed the orders impugned herein on 27.11.2015.

5. Heard the learned counsel on either side and perused the materials placed before this Court.

6. A reading of the impugned orders show that notices were issued to all the parties concerned including the other heirs of the original owner Rathinam @ Gurusamy and after due enquiry, considering all the evidence and documents concerned, the same were passed. The third respondent, who is the vendor of the petitioners, had also appeared before the authorities and deposed that her father executed the settlement deed on 11.02.2009, based on which, she had obtained patta in her name in Patta No.743. Even as per the revenue records and the certificate of the Village Administrative Officer, the Adangal is in the name of the third respondent. As stated earlier, she had paid the taxes for the property and mortgaged the same with the SBI. The above act only means that the settlement deed executed by the Rathinam @ Gurusamy was accepted and acted upon by the third respondent in the manner known to law as mentioned above.

7. The evidence of the other legal heirs of the owner Rathinam @ Gurusamy, namely, his wife Vijayam and another daughter Valarmathi, shows that they have unanimously stated that for the purpose of maintenance, they had taken Rs.3,00,000/- from the third respondent and executed the settlement document in favour of the third respondent. Based on the above evidence and the documents, the first respondent has held that after the settlement deed was acted upon, the same was unilaterally cancelled by the said Rathinam @ Gurusamy after a lapse of four years which is bad and illegal. Further, in the orders impugned, it is held that after the alleged cancellation of the settlement deed document, which itself is not sustainable in the eye of law, the father of the third respondent had executed the sale agreement in Document No.1000/2012, which is also registered before the first respondent, and the same is also not sustainable. However, the first respondent had refused to register the sale deeds based on the Circular No.18223/C1/2013-3, dated 08.11.2013.

8. Though in normal circumstances, against the order of the first respondent, an appeal is contemplated under Section 72 of the Registration Act, 1908, the petitioners have chosen to come before this Court challenging the same

on the ground that the first respondent failed to exercise its power as a quasi-judicial authority, despite the fact that the documents presented for registration are in order.

9. In the conspectus of the matter, it would be relevant to advert to the decision of the Full Bench of this Court in *Latif Estate Line India Ltd V. Hadeeja Ammal*, 2011 (2) CTC 1, wherein, it is held that unilateral execution of cancellation of any document cannot annul the registered deed duly executed by the same person and such act of unilateral cancellation is opposed to public policy. Paragraph 59 of the said judgment reads 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 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."

10. It is not denied by the third respondent or her

siblings or even her mother that the father Rathinam @ Gurusamy intended to settle the property in favour of the third respondent and accordingly, it was settled. Thereafter, the same was sought to be cancelled by the father to enter into an agreement for sale with some third parties. However, the third respondent had, in the meanwhile, executed the sale deeds in favour of the petitioners for a valid consideration and only the registration of the same is pending. When the first respondent has found that the unilateral cancellation as well as the sale agreement are bad in the eye of the law, he had no impediment in registering the document and ought to have registered the same. But erroneously passed the impugned orders.

11. It is stated that the settlor Rathinam @ Gurusamy also died on 27.12.2014. The first respondent has found that the unilateral cancellation is bad and as per the direction of the Full Bench any reversal should be only by reconveying the property by a deed of conveyance of the settlee. As the settlor himself is no more and the settlement deed executed by the settlor in favour of the settlee is found to be valid, there is no impediment to register the sale deeds presented before the registering authority pending in document Nos.11 and 10 of 2013.

12. At this juncture it is relevant to note that the Hon'ble Apex Court in Abdul Razak V. Mangesh Rajaram Wagle, (2010) 2 SCC 432, after placing reliance on its often quoted judgment in Surya Dev Rai V. Ram Chander Rai, (2003) 6 SCC 675, held as follows :

"23. If the petition filed by Respondents 1 and 2 was under Article 227 of the Constitution of India, then the learned Single Judge should have taken note of the often quoted judgment in Surya Dev Rai v. Ram Chander Rai [(2003) 6 SCC 675], in which a two-Judge Bench, after threadbare analysis of Articles 226 or 227 of the Constitution and considering a large number of judicial precedents on the subject, recorded the following conclusions:

.....
(3) Certiorari, under Article 226 of the Constitution, is issued for correcting gross errors of jurisdiction i.e. when a subordinate court is found to have acted (i) without jurisdiction-by assuming jurisdiction where there exists none, or (ii) in excess of its jurisdiction-by overstepping or crossing the limits of jurisdiction, or (iii) acting in

flagrant disregard of law or the rules of procedure or acting in violation of principles of natural justice where there is no procedure specified, and thereby occasioning failure of justice.

.....

(7) The power to issue a writ of certiorari and the supervisory jurisdiction are to be exercised sparingly and only in appropriate cases where the judicial conscience of the High Court dictates it to act lest a gross failure of justice or grave injustice should occasion. Care, caution and circumspection need to be exercised, when any of the abovesaid two jurisdictions is sought to be invoked during the pendency of any suit or proceedings in a subordinate court and the error though calling for correction is yet capable of being corrected at the conclusion of the proceedings in an appeal or revision preferred thereagainst and entertaining a petition invoking certiorari or supervisory jurisdiction of the High Court would obstruct the smooth flow and/or early disposal of the suit or proceedings. The High Court may feel inclined to intervene where the error is such, as, if not corrected at that very moment, may become incapable of correction at a later stage and refusal to intervene would result in travesty of justice or where such refusal itself would result in prolonging of the lis.”

(emphasis supplied)

13. As indicated in the above pronouncement of the Hon'ble Supreme Court directing the petitioner to go for an appeal under Section 72 of the Registration Act, 1908, before the District Registrar would only result in prolonging the agony of the petitioner, as the order passed by the first respondent is correct in so far as the findings are concerned and only coming to the executing act of registering the document alone, he failed to exercise his quasi-judicial authority. Hence, in line with the above conclusions of the Hon'ble Supreme Court, this Court is inclined to interfere with the impugned orders.

14. Accordingly, the impugned orders of the first respondent are set aside. Consequently, the first respondent is directed to register the sale deeds dated 26.04.2013 pending as Document Nos.11 and 10/2013 and the third respondent is directed to extend co-operation in

executing the sale deeds. The said exercise shall be completed within a period of six weeks from the date of receipt of a copy of this order.

15. These writ petitions are allowed to the extent indicated above. There will be no order as to costs.

Sd/-

Assistant Registrar(CS vi)

//True Copy//

Sub Assistant Registrar

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To

1. The Sub Registrar,
Office of the Sub Registrar,
Uthangarai Taluk,
Krishnagiri District.
2. The District Registrar,
Office of the District Registrar,
Uthangarai Taluk,
Krishnagiri District.

+1cc to Mr.R.Srinivasan,Advocate SR.No. 32373

+2ccs to Mr.M.Balasubramanian , Advocate SR.No. 32372

W.P.Nos.3620 and 3621 of 2016

kan (CO)

A.SK(24/04/2019)

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