

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 12.09.2019

Coram:

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

Writ Petition No.25126 of 2019

S.G.Nayaz

.. Petitioner

/versus/

1.Joint Sub Registrar,
Hosur.

2.B.Shaik JeelanBasha

... Respondents

Writ Petition filed under Article 226 of Constitution of India praying to issue a Writ of Mandamus directing the 1st respondent to consider the petitioner representation dated 20.05.2019.

For Petitioner :Mr.K.Venkatasubban

For Respondent :Mr.T.M.Pappiah, Spl.GP for R1

O R D E R

By consent, the main writ petition is taken up for final disposal at the admission stage itself.

2. Heard Mr.K.Venkatasubban, learned counsel appearing for the petitioner and Mr.T.M.Pappiah, learned Special Government Pleader, who takes notice on behalf of the first respondent.

3. The prayer in the writ petition is to issue a Writ of Mandamus directing the 1st respondent to consider the petitioner representation dated 20.05.2019.

4. The petitioner claims that he entered into a sale agreement in respect of the property owned by him with the second respondent on 01.04.2013. The said sale agreement was registered on 28.09.2011. However, the contention of the petitioner is that it was infact not an agreement to sell, but only an encumbrance to the loan secured by him and the document was registered. He has sent a legal notice to the second respondent calling upon him to take necessary steps to remove

the entry made in the encumbrance register by cancelling the sale agreement and hand over the original sale agreement. Hence, he has given a representation dated 20.05.2019 to the first respondent requesting him to pass an order removing the entry pertaining to the document No.5184 of 2013 dated 01.04.2013 from the encumbrance register maintained by him.

5. The contention of the petitioner is that since the intention of the petitioner was not to alienate the property but only created the encumbrance for the loan secured. After discharge of the loan, the second respondent has no right to enforce the sale agreement. Furthermore, the second respondent gave a complaint on 14.06.2014, which was tried by the Judicial Magistrate No.II, Krishnagiri in C.C.No.115 of 2016 and the case was dismissed on 11.09.2017. Since the criminal case tried against him under Sections 420, 294(b), 506(i) of the Indian Penal Code is dismissed, the second respondent is bound to delete the encumbrance of the property created, in view of the alleged sale agreement.

6. The claim of the petitioner seeking Mandamus is not sustainable since the petitioner under law can have no right to delete the encumbrance based on the representation. The cancellation of the document has to be done in the manner known to law and not by mere representation. Any registered document to be modified or altered or cancelled under the Registration Act, it has to be done by the Registering Authority through a written deed. The petitioner has no right to seek cancellation of a registered deed otherwise than procedure under law. Hence, the writ petition is dismissed. The petitioner has to work out his remedy in the manner known to law as per the Registration Act. No costs.

Sd/-

Assistant Registrar(CO)

//True copy//

Sub Assistant Registrar

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To:

The Joint Sub Registrar, Hosur.

+1cc to M/s.Sarvabauman Associates, Advocate SR.No.78375

+1cc to Government Pleader SR.No.79354

W.P.No.25126 of 2019

PA (CO)

GMV (25/10/2019)