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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 27.03.2019

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THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM

and

THE HONOURABLE MRS.JUSTICE R.THARANI

W.A.(MD)No.358 of 2015
and M.P.(MD)Nos.2 and 3 of 2015

V.R.G.Palanikumar

... Appellant/Petitioner

Vs.

1.The District Registrar (Administration),
District Registrar Office,
Madurai North, Madurai.

2.K.Ramasamy

... Respondents/Respondents

Prayer:- Writ Appeal is filed under Clause 15 of Letters Patent against the order of this Court in W.P.(MD).No.14970 of 2013, dated 13.08.2014.

Prayer in WP(MD). 14970/ 2013 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari calling for the records of the 1st respondent in is proceedings No. 3069/aa1/2012 dated 04/10/2012 and quash the same as illegal and pass such other relief the Honourable Court may deem fit and proper in the nature and circumstances of the case and thus render justice.

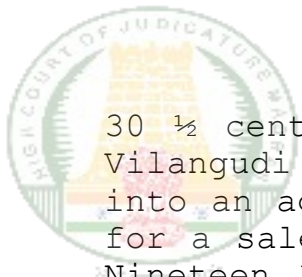
For Appellant : Mr.J.B.Bharathan
For Respondents : Mr.M.Murugan for R1
Government Advocate
Mr.G.Mohan Kumar for R2

J U D G M E N T

(Judgment of the Court was delivered by **K.KALYANASUNDARAM, J.**)

This writ appeal is directed against the order of the learned single Judge passed in W.P.(MD).No.14970 of 2013, dated 13.08.2014.

2.The writ petitioner is the appellant herein. The writ petition was filed challenging the order of the first respondent cancelling the sale agreement entered into between the appellant and one Dr.S.Shanmugam. According to the appellant, Dr.S.Shanmugam was the owner of the property in S.No.205/1 measuring an extent of



30 ½ cents and R.S.No.205/2, measuring an extent of 20 cents in Vilangudi Village, Madurai Taluk, Madurai District, and he entered into an agreement with the appellant agreeing to sell the property for a sale consideration of Rs.1,19,00,000/- (Rupees One Crore and Nineteen Lakhs) and he also received an advance of Rs.6,00,000/- (Rupees Six Lakhs).

3.It seems that the second respondent herein approached the first respondent to cancel the sale agreement contending that the property was originally owned by Dr.S.Shanmugam and he sold the property in favour of the Partnership firm namely M/s.Abyambigai Dyes and Chemicals Company, by a sale deed, dated 06.12.1976, in which he was one of the partners and on 30.09.1977, he retired from the partnership and hence, he has no right to enter into sale agreement with the appellant.

4.The District Registrar, after considering the rival contentions cancelled the sale agreement. Challenging the same, the appellant filed the writ petition and the writ petition came to be dismissed by observing as follows:

"8.After hearing the learned counsels for the parties and perusing the materials placed on record, it is seen that the sale deed executed by Dr.S.Shanmugam, during 1976, has not been disputed nor challenged. A faint plea was raised that though the document was registered, it was not acted upon. The sale deed, dated 06.12.1976, being a registered instrument, it is deemed that the sale has been effected in a proper manner. The onus is on the person, who claims that the sale deed has not been acted upon, by producing necessary evidence in that regard and contend that though the document was registered, it was not given effect to. But, nothing is placed on record by the petitioner to that effect. From the facts narrated, which could be culled out from the records, placed before this Court, it is seen that between 1976 and 2007, the firm has been reconstituted several times, the new name of the firm M/s.Kwality Dyes and Chemicals has been mutated in the revenue records and reconstitution has been recorded by the Registrar of Firms. Therefore, on the date when the sale agreement was executed in favour of the petitioner on 07.10.2010, it should be established that the petitioner's vendor had a saleable interest in the property. This has not been established and admittedly on the said date Dr.S.Shanmugam had no saleable interest in the property, since he had already executed a sale deed in favour of the firm way back during 1976. In such circumstances, the manner in which the first



respondent has analyzed the entire facts is perfectly justified and there is no error in the decision making process."

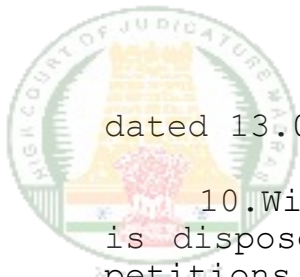
5.Mr.J.B.Barathan, learned counsel for the appellant would submit that the cancellation of the agreement was made based on the Circular No.67, dated 03.11.2011, but, the circular has been subsequently withdrawn by the Government. It is also stated that the appellant has now taken a decision to approach a civil Court to file a suit for Specific Performance. But, in view of the cancellation of the agreement, his right has been curtailed. According to the learned counsel, District Registrar has no jurisdiction to decide the disputed title between the parties.

6.Per contra, Mr.Mohan Kumar, learned counsel for the respondent No.2 would contend that after Dr.Shanmugam sold the property in favour of the firm, mutation in the revenue record had taken place, which was not questioned by him for more than forty years. Form-A issued by the Registrar of firms would show that the vendor of the appellant namely Dr.S.Shanmugam has resigned from the partnership on 30.09.1977. It is the contention of the learned counsel that it is a clear case of cheating and based on a criminal complaint, the police authorities have filed a charge sheet against him which is also questioned by his son in a quash petition. In the quash petition, he has stated that the agreement of sale has been cancelled and the advance amount of Rs.6,00,000/- have also been returned to the appellant. Hence, the learned counsel submitted that after the cancellation of the sale agreement, the appellant has no right to pursue this appeal.

7.Mr.Murugan, learned Government Advocate appearing for respondent No.1 had made the submissions in support of the decisions of the District Registrar and the order of the learned Single Judge.

8.In the instant case, according to the appellant, Dr.S.Shanmugam has saleable right over the property in dispute and wanted to file a suit for Specific Performance. According to the learned counsel for the appellant, the cancellation of the sale agreement and the order of the learned Single Judge would stand in his way to establish his right before the competent authority. Since the appellant has already decided to file a suit for Specific Performance and also expressed his view to implead even the second respondent as one of the defendant in the suit, in our considered view further adjudication in this case is unnecessary.

9.In such view of the matter, the writ appeal is disposed of giving the liberty to the appellant to approach the civil court to establish his right. The competent civil court shall decide the issue purely on merits and in accordance with law without being influenced by the order of the District Registrar and the order of the learned Single Judge passed in the W.P.(MD).No.14970 of 2013,



dated 13.08.2014.

10. With the above observation and direction, this writ appeal is disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

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Sd/-

Assistant Registrar

// True Copy //

Sub Assistant Registrar (CS)

TM

To

The District Registrar (Administration),
District Registrar Office,
Madurai North, Madurai.

+1CC TO MR.R.VIJAYAKUMAR, Advocate Sr. No.57018
+1CC TO MR.T.R.JEYAPALAM, Advocate Sr. No.57288
+1CC TO THE SPECIAL GOVERNMENT PLEADER SR.No.57758

W.A. (MD) .No.358 of 2015

TR (10.04.2019) 4P 5C