



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 24.09.2019

CORAM:

THE HONOURABLE **MR. JUSTICE M. SUNDAR**

W.P(MD)No.20230 of 2014

R.Rajeswari

... Petitioner

/Vs./

1.The Sub-Registrar,
Registration Department,
Pappanadu, Orathanadu Taluk,
Thanjavur District.

2.V.Rangasamy

3.R.Saroja

4.R.Chinnasamy

5.R.Sumathy

6.R.Balasing

7.P.Kala

8.R.Muruganantham

9.K.Kalaivani

... Respondents

(R3 to R9 are impleaded vide Court order dated 26.10.2017
in W.M.P(MD).No.14870 of 2017)

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Mandamus, to direct the first respondent to cancel the deed of cancellation dated 29.06.1999 registered as Document No.477 of 1999 in the office of the first respondent executed by the second respondent and consequently direct the first respondent to delete the entry of the cancellation of sale deed from the records.

For Petitioner : Mr.S.Sethuraman

For Respondents : Mr.M.Murugan (for R1)

Government Advocate

No appearance (for R2 to R9)

ORDER

Mr.S.Sethuraman, learned counsel on record for writ petitioner and Mr.M.Murugan, learned Government Advocate on behalf of first respondent (official respondent) are before this Court. With regard to other respondents, the position is the same as in the last hearing on 16.09.2019.

2.Read this in conjunction with and in continuation of earlier order/proceedings dated 16.09.2019, which reads as follows:

'Mr.S.Sethuraman, learned Counsel for the writ petitioner and Mr.M.Murugan, learned Government



Advocate on behalf of the first respondent (official respondent) are before this Court.

2. Read this in conjunction with and in continuation of earlier proceedings dated 05.09.2019. Pursuant to earlier proceedings, today names of the Counsel, who have entered appearance on behalf of the respondents 3, 5 and 7 to 9 have been shown in the cause list, but there is no representation. With regard to respondents 4 and 6, their names and addresses as in the cause title have been shown in the cause list. Names of the respondents 4 and 6 called out aloud in the Court and the adjoining corridor. There is no response. This Court is informed that no Counsel has entered appearance on behalf of respondents 4 and 6.

3. Learned Counsel for writ petitioner has placed before this Court a judgment of a Honourable Full Bench in **Latif Estate Line India Ltd., Vs. Hadeeja Ammal and Others** reported in **2011 (2) CTC 1**, for the proposition that a deed of cancellation of sale deed executed unilaterally cannot be accepted for registration.

4. With the intention of giving one more opportunity for the private respondents, this Court deems it appropriate to list this matter on 24.09.2019.

5. List on 24.09.2019.'

3.As the position is no different today, the matter is disposed of by hearing learned counsel for petitioner and State counsel for first respondent.

4.Both the counsel submit without any disputation or disagreement that this matter is directly and squarely covered by the principle laid down by a Hon'ble Full Bench of this Court in **Latif Estate Line India Ltd., Vs. Hadeeja Ammal and others** reported in **2011 (2) CTC 1**. Relevant paragraphs in Latif Estate Line India case are paragraph Nos.5, 58 and 59 and the same read as follows:

'5.Doubting the correctness of the judgment rendered in W.P.No.8567 of 2008, as also the Division Bench judgment in W.A.No.194 of 2009, these appeals have been referred to a Full Bench for deciding the correctness of these judgments, and also for deciding the following questions formulated by the Bench.

(i) Whether cancellation of a registration of a



registered sale deed of a immovable property having valuation of more than one hundred rupees can be registered either under Sections 17 or 18 or any other provision of the Registration Act?

(ii) Whether for such cancellation of a registered sale deed, signature of person claiming under the document for sale of property is required to sign the document, if no such stipulation is made under the Act? And

(iii) Whether the decisions of the single judge dated 10.02.2009 made in W.P.No.8567 of 2008 and the Division Bench dated 01.04.2009 made in W.A.No.194 of 2009 amount to amending the provisions of the Registration Act and the Rules framed there under, by inserting a clause for extinguishing right, title or interest of a person on an immovable property of value more than Rs.100/- in a manner not prescribed under the Rules.?

6.....

58.It can also not be overlooked or ignored that a unilateral cancellation of a sale deed by registered instrument at the instance of the vendor only encourages fraud and is against public policy. But there are circumstances where a deed of cancellation presented by both the vendor and the purchaser for registration has to be accepted by the Registrar if other mandatory requirements are complied with. Hence, the vendor by the unilateral execution of the cancellation deed cannot annul a registered document duly executed by him as such an act of the vendor is opposed to public policy.

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 favor 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.

5.To put it in a nutshell, Latif Estate principle is that unilateral cancellation is impermissible in law.

6.In the light of the narrative thus far and in the light of the undisputed legal position, it follows as an inevitable sequitur that the prayer in the instant writ petition has to be acceded to.

7.Instant Writ Petition is allowed accordingly. No costs.

Sd/-

Assistant Registrar (C.O)

// True Copy //

Sub Assistant Registrar(CS)

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To

The Sub-Registrar,
Registration Department,
Pappanadu,
Orathanadu Taluk,
Thanjavur District.

+2 CC to Mr.S.SETHURAMAN, Advocate SR-89233.
+1 CC to GP SR-89398.

**Order made in
W.P(MD)No.20230 of 2014**

**Dated:
24.09.2019**

CS (15.10.2019) 4P 5C