



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.03.2020

CORAM

THE HON'BLE MR.JUSTICE T.S.SIVAGNANAM

W.P.No.16491 of 2015
and M.P.Nos.1 & 2 of 2015

R.Malar

...Petitioner

vs.

1.The Sub-Registrar,
Chengam & T.K.,
Thiruvananthamalai Dist.,

2.N.Sadasivam

...Respondents

PRAYER: Writ Petition filed Under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus to call for the entire records relating to the impugned proceedings relating to the registration of unilateral cancellation settlement deed dated 15.2.2007 vide Document No.675/2007 on the file of the first respondent and quash the registration of the above document dated 15.2.2007 and consequently direct the first respondent to revoke the registration done in respect of the above said property.

For Petitioner
For Respondents

: Mr.T.Panchatsaram
: Mr.P.P.Purushothaman for R1
Government Advocate

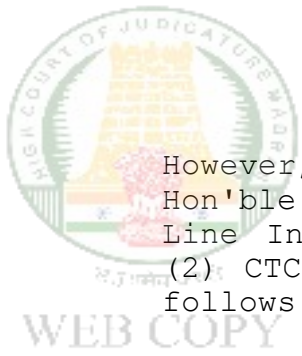
Ms.G.Sumitra for R2
for Mr.I.Abrar Md.Abdullah

O R D E R

The petitioner is the daughter of the second respondent and she seeks for an issuance of writ of certiorarified mandamus to quash the unilateral cancellation of settlement deed, dated 15.02.2007 registered as Document No.675 of 2007 and to revoke the registration.

2.It is settled legal position that this Court cannot declare a registered document as a nullity in a writ petition.

1/3



However, the law on this subject has been laid down by the Hon'ble Full Bench of this Court in the case of *Latif Estate Line India Ltd. vs. Hajeeja Ammal and Others* reported in 2011 (2) CTC 1. The operative portion 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.

3. In terms of the above decision, such unilateral cancellation deed could not have been accepted for registration by the first respondent, Sub Registrar, and having done so, his action is obviously illegal. Therefore, all that, this Court can observe is that, acceptance of document for registration is contrary to the law laid down by the Hon'ble Full Bench in the aforementioned decision. Therefore, the encumbrance should be deleted from the register maintained by the first respondent. So far as the right claimed by the petitioner over the property is concerned, it is upto her to approach the Civil Court for necessary relief.

4. The writ petition is allowed to the extent as indicated above. No costs. Consequently, connected miscellaneous petitions are closed.

s/d-
Assistant Registrar

True Copy
Sub-Assistant Registrar

pam
To

The Sub-Registrar,
Chengam & T.K.,
Thiruvananthapuram District.

+1 cc to the Government pleader sr 22674
+1 cc to Mr.T.Panchatsaram Advocate sr21560
+1 cc to Mr.I.Abrar Md Abdullah Advocate sr22319

W.P.No.16491 of 2015

aa02/07/2020