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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.03.2020

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THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P. No. 28646 of 2012

S.Akther Begum

.. Petitioner

Vs.

1. The sub Registrar
Registration Department
Thiruvallur.

2. Mr. Habib Abdul Latif

3. Moheen Abdul Latif

.. Respondents

Petition under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus, calling for the records of the first respondent and to quash the cancellation deed dated 27.08.2007 executed by the second and third respondents for cancelling the sale deed dated 21.11.1996 registered as document no.5110/1996 and registered by the first respondent herein, as document no.16834/2007 at the sub registration office, Thiruvallur and direct the first respondent to delete the entry of cancellation in Book No.1 of the first respondent.

For Petitioners: M/s.T.Velumani

For Respondents: Mr.P.P.Purushothaman (For R1)
Government Advocate
Mr. R.Gopinath (For R2 & R3)

ORDER

Heard M/s.T.Velumani, learned counsel for the petitioner, Mr.P.P.Purushothaman, learned government advocate for the first respondent and Mr.R.Gopinath, learned counsel for the second and third respondents.

2. This writ petition has been filed for a direction to quash the cancellation deed dated 27.08.2007 executed by the second and third respondents for cancelling the sale deed dated



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21.11.1996 registered as document no.5110/1996 registered by the first respondent herein as document no.16834/2007 at the sub registration office, Thiruvallur and direct the first respondent to delete the entry of cancellation in Book No.1 of the first respondent.

3. This issue has been settled in the judgment of the Full Bench of this Court in the case of *Latif Estate Line India Ltd. Vs. 1.Hadeeja Ammal and others* reported in 2011(2) CTC 1. The operative portion of the 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. Sub-para (i) of Para 59 would squarely apply to the facts of the present case. The sale deed having been executed by respondents 2 and 3 cannot be cancelled by respondents 2 and 3 unilaterally and such cancellation deed could not have been accepted by the first respondent for registration. Accordingly,



the writ petition is allowed and the unilateral cancellation of sale deed is held to be null and void and accordingly, the entry made in the encumbrance should be removed by the first respondent. However, it will be open to the respondents 2 and 3 to approach the civil court if so advised. Consequently, connected miscellaneous petition is closed. No costs.

Sd/-

Assistant Registrar (CS-III)

//True Copy//

Sub Assistant Registrar

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To

1. The Sub Registrar
Registration Department
Thiruvallur.

+lcc to Mr.T.Velumani, Advocate SR.18685
+lcc to Mr.R.Gopinath, Advocate SR.18460
+lcc to the Government Pleader SR.19254

W.P. No. 28646 of 2012

SPD(CO)
CB(13/07/2020)