

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.03.2020

CORAM

THE HON'BLE MR.JUSTICE N.ANAND VENKATESH

W.P.No.6694 of 2020
and
WMP NO.7946 of 2020

Revathi

..Petitioner

.v.

- 1.The Inspector General of Registration,
Inspector General of Registration Office,
Shanthome High Road,
Chennai 600 028.
- 2.The District Registrar,
District Registrar Office,
Registration Department,
Virudhachalam,
Cuddalore District.
- 3.The Sub Registrar,
Pennadam Registration Office,
Pennadam,
Cuddalore District.

4.Pandurengan

... Respondents

Prayer:- Writ petitions filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari to call for the records pertaining to the cancellation of Settlement Deed dated 28.06.2017, vide Document No.943 of 2017 unilaterally passed by the third respondent herein and quash the same as illegal.

For Petitioner : Mr.M.Velmurugan

For R 1 to R 3 : Mr.T.M.Pappiah

Special Government Pleader

O R D E R

This writ petition has been filed challenging the registration of the unilateral cancellation of Settlement Deed that was executed in favour of the petitioner by a registered Settlement Deed dated 28.06.2017.

2.The case of the petitioner is that the 4th respondent, who is the father of the petitioner had executed a Settlement Deed in favour of the petitioner by a registered Settlement Deed dated 28.06.2012. When the petitioner was trying to apply for a Bank loan and had applied for an encumbrance certificate, she found that the 4th respondent had unilaterally cancelled the Settlement Deed by way of a cancellation deed dated 28.06.2017. The petitioner therefore made a representation to the 2nd respondent on 25.02.2020, seeking for the cancellation of the registration. Since the same did not evoke any response, the present writ petition has been filed before this Court seeking for appropriate directions.

3.Heard Mr.M.Velmurugan, learned counsel appearing for the petitioner and Mr.T.M.Pappiah, learned Special Government Pleader appearing on behalf of the respondents 1 to 3.

4.The issue that has been raised in the present writ petition is covered by a judgment of the Full Bench in *Latif Estate Line India Ltd .v. Hadeeja Ammal* reported in 2011 (2) CTC 1. This judgment was taken note of by the Division Bench of this Court and appropriate directions were issued in *Kannan and Another .v. Mrs.Saranya and Others* in W.A.No.108 of 2020, dated 24.01.2020. The relevant portions in the judgment is extracted hereunder:

3.The Full Bench held that unilateral cancellation of a registered sale deed through a deed of cancellation is of no effect in law. The conclusion drawn by the Full Bench as recorded in paragraph nos.58 and 59 are extracted hereunder:

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 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.

4. Learned counsel for the appellants contends that the learned Single Judge has allowed the writ petition following the judgment of Full Bench which virtually prejudices the rights of the appellants in the property and that the respondents 1 and 2 cannot be permitted to raise such a plea through a writ petition as the remedy, if any, lies by approaching the civil court.

5. We have considered the submissions raised and we find that the Full Bench has dealt with the aforesaid issues in detail holding that the writ petition would be maintainable, and on merits also held that 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. The sum and substance, therefore, is that the writ petition filed by the respondents could be entertained, and in our opinion has been rightly allowed, following the dictum of the Full Bench in the case of *Latif Estate Line India Ltd vs Hadeeja Ammal* reported in 2011 (2) CTC 1 cited supra.

6. Learned counsel for the appellants then contends that the issuance of a Writ by this Court should not amount to extinguishing of any of the claims that the appellants can set up, questioning the very execution of the settlement deed dated 25.02.2008.

7. It is the submission of the learned counsel for the appellants that the appellants' right to a settlement deed dated 25.02.2008 cannot be usurped by any legal provision and more so, the writ petition could not have been entertained after such a long passage of time.

8. We may clarify that an otherwise void document, as held by the Full Bench, cannot rejuvenate or survive any lapse of time and would not improve the situation any further, in as much as the document is non-est in the eyes of law. The order of the learned Single Judge dated 10.08.2018 is simply a declaration to that effect, taking into account the law propounded by the Full Bench, which in no way defeats the rights of the appellants to contest the original settlement deed dated 25.02.2008. We say this for the reason that the learned counsel for the appellants is right in his submission that the declaration granted by the High Court cannot extinguish the rights of the appellants to contest their position before the appropriate forum and even otherwise, the appellants must have been under the belief that the cancellation deed had fulfilled the said purpose. This may also be

coupled with the issue of limitation, if any action is proposed by the appellants and we therefore, make it clear that from that point of view, the filing of the writ petition and the grant of declaration on 10.08.2018 shall not be a disadvantage in that regard.

5.It is clear from the above judgment that a writ petition of this nature is maintainable and a deed of cancellation which was executed unilaterally will have no effect. Such a document ought not to have been accepted for registration more particularly in a case where the property had already vested absolutely in favour of the petitioner.

6.In view of the above, there shall be a declaration to the effect that the unilateral cancellation of the Settlement Deed by a document dated 28.06.2017, is non-est in the eye of law. However, it is always left open to the 4th respondent to independently seek for a declaration before the appropriate Court and that right will not be taken away by this order.

This writ petition is disposed of accordingly. No costs. Consequently, the connected miscellaneous petition is closed.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

KP

To

1.The Inspector General of Registration,
Inspector General of Registration Office,
Shanthome High Road,
Chennai 600 028.

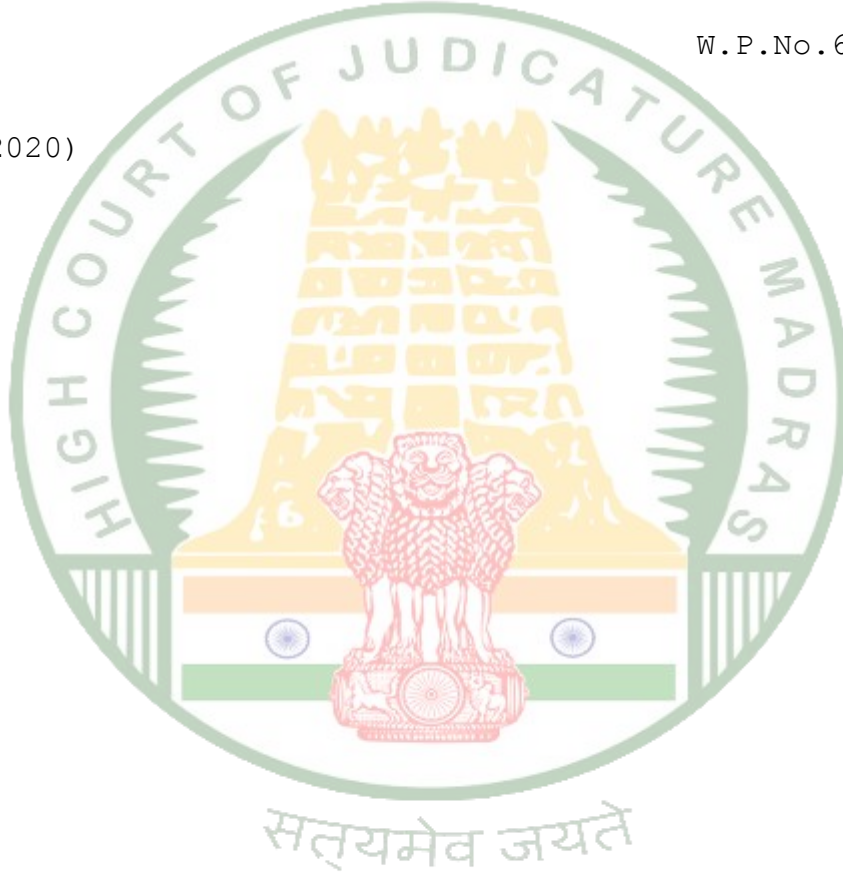
2.The District Registrar,
District Registrar Office,
Registration Department,
Virudhachalam,
Cuddalore District.

3.The Sub Registrar,
Pennadam Registration Office,
Pennadam,
Cuddalore District.

+1 CC to The Govt. Pleader sr 24074.

W.P.No.6694 of 2020

RKA (CO)
SP(17/07/2020)



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