

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.02.2020

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

Writ Petition No.32974 of 2015

Minor Selvi S.Poojasri

...Petitioner

Vs.

1. The Inspector General of Registration,
Santhome High Road,
Chennai - 600 028.
2. The Deputy Inspector General of Registrar,
Vellore Zone, Vellore - 632 001.
3. The Sub-Registrar,
Katpadi Sub Registrar Office,
Katpadi, Vellore - 632 007.
- 4.E.Sathish

...Respondents

Writ Petition filed under Article 226 of the Constitution of India, for issuance of Writ of Mandamus, directing the 2nd and 3rd respondents to consider and to pass suitable orders in accordance with on the petitioner's representation dated 26.09.2014 and 01.10.2014 respectively on a stipulated time.

For petitioner : Mr.Adiveera Rama Pandiyan
for M/s.S.S.Sinthanadevi

For Respondents: Mr.P.P.Purushothaman
Government Advocate
(for R.1 to R.3)
No representation for R.4

ORDER

Heard M/s.Adiveera Rama Pandiyan for M/s.S.S.Sinathanadevi, for the petitioner and Mr.P.P.Purushothaman, learned Government Advocate for respondents 1 to 3. Though notice has been served on the fourth respondent and his name is printed in the cause list, none appeared on behalf of him.

2.The petitioner is a minor daughter of the fourth respondent and is represented by her mother and natural guardian Mrs.Anithha. There appears to be some difference of opinion between the spouses and they are stated to be living separate. The petitioner seeks for issuance of writ of mandamus to direct the respondents to consider his representation dated 26.09.2014 and 01.10.2013. In those representations, petitioner has sought for cancellation of the unilateral cancellation of settlement deeds dated 10.02.2014, registered as Document No.1045/2014. The petitioner's case is based upon the decision of the Hon'ble Full Bench in the case of Latif Estate Line India Ltd., Vs. Hadeeja Ammal & others reported in 2011 (2) CTC Page 1. The questions which were referred to the Hon'ble Full Bench were answered in the following terms;

"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 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, once title to the property is vested in the transferee by way of sale, in this case, by way of settlement, it cannot be divested unto the transfer by executing a registered Deed of Cancellation.

4.In the light of the above, the writ petition stands disposed of with a direction to the second respondent to consider the petitioner's representation, bearing in mind the above legal principles and after issuing notice to the fourth respondent and by affording an opportunity of personal hearing and on conducting enquiry, pass orders on merits and in accordance with law within a period of three months from the date of conclusion of enquiry.

5.Accordingly, the writ petition stands disposed of. No costs.

-s/d-

Assistant Registrar(CCC)

True Copy

Sub-Assistant Registrar

To

- 1.The Inspector General of Registration,
Santhome High Road,
Chennai - 600 028.
- 2.The Deputy Inspector General of Registrar,
Vellore Zone, Vellore - 632 001.
- 3.The Sub-Registrar,
Katpadi Sub Registrar Office,
Katpadi, Vellore - 632 007

+1 CC to M/s.S.S.Sinthanadevi, Advocate sr 9925.

+1 Cc to Govt. Pleader sr 10842.

W.P.No.32974 of 2015

PP(CO)
SP(19/02/2020)