

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :17.02.2020

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THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.No. 10217 of 2014

M.P.No.1 of 2014

1. Mrs.I. Lalitha
 2. Mr. I. Sudhakar
 3. Ms. I. Lakshmi
 4. Mr. I. Govindaraj
 5. Ms. I. Ramya
-Petitioners

-vs-

1. Mrs. Vasuki
 2. Mrs. Pachaiammal
 3. Join -I Sub Registrar,
Office of the Sub Registrar,
Saidapet, Chennai - 600 015.
- ... Respondents

PRAYER : Petition under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus, to call for the records Cancellation Deed Document No.1535 of 2011 on the file of the Joint-I Sub Registrar Office, Saidapet, Chennai South, 3rd respondent herein and quash the same and consequently direct the 3rd respondent to delete the entries that reflects the aforesaid document from the 'A' Register maintained by the 3rd respondent herein.

For Petitioners : Mr.V. Arunagiri
For Respondents : Mr.Sugendran [R1 & R2]

: Mr.P.P. Purushothaman
Government Advocate [R3]

ORDER

Heard Mr.V. Arunagiri, learned counsel for the petitioners, Mr.Sugendran, learned counsel for respondents 1 and 2 and Mr.P.P.Purushothaman, learned Government Advocate for the 3rd respondent.

2. With consent of learned counsel on either side, this writ petition itself is taken up for final disposal.

3. This writ petition has been filed challenging the Cancellation Deed executed by the respondents 1 and 2 and accepted for registration by the 3rd respondent.

4. The property in question, originally is stated to have been purchased by Mr.Govindasamy, who died on 24.02.1986 leaving behind his wife Tmt.Murugammal and his son Iyyannar and two daughter Vasugi and Pachiyammal.

5. The petitioners 1 to 5 are the wife and children of Iyyannar and respondents 1 and 2 are the sisters of Iyyannar. The petitioners' case is that Tmt. Murugammal W/o. Govindasamy and respondents 1 and 2 have relinquished their rights in the property in favour of the Iyyannar vide document dated 28.08.2008 registered as document No.5659 of 2008 on the file of the Sub Registrar, Saidapet. Iyyannar died on 13.10.2008 leaving behind his wife and the children. It is further stated that Tmt. Murugammal had executed the Relinquishment Deed on 10.06.2010 in favour of the petitioners 1 to 5, which document has been registered as document No.4163 of 2010 on the file of the Sub Registrar, Saidapet. Tmt. Murugammal died on 28.06.2010. Thus, the petitioners would state that they become the absolute owners of the property in question and subsequently partitioned the property among themselves by Partition Deed 17.09.2010 registered as document No.7195 of 2010 on the file of the Joint Sub Registrar, Saidapet. Subsequently, the property was divided into 18 residential plots and each of the petitioners have been allotted with the plots. Thereafter, petitioners 1 to 4 have given a general power of attorney to Mr.V.K.C. Jayamohan, Proprietor of Sekaran Realities vide deed dated 17.09.2010 registered as document No.1552 of 2010 on the file of Joint -I Sub Registrar, Saidapet, Chennai South. While so, respondents 1 and 2 have registered the cancellation of settlement deed dated 28.08.2008.

6. It may not be necessary for this Court to go into the factual details except to consider as to whether the Sub Registrar, could have accepted the impugned document for Registration.

7. This issue is no longer res-integra and decided by the Hon'ble Full Bench of this Court in the case of Latif Estate Line India Ltd. Vs. Hadeeja Ammal & Ors. [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 case, 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."

8. In the light of the above authoritative pronouncement, unilateral cancellation of settlement deed, that too, after several years could not have been accepted for registration and such an document cannot create an encumbrance on the property already transferred.

9. In the light of the above settled legal position, the writ petition is allowed and the impugned document is set aside and the respondents are directed to delete the entries in the encumbrance register maintained by the 3rd respondent. Since the Court has allowed the writ petition purely considering the legal issue without going into the facts of the matter, it is open to the respondents 1 and 2 to approach appropriate forum for any relief, if they are so advised. No costs. Connected miscellaneous petition is closed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

The Join -I Sub Registrar,
Office of the Sub Registrar,
Saidapet, Chennai - 600 015.

+1cc to Mr.S.Sugendran, Advocate, Sr.No.13189.

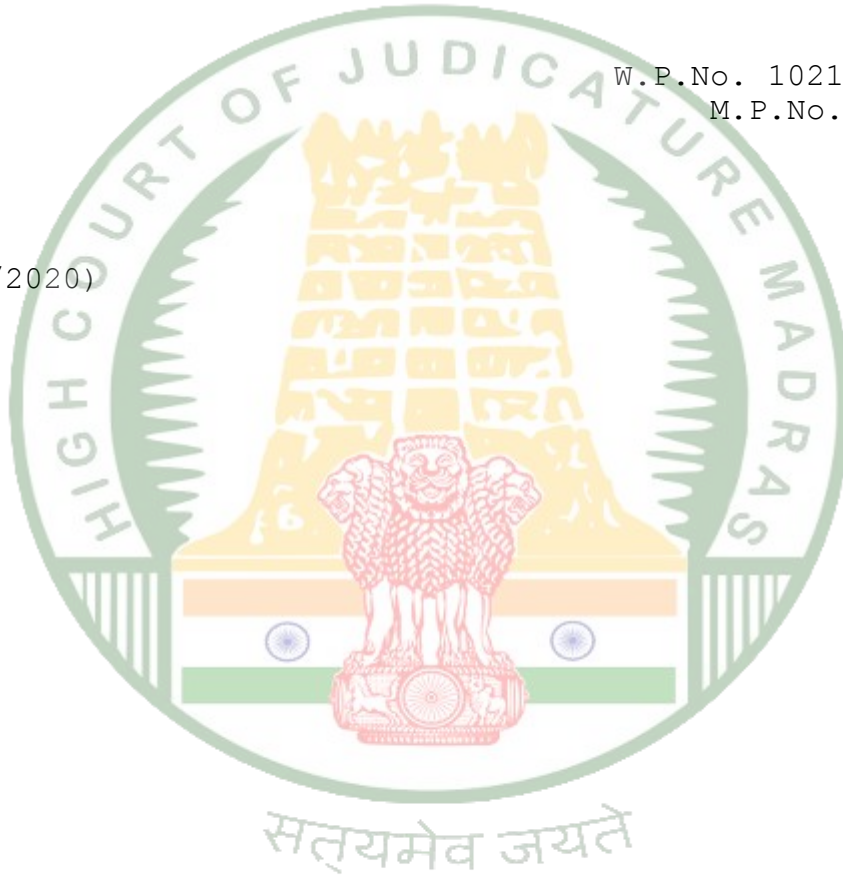
+1cc to Mr.V.Arunagiri, Advocate, Sr.No.13480.

+1cc to The Government Pleader, High Court, Madras-104,
Sr.No.13614.

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RSK(CO)
klt(21/05/2020)



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