

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 21.1.2020

Coram :

The Honourable Mr.Justice T.S.SIVAGNANAM

Writ Petition No.9775 of 2014 & MP.No.1 of 2014

G.Nataraja Mudaliar

...Petitioner

Vs

1.The Sub-Registrar, Avarapakkam,
Villupuram District.

2.The Joint II Sub-Registrar,
Tindivanam, Villupuram District.

3.G.Ramalinga Mudaliar

...Respondents

Prayer: PETITION filed under Article 226 of The Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus to call for the impugned document issued by the second respondent which is styled as a cancellation deed dated 17.1.2014 of the relinquishment deed dated 28.11.2013 executed by the third respondent in favour of the petitioner and which is registered as Doc.No.61 of 2014 on the file of the second respondent herein, quash the registration of the same and further direct respondents 1 and 2 to remove the entry relating to the said cancellation deed from the encumbrance register maintained by them.

For Petitioner : Mr.V.Ayyadurai, SC for
Mr.V.B.Perumal Raja

For Respondents 1 & 2 : Mr.P.P.Purushothaman, GA

For Respondent-3 : Mr.S.Lakshmanaswamy

ORDER

I have heard Mr.V.Ayyadurai, learned Senior Counsel appearing on behalf of the petitioner, Mr.P.P.Purushothaman, learned Government Advocate appearing for respondents 1 and 2 and Mr.S.Lakshmanaswamy, learned counsel appearing for the third respondent.

2. This writ petition has been filed seeking to revoke the document registered by the second respondent as Doc.No.61 of 2014 dated 17.1.2014 and to direct respondents 1 and 2 to remove

the entry relating to the said cancellation deed from the encumbrance register.

3. The petitioner and the third respondent are brothers and are sons of one Mr.Govindaraja Mudaliar. The third respondent is the elder brother of the petitioner. It appears that apart from the petitioner and the third respondent, there were two other brothers and all of them are the sons of the said Mr.Govindaraja Mudaliar. By dint of hard work, they had vast extent of properties in and around Villupuram District. It is the case of the petitioner that a partition was effected among the brothers and definite extent of properties was allotted to each of them and out of the extent allotted to the petitioner, he is said to have settled the properties in favour of his two sons during the year 2003.

4. It appears that there was some interference with the possession and enjoyment of the properties by the sons of the petitioner by several persons including the third respondent, which prompted the petitioner's sons to file a civil suit in O.S.No.48 of 2009 on the file of the Principal District Munsif Court, Tindivanam seeking a decree for permanent injunction. The third respondent filed a suit against the petitioner and others in O.S.No.148 of 2012 on the file of the same Court stating that the settlement deed executed by the petitioner in favour of his sons in the year 2003 is null and void and to pass a declaratory decree to that effect.

5. It is the further case of the petitioner that when the civil cases were pending, settlement talks were held, that ultimately, a consensus was arrived at and that a compromise memo dated 28.11.2013 was filed in O.S.No.148 of 2012, which was filed by the third respondent, in which, the petitioner herein was the first defendant. According to the petitioner, the suit in O.S.No.148 of 2012 stood disposed of in terms of the compromise memo. On the same day i.e. 28.11.2013, the third respondent executed a relinquishment deed, which was registered on the file of the first respondent as Doc.No.59151 of 2013.

6. The petitioner further states that the said relinquishment deed was executed and the compromise memo was also agreed to by the third respondent because a sum of Rs.50 lakhs was paid to him and the nine daughters of the third respondent were the witnesses to the document and his only son was the person, who identified the executant. Therefore, it is his further case that on and after execution of the relinquishment deed dated 28.11.2013, the rights of the petitioner over the property in question had crystallized and that the third respondent had no right over the same. However, the petitioner is now aggrieved because the third respondent executed a deed dated 17.1.2014 canceling the deed of relinquishment dated 28.11.2013 unilaterally without informing the petitioner. Hence, it is also submitted that the unilateral cancellation is bad in law.

7. In support of his contention, the learned Senior Counsel

appearing on behalf of the petitioner, after reiterating the factual averments, has placed reliance on the decision of the Hon'ble Full Bench of this Court (to which, I am a party), in the case of *Latif Estate Line India Limited Vs. Hadeeja Ammal* [reported in 2011 (2) CTC 1] and a recent decision of a learned Single Judge of this Court in the case of *Amuthavalli & Others Vs. The Sub-Registrar, Office of the Sub-Registrar, Gandhipuram, Coimbatore & Others* [reported in 2017 (5) LW 511].

8. Per contra, the learned counsel for the third respondent would submit that the contention of the petitioner that a sum of Rs.50 lakhs was paid to the third respondent is factually incorrect, that the third respondent did not receive any consideration, owing to which, the third respondent canceled the relinquishment deed, which was accepted for registration by the 2nd respondent and that if at all the petitioner is aggrieved, he should approach the civil court for necessary relief. In support of such a contention, the learned counsel has placed reliance on the decision of a learned Single Judge of this Court in the case of *Sumathi Anbarasu & another Vs. The Sub-Registrar, Kundrathur Sub-Registrar Office, Chennai-69* [W.P.Nos. 4180 and 4181 of 2011 & 13062 of 2012 dated 12.7.2012], a decision of the learned Single of this Court in the case of *K.Vimal Chand Bora Vs. Inspector General of Registration* [reported in 2012 (7) MLJ 339] and a decision of the learned Single of this Court in the case of *S.Palanisamy Vs. The Sub-Registrar, Nallur, Tiruppur District* [reported in 2017 (3) LW 217].

9. The learned Government Advocate appearing for respondents 1 and 2 submits that the remedy of the petitioner is to approach the civil court, that the presence of the petitioner while accepting the cancellation deed for registration is not required because Section 34A of the Registration Act, 1908, as inserted by Amendment Act 28 of 2000 with effect from 14.4.2001, would apply to sale deeds only and that in the instant case, it was cancellation of a relinquishment deed.

10. I have carefully considered the contentions of the learned counsel on either side.

11. The short question, which falls for consideration, is as to whether this Court can entertain a writ petition to revoke a document, which was accepted for registration by the 2nd respondent.

12. I need not labour much to decide the issue in the light of the decision of the Hon'ble Full Bench of this Court in the case of *Latif Estate Line India Limited*, the relevant portion of which 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."

13. Paragraph 59(1) of the said Hon'ble Full Bench judgment would be relevant to the instant case wherein it has been 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, that such a document does not create any encumbrance in the property already transferred and that such a deed of cancellation cannot be accepted for registration. In the light of the law laid down in the said Hon'ble Full Bench judgment of this Court, the 2nd respondent could not have accepted the document dated 17.1.2014 for registration.

14. The argument of the learned Government Advocate appearing for respondents 1 and 2 is that Section 34A of the Registration Act would not stand attracted to the facts of the case.

15. However, this submission is not based on the correct legal position because there are several decisions of this

Court, which have held that a registered settlement deed, which is unconditional and irrevocable, cannot be canceled unilaterally and that it is against public policy to cancel registration of such settlement deed. However, in those decisions, it was held that in order to cancel such registered deed, the remedy is to approach the civil court. Therefore, Section 34A of the Registration Act was pressed into service even in respect of documents, which are other than sale transactions.

16. The question in the instant case would be as to who has to approach the civil court to set aside a document. Admittedly, the third respondent is a party to the document dated 28.11.2013. He admitted execution thereof and it has been registered. The case of the third respondent before this Court is that a sum of Rs.50 lakhs stated to have been paid to the third respondent has not been paid. If that is the case, it is well open to the third respondent to approach the civil court to set aside the document dated 28.11.2013. One more hurdle, which the third respondent has to cross, is with regard to the deed of compromise, which was stated to have been recorded in O.S.No.148 of 2012 filed by the third respondent.

17. The recital in the relinquishment deed dated 28.11.2013 shows that the third respondent received a sum of Rs.50 lakhs. If that is so, then the document is supported by consideration and irrevocable. It is a different case as pleaded by the third respondent that he did not receive a sum of Rs.50 lakhs, which cannot be either adjudicated by the Sub-Registrar concerned or in a writ proceeding. Therefore, the appropriate remedy, which the third respondent ought to have exercised, is to approach the civil court. Considering the legal position and the peculiar facts and circumstances of the case, this Court is of the clear view that the 2nd respondent could not have accepted the deed of cancellation dated 17.1.2014 for registration.

18. In the decision in the case of Amuthavalli, more or less an identical question came up for consideration wherein a learned Single Judge of this Court took into consideration the introduction of Section 34A of the Registration Act with effect from 2001. After taking note of the various decisions of this Court including the decision of the Hon'ble Full Bench of this Court in the case of Latif Estate Line India Limited and the decision of the Hon'ble Apex Court in the case of Satya Pal Anand Vs. State of Madhya Pradesh [reported in 2016 (10) SCC 767], it was held that the unilateral cancellation could not be done and even assuming that it was a case of fraud, the person, who alleges fraud, should go to civil court to get the registered document declared as null and void.

19. The decisions referred to by the learned counsel for the third respondent pertain to unilateral cancellation of document and taking note of the decision of the Hon'ble Supreme Court in the case of Satya Pal Anand, the writ petitions were disposed of

giving liberty to the parties to approach the civil court. However, the decision of the Hon'ble Apex Court in the case of Satya Pal Anand cannot be applied to the factual matrix before us in the light of Section 34A having been introduced in the Registration Act by the State Amendment with effect from 2001. In fact, this aspect has been lucidly brought forth by this Court in the decision in the case of Amuthavalli.

20. It is worthwhile to place on record that as against the decision in the case of Amuthavalli, the private respondents therein preferred an appeal to the Hon'ble Division Bench of this Court by filing W.A.No.229 of 2018 and in the decision reported in the case of P.Rukmani & Others Vs. Amudhavalli & Others [reported in 2020 (1) CTC 241], the Hon'ble Division Bench referred to the decision of the Hon'ble Supreme Court in the case of Satya Pal Anand and allowed the writ appeal, as against which, the original writ petitioners namely Amuthavalli & Others preferred a special leave petition by filing SLP (C) No.20427 of 2019 and the Hon'ble Supreme Court granted an order of status quo on 02.9.2019.

21. It is pertinent to reiterate that Section 34A of the Registration Act would be applicable to the facts of the present case. The said provision states that subject to the provisions of this Act, no document for sale of property shall be registered under this Act, unless the person claiming under the document has also signed such document. The third respondent was the executant of the relinquishment deed dated 28.11.2013, in which, his nine daughters signed as witnesses affirming his execution. His only son was the person, who had identified the third respondent in the registration process. Therefore, the third respondent's son and daughters are parties to the registration process though they may not be parties to the document. In the relinquishment deed dated 28.11.2013, there is a reference to payment of consideration. There is also a specific recital that because of receipt of consideration, the petitioner perfects title over the properties, which are set out in the schedule to the said document. Therefore, in effect, the relinquishment deed dated 28.11.2013, being supported by consideration, becomes irrevocable and it is akin to absolute transfer and ought to have been treated as a sale transaction. However, this aspect appears to have been not noted by the 2nd respondent.

22. The learned counsel for the third respondent would reiterate that the third respondent did not receive any money from the petitioner as stated in the relinquishment deed dated 28.11.2013.

23. If that is the case of the third respondent, he has to approach the appropriate forum to establish the same and seek for appropriate relief. Obviously, execution of a cancellation deed is not the remedy and such a document could not have been accepted for registration.

24. In the light of the above, the writ petition is allowed as prayed for and it is held that the 2nd respondent could not have accepted the cancellation deed dated 17.1.2014 for registration. Accordingly, the same is struck off. The entries made in the encumbrance register are also struck off and necessary corrections shall be effected by the 2nd respondent in his office records. The directions issued by this Court will, in no manner, prejudice the rights of the third respondent if he is advised to approach the civil court for necessary relief. No costs. Consequently, the connected MP is closed.

Sd/-

Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

RS

To,

- 1.The Sub-Registrar, Avarapakkam, Villupuram District.
- 2.The Joint II Sub-Registrar, Tindivanam, Villupuram District.

+1cc to Mr.V.B.Perumal , Advocate SR.No. 4024

+1cc to Mr.S.Lakshmanaswamy , Advocate SR.No. 3731

+1 cc to Government Pleader Sr.No. 4339

WP.No.9775 of 2014
and MP.No.1 of 2014

A.SK(17/02/2020)

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