

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.03.2020

CORAM :

THE HONOURABLE MR. JUSTICE T.S. SIVAGNANAM

W.P.No.5075 of 2017 and
W.M.P.No.5353 of 2017

M.Sakthi

...Petitioner

Vs.

1.The Inspector General of Registration,
No.100, Santhome High Road,
Chennai - 600 028.

2.The Sub Registrar,
Joint-II Tindivanam,
Villupuram (Dt).

3.The Sub Registrar,
Padapai Register Office,
Kancheepuram (D.T).

4.P.Prabadevi

...Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorari, calling for the records of the 2nd respondent dated 27.05.2016 in Na.Ka.No.99/2016 and by calling for the records of the 3rd respondent proceedings dated 26.5.2016 No.142/16 and quash the same.

For Petitioner : Mrs.G.Sudha
For R1 to R3 : Mr.P.P.Purushothaman
Government Advocate
For R4 : Mr.D.Ravichander

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O R D E R

Heard Mrs.G.Sudha, learned counsel for the petitioner, Mr.P.P.Purushothaman, learned Government Advocate appearing for the respondents 1 to 3, and Mr.D.Ravichander, learned counsel appearing for the 4th respondent.

2.The petitioner and the 4th respondent are sisters and the petitioner is aggrieved by an order passed by the 3rd respondent, dated 27.05.2016, by which, the 3rd respondent has refused to accept the settlement deed, dated 28.07.2015, executed by the petitioner in favour of her husband Manikandan, on the ground that the property in question released in favour of the petitioner by the 4th respondent by release deed dated 22.01.2015, registered as Document No.145 of 2015, has been cancelled by deed of cancellation dated 07.08.2015, registered as Document No.1635 of 2015.

3.The legal question involved in this writ petition is whether the 2nd respondent could have accepted the deed of cancellation dated 07.08.2015 for registration. This Court need not labour itself to find the answer to the question, as the legal issue is no longer res integra. A Full Bench of this Court, in the case of *Latif Estate Line India Ltd. and others v. Hadeeja Ammal and others* [2011 (22) CTCOL Pg.860 (Mad)], has decided the issue. For better appreciation, Para No.59 of the judgment is quoted herein below :

"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. Sub Clause (i) of Para No.59 of the above judgment would be applicable to the case on hand and the decision is to the effect that the unilateral cancellation of a registered instrument cannot be accepted for registration, as the said document does not create, assign, limit or extinguish any right, title or interest in the property and is of no effect. Further, it has been held that, such a document does not create any encumbrance in the property already transferred and therefore, such a deed of cancellation cannot be accepted for registration.

5. If the above legal principle is applied to the instant case, then the only conclusion that can be arrived is to hold that the 2nd respondent should not have accepted the cancellation deed dated 07.08.2015 for registration. Therefore, the said deed of cancellation dated 07.08.2015, registered as Document No.1635 of 2015, needs to be eschewed and the entry should be deleted from the Encumbrance Register maintained in the office of the 2nd respondent and consequently, the 3rd respondent has to accept the deed of settlement dated 28.07.2015 for registration and register the same and release the document.

6. In the light of the above finding, this writ petition is allowed and the impugned order is quashed. No costs. Consequently, connected miscellaneous petition is closed.

7. The 2nd respondent is directed to delete the entry pertaining to the deed of cancellation dated 07.08.2015, registered as Document No.1635 of 2015, from the Encumbrance Register. Subsequently, the 3rd respondent shall register the deed of settlement dated 28.07.2015 upon re-presentation by the petitioner. The above direction shall be complied with by the 3rd respondent within a period of one week from the date on which the settlement deed is re-presented before the 3rd respondent. It is made clear that, if the 4th respondent claims that she is entitled to the property, then, in terms of the decision of the Full Bench as well as the Division Bench of this Court in the

case of P.Rukmani and others v. Amudhavalli and others [2020 (1) CTC 241], she is at liberty to approach the Civil Court for necessary relief.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

mkn

To

1.The Inspector General of Registration,
No.100, Santhome High Road,
Chennai - 600 028.

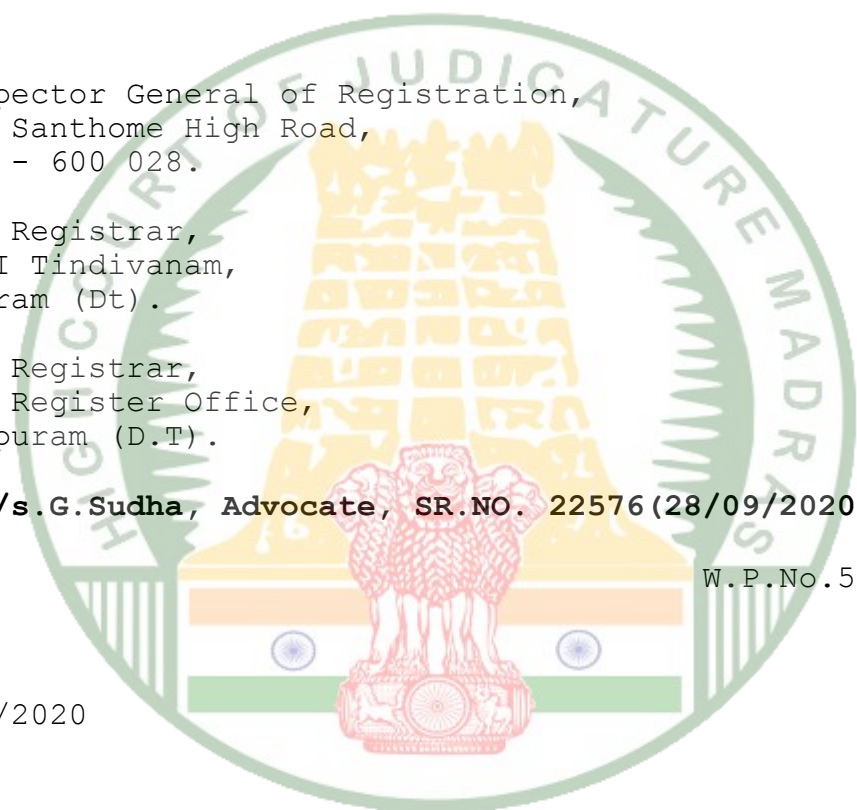
2.The Sub Registrar,
Joint-II Tindivanam,
Villupuram (Dt).

3.The Sub Registrar,
Padapai Register Office,
Kancheepuram (D.T).

+1cc to M/s.G.Sudha, Advocate, SR.NO. 22576(28/09/2020)

W.P.No.5075 of 2017

AJS (CO)
KKV/24/09/2020

The seal of the High Court of Madras is a circular emblem. It features a central yellow temple gopuram (tower) with a red lion capital on top. Below the gopuram is a red and white striped banner. The entire emblem is set against a green background with a white border. The text 'HIGH COURT OF JUDICATURE MADRAS' is written in a circular path around the emblem. At the bottom, the motto 'सत्यमेव जयते' (Satyameva Jayate) is written in Devanagari script.

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