

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.01.2020

CORAM

THE HON'BLE MR. JUSTICE P.D. AUDIKESAVALU

W.P. No. 34243 of 2019

and

W.M.P. Nos. 34875 and 34877 of 2019

S. Banumathiammal

... Petitioner

-vs-

1. The Inspector General of Registration,
No. 1000, Santhome High Road,
Mylapore,
Chennai - 600 028.

2. The Sub-Registrar,
Kundrathur,
Chennai - 600 069.

3. S. Indraniammal
W/o.P.Subramania Chettiar

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Declaration, declaring the cancellation of settlement deed dated 01.09.2016 vide Document No. 13550/2016 registered on the file of the Second Respondent has illegal, arbitrary, unlawful and non-est in eyes of law.

For Petitioner : Mr. Ma. Gouthaman

For Respondents: Mr. T.M. Pappiah,
Special Government Pleader (for R1 and R2)
No appearance (for R3)

O R D E R

Heard Mr. Ma. Gouthaman, Learned Counsel for the Petitioner and Mr. T.M. Pappiah, Learned Special Government Pleader, who takes notice for the First and Second Respondents, and perused the materials placed on record, apart from the pleadings of the parties.

2. The Writ Petition has been filed for declaring the cancellation of settlement deed dated 01.09.2016 registered as Document No. 13550 of 2016 on the file of the Second Respondent as illegal, arbitrary, unlawful and non-est in eyes of law.

3. Having regard to the aforesaid relief sought, it would be necessary to refer to Section 31 of the Specific Relief Act, 1963, which reads as follows:-

"31. When cancellation may be ordered:-

(1) Any person against whom a written instrument is void or voidable, and who has reasonable apprehension that such instrument, if left outstanding may cause him serious injury, may sue to have it adjudged void or voidable; and the court may, in its discretion, so adjudge it and order it to be delivered up and cancelled.

(2) If the instrument has been registered under the Indian Registration Act, 1908 (16 of 1908), the court shall also send a copy of its decree to the officer in whose office the instrument has been so registered; and such officer shall note on the copy of the instrument contained in his books the fact of its cancellation."

The said statutory provision in no uncertain terms enables the Petitioner to institute suit before the jurisdictional Civil Court for the relief that has been sought in this Writ Petition.

4. There is no explanation from the Petitioner in the affidavit filed in support of the Writ Petition for not having resorted to that efficacious remedy. In this backdrop, it may be recapitulated here that the Hon'ble Supreme Court of India in CCE -vs- Dunlop India Limited [(1985) 1 SCC 260], has succinctly explained the legal position relating to the exercise of discretionary powers under writ jurisdiction, as follows:-

"3. Article 226 is not meant to short-circuit or circumvent statutory procedures. It is only where statutory remedies are entirely ill-suited to meet the demands of extraordinary situations as for instance where the very vires of the statute is in question or where private or public wrongs are so inextricably mixed up and the prevention of public injury and the vindication of public justice require it that recourse may be had to Article 226 of the Constitution. But then the Court must have good and sufficient reason to bypass the alternative remedy provided by statute. Surely matters involving the revenue where statutory remedies are available are not such matters. We can also take judicial notice of the fact that the vast majority of the petitions under Article 226 of the

Constitution are filed solely for the purpose of obtaining interim orders and thereafter prolong the proceedings by one device or the other. The practice certainly needs to be strongly discouraged."

5. That apart, the nature of disputes sought to be agitated by the Petitioner in the Writ Petition involve various disputed question of facts which require recording of evidence of the parties on their respective claims, which are absolutely private in character and does not have any element of public law involved, which could be decided in summary proceedings under Article 226 of the Constitution.

6. In this regard, reference may be made to the decision of the Division Bench of this Court in P. Rukamani -vs- Amudhavalli (Judgment dated 17.07.2019 in W.A. No. 229 of 2018), in which the question whether Writ Petition under Article 226 of the Constitution challenging the validity of the registration of documents made under the Registration Act, 1908, could be entertained came up for consideration, and it has been held as follows:-

"9. Considering the submissions made at the bar, we are of the clear opinion that in a case relating to execution of a conveyance deed or a sale deed or cancellation thereof, if there is any dispute about the rights of the parties involved therein, the only appropriate remedy for the parties is to approach the Civil Court by way of civil suit. The act of registration of a document is a consequential act which will be subject to decree of Civil Court in case such a dispute arises.

10. We are of the clear opinion that such a relief could not have been sought or granted in Writ Jurisdiction under Article 226 of the Constitution of India. The civil rights of the parties based on relevant evidence can only be determined by a Civil Court by a competent Civil Court and not by the writ Court under Article 226 of the Constitution of India. Such private rights of the parties cannot be made a subject matter of writ jurisdiction. The writ petitions under Article 226 of the Constitution of India lie only against the State or instrumentality of the State as defined under Article 12 of the Constitution of India. Therefore, such determination of private civil rights of the parties cannot be made subject matter of writ petition."

7. In the result, the Writ Petition is dismissed. It is made clear that no view has been expressed by this Court on the

correctness or entitlement on the merits of the claim made by the Petitioner. Consequently, connected Miscellaneous Petitions are closed. No costs.

Sd/-
Assistant Registrar (CS-III)

//True copy//

Sub Assistant Registrar

vjt

To

1. The Inspector General of Registration,
No. 1000, Santhome High Road,
Mylapore,
Chennai - 600 028.

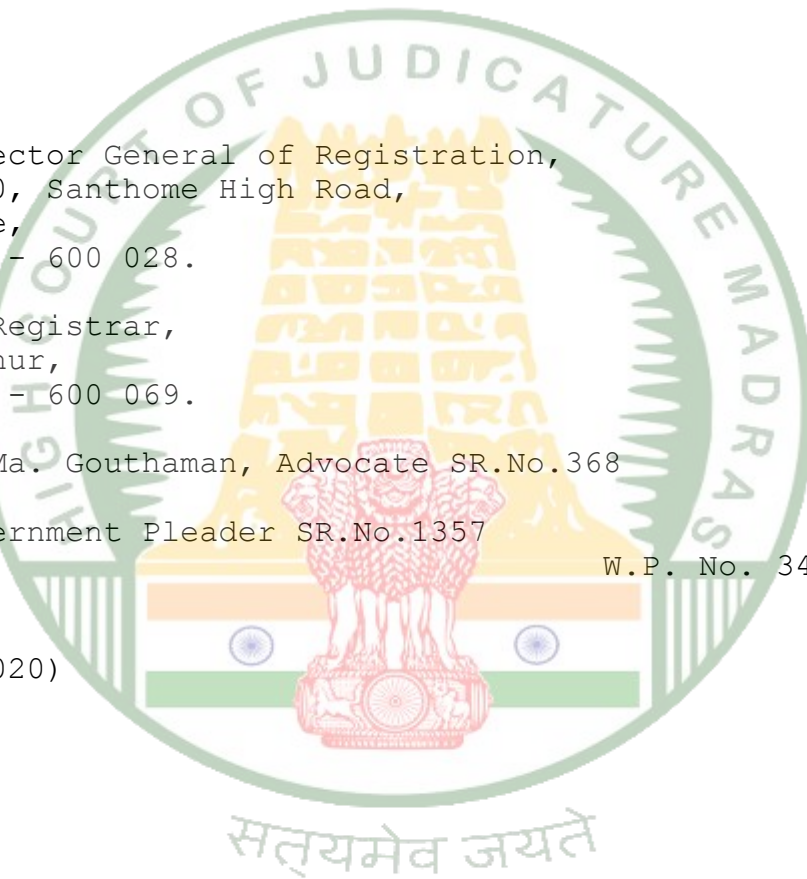
2. The Sub-Registrar,
Kundrathur,
Chennai - 600 069.

+1cc to Mr.Ma. Gouthaman, Advocate SR.No.368

+1cc to Government Pleader SR.No.1357

W.P. No. 34243 of 2019

VSN II (CO)
GMY (06/03/2020)



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