



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 05.06.2020

C O R A M

THE HONOURABLE MR.JUSTICE P.D.AUDIKESAVALU

W.P. (MD) No. 21357 of 2016

and

W.M.P. (MD)No.15273 of 2016

WEB COPY

T.V.Amarnath

... Petitioner

Vs.

1.The District Registrar,
Kumbakonam,
Thanjavur District.

2.The Sub Registrar,
Sub Registrar Office,
Dr.Moorthy Road,
Kumbakonam,
Thanjavur District.

3.T.V.Kamala

4.T.V.Sethuraman

...Respondents

PRAYER: Writ Petition filed under Article 226 of the constitution of India, to issue a writ of Certiorarified Mandamus, to call for the records relating to the registration of the impugned Gift settlement Cancellation Deed dated 03.06.2016 bearing document NO.2405 of 2016 and Gift Settlement Deed dated 06.06.2016 bearing document NO.2406 of 2016 on the file of the Second Respondent and quash the same and consequently direct the Second Respondent to delete the said entries from his record in respect of above said documents.

For Petitioner : Mr.T.R.Subramanian

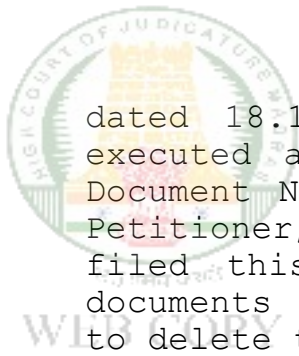
For Respondents 1 & 2 : Mr.V.Anand

Government Advocate

ORDER

Heard Mr. T.R.Subramanian, Learned Counsel for the Petitioner, Mr. V.Anand, Learned Government Advocate appearing for the First and Second Respondents through video-conference and perused the materials placed on record, apart from the pleadings of the parties.

2. The mother of the Petitioner viz., T.V.Kamala, the Third Respondent herein, had executed the Settlement Deed dated 18.11.2015 registered as Document No. 5283 of 2015 in the office of the District Registrar, Kumbakonam, transferring her property in favour of the Petitioner. Subsequently, the mother of the Petitioner by a Deed of Cancellation dated 03.06.2016 registered as Document No.2405 of 2016 had unilaterally cancelled the aforesaid Settlement Deed



dated 18.11.2015 executed in favour of the Petitioner, and she executed another Settlement Deed dated 06.06.2016 registered as Document No. 2406 of 2016 in favour of the Fourth Respondent. The Petitioner, on coming to know about the aforesaid transactions, has filed this Writ Petition challenging the registration of those documents and for consequential direction to the Second Respondent to delete those entries in the records.

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.

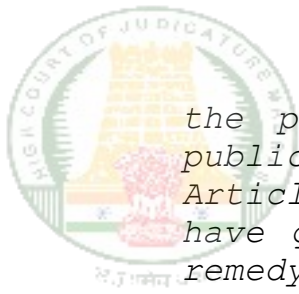
(2) If the instrument has been registered under the Indian Registration Act, 1908 (16 of 1908), the court shall also send a copy of its decree to the officer in whose office the instrument has been so registered; and such officer shall note on the copy of the instrument contained in his books the fact 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 he wants. In this regard, reference may be made to the decision of the Hon'ble Supreme Court of India in **Satya Pal Anand -vs- State of Madhya Pradesh** [(2016) 10 SCC 767], in which it has been held as follows:-

"40.At the same time, once the document is registered, it is not open to the Registering Officer to cancel that registration even if his attention is invited to some irregularity committed during the registration of the document. The aggrieved party can challenged the registration and validity of the document before the Civil Court...."

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 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."

4. 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. In this regard, reference may be made to the decision of the Division Bench of this Court in **P.Rukumani -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."



5. On a conspectus of the aforesaid binding decisions viz-a-viz statutory provisions, the following legal position would emerge:-

- (i) it is not open to the Registering Authority to cancel the registration of a document which has already taken place, even if there is some irregularity committed during the registration of the document;
- (ii) the aggrieved party has to challenge the validity and registration of the document before the jurisdictional Civil Court invoking Section 31 of the Specific Relief Act, 1963; and
- (iii) if the jurisdictional Civil Court finds in such suit instituted that the registered instrument is void, it shall send a copy of that decree to the Registering Authority, who shall note on the copy of the instrument contained in its books the fact of its cancellation.

6. 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. No costs.

Sd/-

Assistant Registrar (CS II)

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Sub Assistant Registrar(CS)

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Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate / litigant concerned.

To

1.The District Registrar,
Kumbakonam,
Thanjavur District.

2.The Sub Registrar,
Sub Registrar Office,
Dr.Moorthy Road,
Kumbakonam,
Thanjavur District.

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