



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 10.03.2020

DELIVERED ON : 05.06.2020

CORAM

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

W.P. (MD) No.26366 of 2019

and

W.M.P. (MD) Nos.22789 and 22790 of 2019

Ovureddy

... Petitioner

-VS-

1. The District Registrar,
(Assistant Inspector General of Registration)
Tuticorin.

2. The Sub-Registrar,
Vilathikulam (TK),
Tuticorin District.

3. Thirumalappan

4. Shanmugalakshmi

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the records of the 1st respondent in Na.Ka. No. 3676/A4/2019 dated 05.09.2019 and quash the same and to consequently declare the Unilateral Cancellation of Settlement Deed dated 12.09.2013 (Document No.3227/2013 in SRO, Vilathikulam executed by the Petitioner's father and Document No.3229/2013 in favour of the 3rd Respondent and the consequential Settlement Deed in Document No.3247/2013 execute in favour of the 4th respondent dated 13.09.2013 in SRO, Vilathikulam as null and void.

For Petitioner : Mr. V. Vijayshankar

For Respondents 1 & 2 : Mr. M. Murugan

<https://hcservices.ecourts.gov.in/hcservices/>

Government Advocate



O R D E R

Heard Mr. V. Vijayshankar, Learned Counsel for the Petitioner and Mr. M. Murugan, Learned Government Advocate, 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 father of the Petitioner viz., Ovu Reddiar, had executed the Settlement Deed dated 31.05.2005 registered as Document No. 794 of 2004 in the Office of the Sub-Registrar, Vilathikulam, transferring the property measuring an extent of 8.40 acres in Survey No. 89/1B in Muthiayapuram Village, Vilathikulam Taluk, in favour of the Petitioner. Subsequently, the father of the Petitioner by a Deed of Cancellation dated 12.09.2013 registered as Document No.3227 of 2013 had unilaterally cancelled the aforesaid Settlement Deed dated 31.05.2005 executed in favour of the Petitioner, and he executed another Settlement Deed dated 12.09.2013 registered as Document No. 3229 of 2013 in favour of the Third Respondent. The Third Respondent, in turn, executed a Settlement Deed dated 13.09.2013 registered as Document No. 3247 of 2013 in favour of the Fourth Respondent. The father of the Petitioner subsequently died on 28.02.2015. The Petitioner, on coming to know about the aforesaid transactions, had made a representation dated 26.06.2019 to the First Respondent seeking to cancel the registration of those documents. The said representation was disposed by the First Respondent in his order Na.Ka. No. 3676/A4/2019 dated 05.09.2019 stating that the Petitioner has to work out his remedy before the Civil Court, in that regard. Aggrieved thereby, the Petitioner has filed this Writ Petition challenging the aforesaid order.

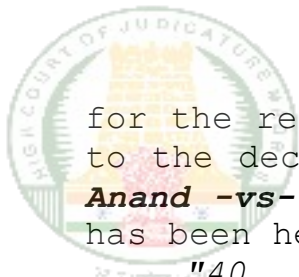
3. Having regard to the aforesaid relief sought, it would be necessary to refer to Section 31 of the Specific Relief Act, 1963, which reads as follows:-

"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 challenge 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 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."

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.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:-

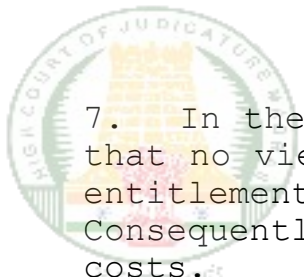
"9. Considering the submissions made at the bar, we are of the clear opinion that in a case relating to execution of a conveyance deed or a sale deed or cancellation thereof, if there is any dispute about the rights of the parties involved therein, the only appropriate remedy for the parties is to approach 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."

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. Learned Counsel for the Petitioner relies on the decision of this Court in **P.A.G. Kumaran -vs- Inspector General of Registration** [2017 (2) CWC 796], where directions were issued for removal of entries in the records of the Registration Department. On perusal, it is noticed that the question relating to availability of remedy under Section 31 of the Specific Relief Act, 1963, and the ratio laid down in the aforesaid binding decisions had not been raised in that case.



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.

WEB COPY

Sd/-

Assistant Registrar (Records)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

sj

To

1. The District Registrar,
(Assistant Inspector General of Registration)
Tuticorin.

2.The Sub-Registrar,
Vilathikulam (TK),
Tuticorin District.

W.P. (MD) No.26366 of 2019
05.06.2020

KK(10.06.2020) 5P 3C