



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.07.2021

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA
AND
THE HONOURABLE MR.JUSTICE V.SIVAGNANAM

W.A.No.494 of 2015

N.Sengodan

.. Appellant

Versus

1.The Sub-Registrar,
Suramangalam S.R.O.,
Salem - 5.

2.S.V.Kesavan

3.K.Desigan

.. Respondents

Prayer: Writ Appeal has been filed under Section 15 of Letter of Patent against the order dated 26.08.2014 passed in W.P.No.5425 of 2009.

Prayer in W.P.No.5425 of 2009:

Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus to call for the records of the first respondent pertaining to the Impugned Deed of Cancellation dated 23.05.2008 of 2008, bearing document No.3962 of 2008 whereby the Sale Deed dated 07.03.1990 bearing document No.529 of 1990 registered at SRO, Suramangalam has been cancelled unilaterally and quash the same.

For Appellant : Mr.Su.Srinivasan

For R1 : Mr.T.Arunkumar, GA
R2 died & R3 left

JUDGMENT

(Judgment of the Court was delivered by T.RAJA, J.)

The present appeal is directed against the impugned order passed by the learned Single Judge in W.P.No.5425 of 2009, dated 26.08.2014, in and by which, learned Single Judge refused to entertain the writ petition challenging the Deed of Cancellation



dated 23.05.2008 bearing Document No.3962 of 2008 cancelling the Sale Deed dated 07.03.1990 bearing Document No.529 of 1990 registered on the file of the first respondent, executed in favour of the appellant's father/Nanjappa Gounder.

WEB COPY

2. Learned counsel for the appellant submitted that the appellant's father had purchased an agricultural land comprised in Survey No.152/7, situated at Alagapuram Village, Salem District, measuring to an extent of 3 acres and 2.5 cents, through a registered sale deed dated 07.03.1990 bearing Document No.529/1990 on the file of SRO, Sooramangalam, from the respondents 2 and 3. After the death of the appellant's father on 12.08.1994, his brother gave power of attorney in favour of the appellant for enjoyment of the said land and thereafter, he has been in possession and enjoyment of the said property and carrying on agricultural activities. Whiles, in the year 2004, he came to know that the said property purchased by his father from the respondents 2 and 3 was already acquired by the Tamil Nadu Housing Board in the year 1983 itself. However, suppressing these facts, since the respondents 2 and 3 sold the property in question to the appellant's father on 07.03.1990, the appellant gave a criminal complaint against the respondents 2 and 3 in C.C.No.364 of 2004 on the file of Judicial Magistrate Court, Salem, whereby the respondents 2 and 3 were convicted on 19.04.2007, and as against the same, the respondents 2 and 3 have also preferred an appeal in C.A.No.73/2007. Pending appeal, they have approached the appellant to settle the matter amicably. Now, since the parties have settled the matter with regard to compensation, the appellant is entitled to claim ownership of the land in question, he pleaded.

3. In this conspectus, he argued, the respondents 2 and 3 have executed the Deed of Cancellation dated 23.05.2008 cancelling the sale deed dated 07.03.1990 entered between the appellant's father and the respondents 2 and 3, which is contrary to the ratio laid down by the Hon'ble Full Bench of this Court in Muppudathi Pillai Vs. Krishnaswami Pillai [AIR 1960 Madras 1] holding that the vendor by the unilateral execution of the cancellation deed cannot annul a registered document duly executed by him. But, in the present case, although the respondents 2 and 3 have unilaterally executed the Deed of Cancellation dated 23.05.2008, that too, without issuing notice to the appellant, learned Single Judge refused to accept the case of the appellant to set aside the Deed of Cancellation dated 23.05.2008, therefore, the writ appeal deserves to be allowed.

4. Finally, he contended that although the land in question was acquired by the Tamil Nadu Housing Board way back 1983, now the Housing Board has given up the project, therefore, the land



in question has to be re-conveyed to the original owner, namely, the father of the appellant or his legal heirs.

5. Opposing the above prayer, learned Government Advocate admitting the legal position that unilateral cancellation of sale deed is not legally permissible as per the ratio laid down by the Hon'ble Full Bench of this Court in Muppudathi Pillai's case (cited supra), submitted that after the order passed by the learned Judicial Magistrate, Salem, on 19.04.2007 in C.C.No.364 of 2004 convicting the respondents 2 and 3, they have preferred an appeal before the learned Assistant Sub Judge No.I, Salem, in C.A.No.73/2007, and pending appeal, they have approached the appellant to settle the matter amicably and thereby, the respondents 2 and 3 have also paid Rs.3,50,000/- towards litigation and reclamation charges incurred by the appellant with an assurance that they will not disturb the peaceful possession and enjoyment of the property in question by the appellant. Whiles, the appellant cannot once again seek his right over the land in question and if at all the appellant assumes that deed of cancellation has been executed by the respondents 2 and 3 behind his back, he has to approach the competent Civil Court for appropriate relief, he pleaded.

6. We fully agree with the above said submissions of learned Government Advocate. Admittedly, sale deed dated 07.03.1990 bearing Document No.529/90 entered between the appellant's father and the respondents 2 and 3 was cancelled by way of Deed of Cancellation dated 23.05.2008 bearing Document No.3962/2008 on the file of SRO, Suramangalam, Salem. Subsequently, the appellant filed a criminal case against the respondents 2 and 3 in C.C.No.364 of 2004 on the file of learned Judicial Magistrate, Salem, and after trial, this was ultimately ended in conviction on 19.04.2007. Aggrieved by the same, the respondents 2 and 3 preferred an appeal in C.A.No.73 of 2007 on the file of learned Assistant Sub Judge No.1, Salem. Pending appeal, they have entered into settlement and thereby, the appellant also received a sum of Rs.3,50,000/- towards litigation and reclamation charges and this fact was also recited in the Deed of Cancellation dated 23.05.2008. Therefore, taking note of the said settlement made by the parties, the criminal Court allowed the appeal filed by the respondents 2 and 3 in C.A.No.73 of 2007, dated 06.10.2007.

7. Further, as could be seen from the impugned order passed by the learned Single Judge, the appellant herein has also admitted the receipt of Rs.3,50,000/- by way of two demand drafts and settling the matter amicably between the parties. But, the contention of the learned counsel for the appellant that he was cheated and defrauded by the respondents 2 and 3 in veiling the acquisition of land in question by the Tamil Nadu



Housing Board way back in 1983 itself has to be investigated and therefore, as rightly decided by the learned Single Judge, these disputed question of facts have to be adjudicated only before the competent Civil Court.

WEB COPY

8. Thus, for the reasons stated above, we do not find any error or illegality in the impugned order passed by the learned Single Judge warranting interference. Accordingly, the writ appeal stands dismissed by confirming the impugned order passed by the learned Single Judge. No Costs.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

rkm

To

The Sub-Registrar,
Suramangalam S.R.O.,
Salem - 5.

W.A.No.494 of 2015

RSV (CO)
PR (09/08/2021)