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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.10.2021

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA
AND
THE HONOURABLE MRS.JUSTICE T.V.THAMILSELVI

W.A.No.263 of 2013

Thamiraparani Investments Ltd.,
rep by its Director Mr.P.Ram Mohan
Flat No.A2, I Floor
"Srishti's Crescendo"
No.24, Desika Road
Mylapore
Chennai 600 004

..Appellant

-vs-

1. The Sub Registrar
Ponneri
Tiruvallur District
2. The Inspector General of Registration
No.100, Santhome High Road
Pattinapakkam
Chennai 600 028
3. Citrex Products Limited
rep by its Director Mr.K.Balasubramanian
"Atkinson Palace" 2-F-1
No.2, Jyothi Venkatachalam Road
Vepery, Chennai 600 007
4. V.Rajendran
5. Sathish Raj
6. M/s Metafilms (India) Ltd.,
No.157/1, GNT Road
Chinnambedu Post
Kavarapet 601 206

..Respondents

Appeal filed under Clause 15 of the Letters Patent against the order dated 17.04.2012 made in W.P.No.24554 of 2011.

Prayer in W.P.No.24554 of 2011: Writ petition filed under Article 226 of the constitution of India, praying for the



issuance of a writ in the nature of Mandamus, directing the respondents 1 and 2 to cancel the registration of the amendment deeds registered as Document Nos.377-379 of 2009 on the file of the Respondents No.1.

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For Appellant	::	Mr.R.Subramanian for M/s G.Rajathi
For Respondents	::	Mr.T.Arunkumar Government Advocate for R1 & R2 R3-No appearance Ms.A.Saranya for M/s Iyer & Thomas for R4 to R6

JUDGMENT

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

This writ appeal has been filed by M/s Thamiraparani Investments Limited against the impugned order dated 17.4.2012 passed in Writ Petition No.24554 of 2011, wherein the prayer for issuance of a mandamus directing the respondents 1 & 2 to cancel the registration of the amendment deeds registered as Document Nos.377-379 of 2009 on the file of the Sub Registrar, Ponneri, was refused.

2. The case of the appellant/writ petitioner briefly runs thus:

M/s Citrex Products Limited, the third respondent herein was originally the owner of larger extent of 30.8 acres of land in Thatchur and Peravallur villages in Tiruvallur District. After entering into a sale agreement with the appellant in respect of 25.8 acres out of 30.8 acres of land, it is stated that the third respondent had handed over possession to the appellant. It is also stated that after receipt of the entire sale consideration, the third respondent also executed a Power of Attorney in respect of the said extent of land in favour of the nominees of the appellant. Subsequently, the execution of three sale deeds pertaining to an extent of 11 acres having been fraudulently made by Mr.V.Rajendran and Mr.R.Satish Raj, the respondents 4 & 5 on behalf of the third respondent, was found out. Therefore, the execution of the above sale deeds were challenged in O.S.No.57 of 2004 before the Sub Court, Ponneri and the said suit has been now transferred and pending in re-numbered O.S.No.140 of 2020 before the Sub Court, Poonamallee. Since the appellant got registered the balance extent of 14.8 acres of land under a sale deed registered as Document No.97 of 2005 in the office of the Sub Registrar, Ponneri during the pendency of the above suit proceedings, steps were taken to



amend the sale deeds for 10 acres together with another sale deed executed in favour of the sixth respondent for 5 acres, in January, 2009. Since the registration has been done without proper enquiry, the appellant filed the writ petition praying for a direction directing the respondents 1 & 2 to cancel the registration of the amendment deeds registered as Document Nos.377-379 of 2009 on the file of the Sub Registrar, Ponneri. The learned single Judge, after hearing both sides, has refused to accept the case of the appellant/writ petitioner. Aggrieved thereby, the present appeal has been filed.

3. Mr.R.Subramanian, learned counsel appearing for the appellant contended heavily that when there was an agreement of sale entered into with the third respondent in respect of 25.8 acres of land and the possession was also handed over to the appellant, after executing the sale agreement, the third respondent had no authority to alienate the same land by executing the rectification deeds in the year 2009, as they have lost the right to enjoy the property from the date of entering into the sale and after handing over possession to the appellant. In support thereof, placing reliance on the judgment of the Hon'ble Full Bench of this Court in M/s Latif Estate Line India Ltd., represented by its Managing Director Mr.Habib Abdul Latif v. Mrs.Hadeeja Ammal and others, 2011 (2) CTC 1, learned counsel argued that when the unilateral cancellation of a sale deed by registered instrument at the instance of the vendor only encourages fraud and is against public policy, the appellant is entitled to come to this Court invoking Article 226 of the Constitution of India for cancellation of the amendment deeds. As the learned single Judge has refused to accept the appellant's prayer, he pleaded for allowing this writ appeal.

4. Mr.T.Arunkumar, learned Government Advocate appearing for the respondents 1 & 2, taking support from the very same Full Bench judgment cited supra, submitted that when the legal position is well settled that 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, the present writ appeal is not legally maintainable. Again taking support from the judgment of the Hon'ble Apex Court in Sathya Pal Anand v. State of M.P. and others, (2016) 10 SCC 767, he has argued that 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, as the aggrieved party has to challenge the registration and validity of the document only before the civil Court. In the present case, when the civil suit in re-numbered O.S.No.140 of 2020 (O.S.No.57 of 2004), in which the appellant is also one of the plaintiffs, for necessary reliefs is pending



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before the Sub Court, Poonamallee, learned Government Advocate pleaded that the act of the appellant in coming to this Court invoking Article 226 of the Constitution of India questioning only the registration of the rectification deeds, is wholly unjustified and untenable.

5. Ms.A.Saranya, learned counsel appearing for the respondents 4 to 6 also submitted that when the parties have already filed various civil suits and the same are pending, namely, re-numbered O.S.No.140 of 2020 (O.S.No.57 of 2004) on the file of the Sub Court, Poonamallee, another re-numbered O.S.No.141 of 2020 (O.S.No.64 of 2004) on the file of the Sub Court, Poonamallee and yet another suit in C.S.No.51 of 2005 before this Court, now transferred to the file of the City Civil Court, the filing of the writ petition questioning the correctness of the registration of the rectification deeds, is wholly unjustified.

6. Having heard learned counsel for the parties, in the case on hand, we are being bound by the ratio laid down by the Hon'ble Full Bench of this Court in the case of M/s Latif Estate Line India Ltd., represented by its Managing Director Mr.Habib Abdul Latif v. Mrs.Hadeeja Ammal and others, 2011 (2) CTC 1 holding clearly that 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, which we have also recently followed in our order dated 28.9.2021 passed in Writ Appeal Nos.59 & 60 of 2016 (S.P.Velayutham etc. v. Asset Reconstruction Company (India) Limited and others), holding as follows:-

"12. Now coming to the core question raised in these appeals as to whether the registered sale deed on the ground of fraudulent execution can be cancelled by the writ Court exercising jurisdiction under Article 226 of the Constitution of India, the said issue is no longer res integra, as the Full Bench judgment of this Court in the case of M/s Latif Estate Line India Ltd., represented by its Managing Director Mr.Habib Abdul Latif v. Mrs.Hadeeja Ammal and others, 2011 (2) CTC 1, has succinctly held as follows:-

"57. There is no dispute that a third party can claim title to the property against the purchaser who purchased the property for valuable consideration and came into possession of the same. But it is the Civil Court of competent



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jurisdiction to give such declaration in favour of the third party or a stranger.

58. It can also not be overlooked or ignored that a unilateral cancellation of a sale deed by registered instrument at the instance of the vendor only encourages fraud and is against public policy. But there are circumstances where a deed of cancellation presented by both the vendor and the purchaser for registration has to be accepted by the Registrar if other mandatory requirements are complied with. Hence, the vendor by the unilateral execution of the cancellation deed cannot annul a registered document duly executed by him as such an act of the vendor is opposed to public policy.

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



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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.

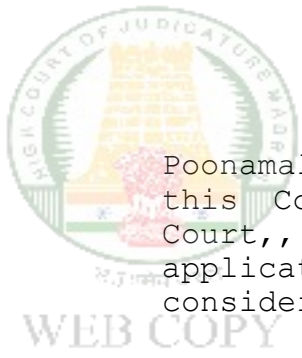
60. Having regard to the conclusions arrived at as aforesaid, the questions referred are answered accordingly. The appeals are referred back to the concerned Court for deciding the case on merits."

(emphasis supplied)

7. Further, we must also indicate herein that when the Hon'ble Apex Court in the case of Sathya Pal Anand v. State of M.P., and others, (2016) 10 SCC 767, has also made it clear that 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 and the course open to the aggrieved party is to challenge the registration and validity of that document only before the competent civil Court, we are unable to find any merits in the writ appeal.

8. However, Mr.R.Subramanian, learned counsel appearing for the appellant, referring to Section 14 of the Limitation Act, 1963, prayed this Court to exclude the time of proceeding taken by the appellant while prosecuting the writ petition and the writ appeal before this Court.

9. In our opinion, when the parties have already filed various civil suits and the same are pending, namely, re-numbered O.S.No.140 of 2020 (O.S.No.57 of 2004) on the file of the Sub Court, Poonamallee, another re-numbered O.S.No.141 of 2020 (O.S.No.64 of 2004) on the file of the Sub Court,



Poonamallee and yet another suit in C.S.No.51 of 2005 before this Court, now transferred to the file of the City Civil Court,, it is for the appellant to move an appropriate application before the jurisdictional trial Court, that may be considered by the trial Court concerned on merits.

10. With this observation, the writ appeal stands dismissed. Needless to mention that the civil Court(s) shall decide the question of title to the property in question in accordance with law. However, there is no order as to costs.

Sd/-
Deputy Registrar (CS)

//True Copy//

Sub Assistant Registrar

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To

1. The Sub Registrar
Ponneri
Tiruvallur District
2. The Inspector General of Registration
No.100, Santhome High Road
Pattinapakkam
Chennai 600 028

+1cc to Mr.H.Karthik Seshadri, Advocate, S.R.No.52995

+1cc to the Government Pleader, S.R.No.53189

W.A.No.263 of 2013

AD(CO)
RGA(12/01/2022)