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IN THE HIGH COURT OF JUDICIATURE AT MADRAS

DATED : 15.09.2021

CORAM :

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

W.A.No.1382 of 2019

Muthulakshmi ... Appellant/ Petitioner
versus

- 1.The State rep. by its
Secretary to Government,
Commercial Taxes and Religious
Endowment Department,
Secretariat, Chennai - 600 009.
- 2.The Inspector General of Registration,
No.100, Santhome High Road,
Mylapore, Chennai - 600 028.
- 3.The District Registrar,
Namakkal District - 637 001.
- 4.The Sub Registrar,
Paramathivelur & Taluk,
Namakkal District - 637 007.
- 5.K.Shanmugam
- 6.Pavayee
- 7.S.Ramesh
- 8.Mariyayee
- 9.M.Selvaraj
- 10.Murugan
- 11.Senthil Kumar

... Respondents

Prayer: Appeal filed under Clause 15 of the Letters Patent
against the order dated 15.11.2018 in W.P. No.29908 of 2018.

Prayer in W.P. No.29908 of 2018:

Petition filed under Article 226 of the Constitution of
India praying for issuance of Writ of Mandamus, directing the



3rd respondent to direct 4th respondent to cancel the partition deed executed on 22.10.1981 by the father of 5th respondent as Doc.No.542 of 1981 in favour of 5th and 6th respondents on the grounds of being repugnant to the provisions of Hindu Succession (Amendment) Act 2005 as well as sale deed Doc.No.1488 of 2013 registered on 08.05.2013 by the 5th respondent in favour of respondents 9-11 for non-consideration received in regard to petitioner's 1/4th share interest rights as coparcener.

For Appellant : Mr.A.S.Palanisamy

For Respondents: Mr.V.Manoharan,
Government Advocate for R1 to R4

Mr.P.Mathivanan for R5 to 8

Mr.T.L.Thirumalaisamy for R9 to 11

JUDGMENT

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

This appeal has been directed against the impugned order dated 15.11.2018 passed in the above W.P. No.29908 of 2018, wherein the learned Single Judge, dismissing the prayer of the appellant, seeking for issuance of writ of mandamus, directing the District Registrar, Namakkal District to direct the Sub Registrar, Paramathivelur and Taluk to cancel the Partition Deed executed on 22.10.1981 by the father of the fifth respondent as Document No.542 of 1981 in favour of respondents 5 and 6 on the ground of being repugnant to the provisions of Hindu Succession (Amendment) Act 2005 as well as Sale Deed Doc.No.1488 of 2013 registered on 08.05.2013 by the fifth respondent in favour of respondents 9-11 for non-consideration received in regard to appellant's 1/4th share interest rights as coparcener and considering the peculiar prayer made by the appellant in the writ petition under Article 226 of the Constitution of India, granted her liberty to approach the appropriate forum for redressing her grievance, if she is so advised.

2.The case of the writ petitioner/appellant shows that she is one of the legal heirs of her late father Karuppanna Gounder. After the death of her grand father, her father executed a registered Partition Deed dated 22.10.1981 as Document No.542/1981 at the Office of the Sub Registrar, Paramathi, Namakkal District, allotting shares to various persons, without allotting any share to herself and her sister 7th respondent. As the said partition and the subsequent Sale Deed dated 08.05.2013 registered as Document No.1488/2013 are in violation of the provisions of Hindu Succession (Amendment) Act 2005, she has filed the above writ petition for cancellation of the above partition deed and the sale deed.



3.The issue raised in this appeal is no longer res integra, in the light of the judgment dated 11.02.2011 passed by the Full Bench of this Court in M/s.Latif Estate Line India Ltd. Vs Hadeeja Ammal and others, wherein it has been held 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.

4.In spite of the fact that liberty was given to the appellant to approach the competent forum to redress her grievance, she was wrongly advised to come to this Court by filing this appeal challenging the correctness of the partition as well as the sale deed. In the light of the observation made in the judgment of the Full Bench of this Court in the case of Latif Estate Line India Limited vs. Hadeeja Ammal and others reported in 2011 (2) CTC 1, since the cancellation of the partition deed to be considered only on the basis of the oral and documentary evidence to be placed by both the parties before the competent Civil Court, we are afraid of entertaining this appeal. In this regard, it is necessary to extract the relevant portion as under:

'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 effected by way of sale with the condition that title till 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 on 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



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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 cases on merits.'

5.The Hon'ble Apex Court also in Satya Pal Anand vs. State of M.P. and others reported in 2016 10 SCC 767 in paragraph 31 has held categorically that the validity of the registered document can, indeed, be put in issue before a Court of competent jurisdiction. The relevant portion is extracted as under:

'31.In our considered view, the decision in the case of Thota Ganga Laxmi (supra) was dealing with an express provision, as applicable to the State of Andhra Pradesh and in particular with regard to the registration of an Extinguishment Deed. In absence of such an express provision, in other State legislations, the Registering Officer would be governed by the provisions in the Act of 1908. Going by the said provisions, there is nothing to indicate that the Registering Officer is required to undertake a quasi judicial enquiry regarding the veracity of the factual position stated in the document

presented for registration or its legality, if the tenor of the document suggests that it requires to be registered. The validity of such registered document can, indeed, be put in issue before a Court of competent jurisdiction.'

6.Since the aforementioned ratio are clear and categorical 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 appellant ought not to have come to this Court unnecessarily, after getting liberty from the learned Single Judge in the writ petition. Therefore, whether the appellant was before the learned Single Judge or before the Division Bench, the judgment of the Full Bench as well as the Hon'ble Apex Court mentioned supra will apply to the appellant as well. Hence, this writ appeal is liable to be dismissed. Accordingly, the writ appeal stands dismissed. No costs.

Sd/-

Assistant Registrar(CS V)

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Sub Assistant Registrar

vga



To

1.The State rep. by its
Secretary to Government,
Commercial Taxes and Religious
Endowment Department,
Secretariat,
Chennai - 600 009.

2.The Inspector General of Registration,
No.100, Santhome High Road,
Mylapore, Chennai - 600 028.

3.The District Registrar,
Namakkal District - 637 001.

4.The Sub Registrar,
Paramathivelur & Taluk,
Namakkal District - 637 007.

+1 cc to Mr.P.Mathivanan, Advocate Sr.NO.47132
+1 cc to Mr.T.L.Thirumalaisamy, Advocate Sr.NO. 46642
+2 ccs to Mr.A.S.Palanisamy, Advocate Sr.NO. 47281
+1 cc to Government Pleader Sr.NO. 47197

W.A.No.1382 of 2019

A.SK(12.10.2021)