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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.07.2021

CORAM:

THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN

W.P.No.6438 of 2020
and W.M.P.Nos.7609 & 7610 of 2020

M.Ponnusamy .. Petitioner

Vs.

1. The Sub Registrar,
Chennimalai,
Thiruppur District.

2. Chellammal .. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India seeking a Writ of Certiorarified Mandamus calling for the records relating to the registration of the unilateral cancellation deed No.3538, dated 16.10.2019 on the file of the Sub Registrar Office, Chennimalai executed by the 2nd respondent and registered by the 1st respondent and quash the same and consequently direct the 1st respondent to remove the connected entries in the Register.

For Petitioner : Mrs.Vijayakumari Natarajan

For Respondent 1 : Mr.K.M.D.Muhilan,
Government Advocate

For Respondent 2 : No appearance

O R D E R

(The case has been heard through video conference)

The writ petition has been filed challenging the unilateral cancellation of the release deed executed by the second respondent and registered by the first respondent Sub Registrar.

2. The brief facts leading to filing of the writ petition is as follows:

(i) The second respondent is the sister of the writ petitioner and they are having joint family properties in various survey numbers in Keeranoor Village, Perundurai Taluk, Erode district.



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(ii) Earlier, the second respondent filed a suit for partition against the petitioner herein claiming 1/2 share in the joint family properties. According to the petitioner, pending suit, the second respondent received a sum of Rs.25,00,000/- for relinquishing her entire share and the suit was dismissed as settled out of Court.

(iii) Subsequently, the second respondent executed a release deed in respect of eight properties in favour of the petitioner after receiving a sum of Rs.2,00,000/- and the same was registered as Document No.3355 of 2019 on 25.09.2019 before the first respondent. After execution of the release deed, the petitioner has become the absolute owner of the suit property. Thereafter, without the knowledge of the petitioner, the second respondent unilaterally cancelled the release deed and the same was registered by the first respondent Sub Registrar on 16.10.2019, as document No.3538/2019.

(iv) Now, challenging the same the present writ petition has been filed.

3. Even though notice was served on the second respondent through Court as well as privately and the name of the petitioner was also printed in the Cause List, when the matter was listed for hearing on 17.06.2021, there was no appearance for the second respondent and the matter was adjourned to 30.06.2021. On 30.06.2021, also there was no representation for the petitioner, and Registry was directed to verify whether any vakalat has been filed for the second respondent. Today when the matter was taken up, it was informed that no vakalat has been filed on behalf of the second respondent and none represented the second respondent.

4. Mrs.Vijayakumari Natarajan, learned counsel appearing for the petitioner would submit that the second respondent is none other than the sister of the writ petitioner and claiming half share in the property, she filed a suit for partition, wherein there was a settlement between the parties and after receiving a huge amount, she released her right and the suit was also dismissed as settled out of Court. Thereafter, the second respondent executed a release deed after receiving another sum of Rs.2,00,000/-, which has been clearly recited in the release deed, which was also duly registered. After execution of the release deed, the petitioner has become the absolute owner of the property and the title has been transferred to him. Subsequently, on some ill advice, the second respondent cancelled the release deed unilaterally on the ground that she has not received the consideration and that she has been cheated by the petitioner and others.

5. Further according to the learned counsel for the petitioner, after executing the release deed, the title of the property has been vested with the petitioner, the releasor of the property cannot cancel the same without the consent of the



petitioner and she cannot annul the registered document duly executed by her. If at all she has any grievance over the execution of the release deed, the only remedy available to her is to approach the concerned Civil Court and obtain a decree for cancellation of the release deed and the second respondent Sub Registrar also cannot register such document, which is opposed to public policy. According to the learned counsel for the petitioner, the release deed has been executed after receiving the consideration, which is also clearly stated in the release deed and thereafter, it is not open to the second respondent to contend that she has not received the consideration and it is not permissible in law. Hence, according to the learned counsel for the petitioner, the unilateral cancellation of the release deed is illegal and it should be necessarily set aside and the Sub Registrar should be directed to remove the encumbrance in the register. The learned counsel appearing for the petitioner also strongly relied upon a Full Bench judgment of this Court in *Latif Estate Line India Ltd., Vs. Hadeeja Ammal* reported in 2011 (2) CTC 1 to support her contention.

6. Mr.K.M.D.Muhilan, learned Government Advocate appearing for the first respondent would contend that the release deed is said to have been executed for a consideration of Rs.2,00,000/-, but the second respondent allege that she has not received any consideration and being a old lady on misrepresentation the petitioner obtained her thumb impression in some documents and executed the release deed and she has not consciously executed the release deed and hence she came forward to cancel the release deed. There is no specific provision in the Registration Act empowers the first respondent to refuse registration, hence the first respondent registered the cancellation deed and there is no illegality in it.

7. I have considered the rival submission.

8. The issue whether the sale deed or a release deed duly executed and registered can be cancelled unilaterally is no more *res integra*, a Full Bench of this Court in *Latif Estate Line India Ltd.*, case (cited *supra*) has held that unilateral cancellation of a sale deed by the vendor does not create, assign, limit or extinguish any right, title or interest in the immovable property and the same has no effect in law, it only encourage fraud and is against public policy and unilateral execution of cancellation deed cannot annul the registered document duly executed. The relevant portion of the Full Bench judgment of this Court cited *supra* is as follows:

"54. There is no provision in the Transfer of Property Act or in the Registration Act, which deals with the cancellation of deed of sale. The reason according to us is that the execution of a deed of cancellation by the vendor does not



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create, assign, limit or extinguish any right, title or interest in the immovable property and the same has no effect in the eye of law. A provision relating to the cancellation of a document is provided in Section 31 of the Specific Relief Act, 1963 (Old Section 39). Section 31 reads as under:-

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.

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



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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 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."

9. In the instant case, admittedly it is a case of unilateral cancellation of release deed and as per the judgement of the Full Bench of this Court, it has no effect in the eye of law and also it does not create any encumbrance in the property already transferred in favour of the petitioner. In such circumstances, the Sub Registrar ought not to have accepted the document for registration. If at all the second respondent has any grievance over the execution of the release deed, the remedy available to the second respondent is to seek recourse to the Civil Court and get the release deed cancelled and she cannot resort to the indirect way by cancelling the release deed unilaterally. In the said circumstances, the cancellation of release deed on the face of it is illegal and it is only liable to be set aside and the petitioner need not be directed to take recourse in the civil court to challenge the same.

10. In the result, the writ petition is allowed and the cancellation of release deed executed by the second respondent



is set aside and consequently the first respondent is directed to remove all the encumbrance from the register in respect of the above cancellation deed. Consequently, the connected miscellaneous petitions are closed. No costs.

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Sd/-
Assistant Registrar

//True copy//

Sub Assistant Registrar

kk

To

The Sub Registrar,
Chennimalai,
Thiruppur District.

+1cc to Mr.S.Natarajan, Advocate SR.No.30950

W.P.No.6438 of 2020 and
W.M.P.Nos.7609 & 7610 of 2020

PL(CO)
GMY(19/07/2021)