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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 31.08.2021

DATE OF DECISION : 28.09.2021

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA

AND

THE HONOURABLE MRS.JUSTICE T.V.THAMILSELVI

W.A.Nos.59 & 60 of 2016

S.P.Velayutham ...Appellant in W.A.No.59 of 2016
V.Amar ...Appellant in W.A.No.60 of 2016

-vs-

1. Asset Reconstruction Company
(India) Limited rep.by its Manager
Mr.Nirav Parek
The Ruby, 10th Floor
Senapati Bapat Marg
Dadar (West), Mumbai 400 028
2. The Inspector General of Registration
No.100, Santhome High Road
Chennai 600 028
3. The Sub Registrar-Alandur
12, 1st Main Road
Nanganallur Co-operative Society Limited
Nanganallur, Chennai 600 061
4. K.S.Deenadayalu Reddy
5. K.Venkatak Krishnan ...Respondents 1 to 5 in both Appeals
6. V.Amar ...Respondent No.6 in W.A.No.59 of 2016
7. S.P.Velayutham ...Respondent No.6 in W.A.No.60 of 2016

Appeals filed under Clause 15 of the Letters Patent against the order dated 04.01.2016 made in W.P.No.33462 of 2014.

Prayer in W.P.No.33462 of 2014: Writ Petition filed under Article 226 of the Constitution of India seeking for the relief of issuance of writ of certiorarified mandamus to call for the records of the 2nd respondent culminated in the sale deed dated 5.7.2007, which has been registered as document No.2179/07 Book No.1 registered with S.R.O., Alandur, Chennai and quash the same and consequentially direct the 2nd Respondent to remove the



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entry made as Document No.2179 of 2007 in Book I in office of the Sub-Registrar, Alandur, Chennai.

For Appellants :: Mr.V.Raghavachari for
M/s M.Jeeva in W.A.No.59 of
2016
Mr.T.Mohan for
Mr.Avinash Wadhvani
in W.A.No.60 of 2016

For Respondents :: Mr.AR.L.Sundaresan
Senior Counsel for
Mr.Anirudh Krishnan for R1
Mr.T.Arunkumar
Government Advocate for
R2 & R3
Mr.M.L.Ramesh for R5
Mr.A.Jenasenan for R6
R4-Died

JUDGMENT

T.RAJA, J. & T.V.THAMILSELVI, J.

These writ appeals have been filed by the appellants, the respondents 5 & 6 in the writ petition, challenging the impugned order dated 4.1.2016 passed by the learned single Judge in Writ Petition No.33462 of 2014, allowing the writ petition as prayed for, resultantly, quashing the sale deed registered on 5.7.2007 by the Sub Registrar, Alandur and further directing him to remove the revenue entries made therein.

2. Mr.V.Raghavachari, learned counsel appearing for the appellant in Writ Appeal No.59 of 2016, assailing the impugned order, heavily argued that the writ petition filed by Asset Reconstruction Company (India) Limited represented by its Manager seeking cancellation of the sale deed dated 5.7.2007 bearing Document No.2179 of 2007 registered in the office of the Sub Registrar, Alandur, Chennai in the name of the appellant in Writ Appeal No.60 of 2016, is not legally maintainable under Article 226 of the Constitution of India, inasmuch as the writ petitioner cannot seek to establish any right before the writ Court under Article 226 on the basis of the alleged assignment of debt/loan, because when the right, title and interest of the writ petitioner to claim or enforce the debt itself is in dispute, the proper legal course would be to file a civil suit to establish its rights, claim, interest or status as contemplated under Section 34 of the Specific Relief Act seeking declaratory and other consequential reliefs, as already three



forums have repeatedly reiterated that the writ petitioner should approach only the competent civil Court. When the respondents 4 & 5 herein had already conveyed the property in favour of the sixth respondent herein through the appellant as their power of attorney agent and the sixth respondent herein had valid right, title and interest to the property, if there is any dispute with regard to the title, the writ petitioner should have approached the competent civil Court. When the predecessors-in-title Loganatha Reddiyar had exercised the right of ownership over the property under Patta No.7 and executed a registered mortgage deed dated 20.9.1929 vide Document No.1631 of 1929 in favour of Sriramulu Reddiyar, thereafter the said Loganatha Reddiyar executed a registered sale deed dated 22.12.1937 bearing Document No.2061 of 1937 in favour of Sriramulu Reddiyar, who is the father of the fourth respondent herein and subsequently in the year 1943, the said Sriramulu Reddiyar settled the property in favour of Lalithakumari alias Lalitha Manohari and K.S.Deenadayalu Reddy, which was subsequently revoked by him in the year 1949, however, after the demise of Sriramulu Reddiyar, the property devolved upon his son and grandson, the respondents 4 & 5 herein. As a matter of fact, K.S.Deenadayalu Reddy had been exercising the right of ownership over the property and paying the urban land tax and patta was also issued in his favour and subsequently, the respondents 4 & 5 herein had executed a power of attorney dated 23.8.2006 in favour of the appellant Mr.S.P.Velayutham and also an unregistered power of attorney on 7.6.2007, based on which the appellant executed a sale deed dated 5.7.2007 bearing Document No.2179 of 2007 in favour of the sixth respondent. The revenue authorities also have recognised the right, title and interest over the property and the possession thereof and mutation of the names also have been recorded and effected in the revenue records in favour of the sixth respondent and based on the title deeds and the revenue records, the sixth respondent has been in uninterrupted possession and enjoyment of the property. While so, the writ petitioner till date has not questioned or challenged the title or ownership of the property in question before the competent civil Court by filing a civil suit. Mr.V.Raghavachari also contended that when the writ petitioner has not challenged the title of the appellant's predecessors from whom the sixth respondent has derived valid title to the property before a competent civil Court, it is not known how they can come to this Court invoking Article 226 of the Constitution of India to set aside the sale deed.

3. Continuing his arguments, Mr.V.Raghavachari submitted that when 'A' party, 'B' party, 'C' party and 'D' party have raised a land dispute, since tension prevailed in the case land, First Information Report was filed by the Inspector of Police, S-1, St.Thomas Mount Police Station on 24.10.2009 and he

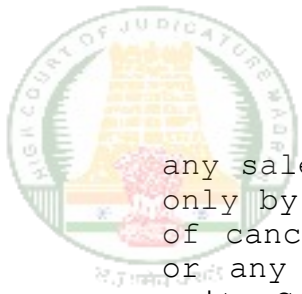


requested the Sub Divisional Magistrate and Revenue Divisional Officer, Tambaram to resolve the dispute after verifying the documents, as there was an apprehension that the parties may indulge in untoward activities and the Revenue Divisional Officer, Tambaram issued notices to all the parties viz., A,B,C,D asking them to appear on 24.11.2009 at 11.00 AM. Pursuant thereto, considering the fact that the appellant Mr.S.P.Velayutham 'B' party produced the registered power deed dated 28.8.2006 and notary power deed dated 7.6.2007 executed in favour of 'B' party, the registered sale deed dated 5.7.2007 executed by 'B' party in favour of V.Amar, patta issued in the name of V.Amar, urban land tax of Rs.1,06,180/- paid on 30.3.2009 in the name of 'B' party, the Revenue Divisional Officer, Tambaram, finding that there was no other title deed produced by any party, except 'B' party, came to the conclusion that the 'A' party, 'C' party and 'D' party may establish their right over the property through the civil Court and the possession and enjoyment of 'B' party should not be interfered with till the order passed by the Revenue Divisional Officer is set aside by the competent civil Court, by her order dated 1.4.2010. Against the said order, M/s Infovision Private Limited represented by its Power of Attorney filed Criminal Revision Case No.760 of 2010 and the learned single Judge, finding that there was a civil dispute involved, confirming the order passed by the Revenue Divisional Officer, dismissed the criminal revision case by his order dated 4.7.2012 directing the parties to approach only the competent civil Court to establish their right. Again aggrieved by the same, M/s Infovision Private Limited filed S.L.P.(Crl.) Nos.7548-7549 of 2012 and the same were also dismissed as withdrawn by order dated 15.10.2012. Thereafter, Asset Reconstruction Company (India) Limited also filed Criminal Original Petition No.26339 of 2014 under Section 482 of the Code of Criminal Procedure to direct the Central Bureau of Investigation (CBI) to receive the complaint dated 19.9.2013 from the respondents 1 to 3 therein for registration of a case and for proper investigation and to file a final report before the appropriate Court. That petition was also dismissed as withdrawn. Once again, the same Asset Reconstruction Company (India) Limited filed another Criminal Original Petition No.27317 of 2010 under Section 482 of the Code of Criminal Procedure to set aside the order dated 1.4.2010 passed by the Executive Magistrate. The learned single Judge of this Court, by order dated 6.11.2014, confirming the order passed by the Revenue Divisional Officer directing the parties to approach the civil Court to establish their right, title and ownership of the land in question, dismissed the said petition. Aggrieved thereby, another S.L.P.(Crl.) No.838 of 2015 was filed. The Hon'ble Apex Court also, confirming the order passed by the learned single Judge, disposing the S.L.P. in its order dated 27.2.2015, clarifying that the observations recorded by



the Magistrate in the order dated 1.4.2010 will not be treated as a binding determination on the issues pertaining to possession and title, directed the writ petitioner to approach the civil Court to establish their title and ownership of the property in question. Without respecting the order passed by the Apex Court, the orders passed by the learned single Judge(s) and the order passed by the Revenue Divisional Officer, again the present writ petition has been filed concealing all these facts to set aside the sale deed. Therefore, for coming to this Court with unclean hands, the learned single Judge ought to have dismissed the writ petition, because initiation of proceedings before this Court under Article 226 of the Constitution of India is nothing but sheer abuse of the process of Court as well as process of law. Hence the writ petition is not at all maintainable. Overlooking this fact, the learned single Judge, usurping the jurisdiction to decide the civil dispute, without even verifying whether the writ petitioner has got any iota of right or title or ownership to the property, has wrongly allowed the writ petition concealing the sale deed dated 5.7.2007. Such an order passed by the learned single Judge is directly running contra to the specific direction issued by the Hon'ble Apex Court in its order dated 27.2.2015 passed in S.L.P.(Crl.) No.838 of 2015 directing the parties to approach the competent civil Court.

4. Contending further, Mr.V.Raghavachari submitted that when the writ petitioner has not challenged the title of the appellant's predecessors in title, they are not entitled to challenge the appellant's title to the property. Moreover, the order passed by this Court in Crl.O.P.No.27317 of 2010 directing the writ petitioner to seek redressal of its grievance before a competent civil Court would squarely be governed by the principle of constructive res judicata and in such circumstances, the writ petition filed by the writ petitioner ought to have been dismissed. Again drawing our attention to the counter affidavit filed by the appellant before the learned single Judge, it was contended that when the Directors of MVR Group of Companies including Mr.M.Varadarajulu alias M.V.Raja were convicted and sentenced to imprisonment by the CBI Court, for the reason that they have committed an offence of forgery, the writ Court ought to have refused the prayer by directing the parties to approach the civil Court, as ordered by the Apex Court. Again when one T.P.Ravikumar filed a frivolous and vexatious suit in O.S.No.704 of 2009 on the file of the District Munsif Court, Alandur as if he was in possession of the property, it was heavily contested by the appellant, as a result the plaint itself was struck off. Even this crucial aspect has been overlooked by the learned single Judge. Concluding his arguments, he submitted that when the law is well settled by the Apex Court and also by the Full Bench of our High Court that



any sale deed 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 impugned order passed by the writ Court cancelling the sale deed exercising jurisdiction under Article 226 is liable to be set aside. In support of his submissions, he has relied upon yet another judgment of the Apex Court in the case of Sathya Pal Anand v. State of M.P. and others, (2016) 10 SCC 767 for the same proposition that the party aggrieved by the registration of any document is free to challenge its validity only before a competent civil Court. Since the impugned order is running contra to the judgment of the Apex Court and also the Full Bench judgment of this Court, the writ appeal may be allowed by setting aside the impugned order, he pleaded.

5. Mr.T.Mohan, learned counsel appearing for the appellant in Writ Appeal No.60 of 2016, adopting the arguments of Mr.V.Raghavachari, also contended that the writ petitioner, who has disobeyed the order of the Apex Court directing the parties to the dispute to approach the competent civil Court, while confirming the order passed by the learned single Judge and clarifying the order passed by the Magistrate dated 1.4.2010, is not entitled to get any relief, as the writ petitioner has come to the Court with unclean hands. After pronouncement of the order by the Hon'ble Apex Court in S.L.P(Crl.) No.838 of 2015 dated 27.2.2015 directing the Asset Reconstruction Company (India) Limited to seek redressal of its grievances before a competent civil Court, the learned single Judge, while taking up the writ petition, ought to have relegated the parties to the competent civil Court, contrary thereto, allowing the writ petition would amount to setting aside the order of the Apex Court made in S.L.P.(Crl.) No.838 of 2015 dated 27.2.2015. When the Hon'ble Apex Court was conscious about the rival claims put forth by the appellant as well as the first respondent in respect of the subject property and has also dealt with the claims and counter claims made by the respective parties and thereupon clarified the legal position that the observations recorded by the Revenue Divisional Officer in the order dated 1.4.2010 will not be treated as a binding determination on the issues pertaining to possession and title of the subject property and thereby relegated the first respondent to seek redressal of its grievances before a competent civil Court, to establish its title to the disputed property, the conclusion reached by the learned single Judge, which is running contra to the direction issued by the Apex Court, is liable to be set aside. When the appellants have established their title and ownership before all the Courts, the first respondent is purported to have acquired the rights by virtue of an alleged assignment said to have been made by Indian Bank by virtue of a



deed of assignment dated 7.12.2007, which is later in point of time and admittedly after the execution of the sale deed in favour of the appellant, therefore, as rightly ordered by the Hon'ble Apex Court relegating the parties to approach the civil Court to establish their right, the learned single Judge also should have directed the writ petitioner to approach the civil Court, which has not been done. Moreover, it appears that M/s Infovision Limited (MVR Group of Companies) through its power agent had already filed a civil suit in O.S.No.33 of 2009 on the file of District Munsif Court, Alandur against the respondents 4 to 6 and in that pending suit, the first respondent has also filed an impleading application and the same is pending. Therefore, on the basis of the well settled legal position that the writ petitioner ought not to have pursued two parallel proceedings, one before the civil Court and another before the writ Court, the writ petition ought to have been dismissed, which has not been done. Hence, the impugned order is liable to be set aside.

6. Mr.AR.L.Sundaresan, learned Senior Counsel appearing for the first respondent/writ petitioner, supporting the impugned order, pleaded that the Asset Reconstruction Company (India) Limited, incorporated under the Companies Act, 1956, is registered with the Reserve Bank of India being a financial institution. The respondents 4 & 5 and the appellants conspired and colluded with each other for setting up of false claim of title over the properties mortgaged with the writ petitioner. Since the fourth and fifth respondents allegedly executed a power of attorney in favour of the appellant in W.A.No.59 of 2016 to manage 9.92 acres of land in Alandur Village, Chennai South, the said alleged power of attorney failed to grant the rights to alienate/sell the property. However, the appellant in W.A.No.59 of 2016 fraudulently using the power of attorney executed a sale deed in favour of his son Amar, the appellant in W.A.No.60 of 2016. Even the third respondent/Sub Registrar, Alandur, in contravention of the provisions of the Indian Registration Act, 1908, registered the same as Document No.2179 of 2007 without even checking the provisions of the Act. When the appellant in W.A.No.59 of 2016 had no valid power of attorney, the sale of the land in favour of his son, Amar, the appellant in W.A.No.60 of 2016 will not convey any right upon him. Sections 32 and 34 of the Registration Act stipulates as to who can present the document and Rule 22 prescribes the procedure to be followed by the Registering Officer before accepting a document for registration. When Section 34 of the Registration Act makes it mandatory for the Registrar to check if the power of attorney empowers the execution of the document presented for registration, the Registrar failed to note that the power of attorney dated 23.8.2006 did not empower the appellant in W.A.No.59 of 2016 to execute the sale deed. As the



Sub Registrar has erred in registering the document, the said sale deed and the subsequent settlement deed are non est in law and they are liable to be set aside, therefore, the writ petition was rightly filed and the learned single Judge, after thoroughly appreciating the fact that the sale deed dated 5.7.2007 registered as Document No.2179 of 2007 in the office of the Sub Registrar, Alandur is contrary to law and totally unsustainable, rightly set aside the same by exercising the extraordinary jurisdiction under Article 226, which cannot be questioned.

7. Refuting the arguments made by Mr.AR.L.Sundaresan, learned Senior Counsel appearing for the first respondent, Mr.T.Arunkumar, learned Government Advocate appearing for the respondents 2 & 3, heavily relying upon the judgment of the Apex Court in the case of Sathya Pal Anand v. State of M.P., and others, (2016) 10 SCC 767, submitted that the Apex Court has answered the said argument holding that if a document is required to be compulsorily registered, but while doing so some irregularity creeps in, that, by itself, cannot result in a fraudulent action of the State Authority. Some irregularity in the procedure committed during the registration process would not lead to a fraudulent execution and registration of the document, but a case of mere irregularity. Therefore, in either case, the party aggrieved by such registration of document is free to challenge its validity only before the civil Court. Again placing reliance on 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, heavily contended that any sale deed 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. Since the first respondent has approached this Court wrongly without disclosing the pendency of the civil suits, in which matters the first respondent has also filed impleading applications to implead them as one of the parties and the same are pending, and the law is well settled that any party having grievance over the sale deed or settlement deed should approach the competent civil Court with oral and documentary evidences to set aside the sale, the writ petition ought not to have been entertained. Therefore, the writ appeals may be allowed by setting aside the impugned order.

8. We also find full force on the submissions made by the learned Government Advocate for the respondents 2 & 3. It has been the claim of the appellants that the predecessors-in-title Loganatha Reddiyar, exercising his right of ownership on the property in question bearing Patta No.7, executed a registered mortgage deed dated 20.9.1929 bearing Document No.1631 of 1929



in the name of Sriramulu Reddiyar. Later on, the said Loganatha Reddiyar executed a registered sale deed dated 22.12.1937 bearing Document No.2061 of 1937 in the name of Sriramulu Reddiyar, the father of the fourth respondent herein. Subsequently in the year 1943, the said Sriramulu Reddiyar settled the property in favour of Lalithakumari alias Lalitha Manohari and K.S.Deenadayalu Reddy, that was subsequently revoked by him in the year 1949. However, after the death of Sriramulu Reddiyar, when the property devolved upon his son and grandson, the respondents 4 & 5 herein, they have executed a power of attorney dated 23.8.2006 in favour of the appellant Mr.S.P.Velayutham and another unregistered power of attorney dated 7.6.2007, based on which the appellant-S.P.Velayutham executed a sale deed dated 5.7.2007 bearing Document No.2179 of 2007 in favour of his son, the sixth respondent. The revenue authorities also, accepting the right, title and interest over the property and also the possession thereof, effected the mutation of the names in the revenue records in favour of the sixth respondent. Therefore, based on the title deeds and the revenue records, the sixth respondent has been in uninterrupted possession and enjoyment of the property. When a civil dispute arose amongst 'A' party, 'B' party, 'C' party and 'D' party claiming a right over the same property causing tension in the case land, First Information Report was filed by the Inspector of Police, S-1, St.Thomas Mount Police Station on 24.10.2009 and he has also requested the Sub Divisional Magistrate and Revenue Divisional Officer, Tambaram to resolve the dispute after verifying the documents to avoid further untoward incidents. Therefore, the Sub Divisional Magistrate and Revenue Divisional Officer, Tambaram, while passing orders under Section 145 of the Code of Criminal Procedure on 1.4.2010 in M.C.Na.Ka.No.4761/2009-C, after hearing all the parties and also perusing the file of the Tahsildar in respect of transfer of patta in RPT NO.13358/2008 that the Tahsildar had already issued Town Survey Patta in the name of S.P.Velayutham, who has also made two deep bore wells in the land and got electricity service connection, came to the conclusion that the said S.P.Velayutham has been in possession and enjoyment of the property supported by title deed, patta and other revenue records in respect of the entire land including the disputed land. Therefore, the Sub Divisional Magistrate and Revenue Divisional Officer, Tambaram directed the 'A' party, 'C' party and 'D' party to establish their right over the property through the competent civil Court with a further direction that till the competent civil Court decides the issue, the possession and enjoyment of 'B' party-S.P.Velayutham shall not be interfered with. The relevant portion of the order passed by the Sub Divisional Magistrate and Revenue Divisional Officer, Tambaram reads as under:-

"21. The file of the Tahsildar in respect of Patta in RPT No.13358/2008 was



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perused. The new survey number of the old Survey Numbers 16/5B, 6, 7, 8, 17, 18(u), 20, 17/16, 18/1 and 2(u) mentioned in Adangal is Survey No.6 and the Extent is 092090. Initially it was mentioned as V.Devareddy Subbu Reddy and thereafter it was circled and mentioned as Deenadayala Reddiar, S/o Sriramulu Reddiar and that too was circled and mentioned as V.Amar, S/o S.P.Velayutham and then that was circled and it was mentioned as S.P.Velayutham, S/o Sabapathy.

As the property is situated within the jurisdiction of Alandur Municipality, new Town Survey number was given and the Patta was issued by the Tahsildar and the Alandur Municipality.

The Tahsildar, Tambaram, has issued Town Survey Patta in the name of S.P.Velayutham. S.P.Velayutham has made two deep bore wells in the land and got Electricity Service Connection.

22. The property is now find a place in Alandur Town Survey Accounts in the name of S.P.Velayutham and is in his possession and enjoyment.

23. Considering the present situation and the documents carefully, it is decided that as the Tahsildar has issued Patta in the name of B-Party viz., S.P.Velayutham in respect of the entire land including the disputed land, A-Party, C-Party and D-Party may establish their right over the property through Court and I decide this case accordingly.

24. The possession and enjoyment of B-Party should not be interfered till this Order is set aside by a Court of Law."

10. Aggrieved by the above order, M/s Infovision Private Limited represented by its power of attorney challenged the said order in Criminal Revision Case No.760 of 2010 under Section 397 read with Section 401 of Cr.P.C., in which Asset Reconstruction Company (India) Limited, the writ petitioner also filed an impleading petition in M.P.No.1 of 2012. The learned single Judge, finding no merits, dismissing the criminal revision case and also the impleading petition filed by the writ petitioner, reiterating the order passed by the Sub Divisional Magistrate and Revenue Divisional Officer, Tambaram dated 1.4.2010, directed them to approach the competent civil Court to



establish their case. Aggrieved thereby, M/s Infovision Private Limited filed S.L.P.(Crl.) Nos.7548-7549 of 2012 before the Apex Court, which came to be dismissed as withdrawn by order dated 15.10.2012. Again Asset Reconstruction Company (India) Limited represented by its Manager Mr.Nirav Parekh filed Criminal Original Petition No.26339 of 2014 under Section 482 of the Code of Criminal Procedure to direct the Central Bureau of Investigation to receive their complaint dated 19.9.2013 for registration of a case, that was also dismissed as withdrawn by the order dated 15.10.2014. Yet again, Asset Reconstruction Company (India) Limited, the first respondent herein filed Criminal Original Petition No.27317 of 2010 under Section 482 of the Code of Criminal Procedure to set aside the order dated 1.4.2010 passed by the Sub Divisional Magistrate and Revenue Divisional Officer, Tambaram. The learned single Judge, dismissing the said criminal original petition by the order dated 6.11.2014, observed as follows:-

"6. In my considered opinion, this petition deserves only to be dismissed, in view of the order passed by this Court in Crl.R.C.No.760 of 2010. The learned counsel appearing for the petitioner would submit that because of the order passed by the Revenue Divisional Officer, the petitioner is not in a position to make any developmental activities in the property. In this regard, I may refer to paragraph 26(ix) of the order of this Court in the Crl.R.C.No.760 of 2010, which reads as follows:

"(ix) The impleading petitioner viz., Asset Reconstruction Company (India) Ltd., had financed the Indian Bank, Chennai, who is the mortgagee of the property, to an extent of 120 grounds including the disputed property. The impleading petitioner's civil rights and physical possession of the property can be established only before a civil Court. This impugned order has been made only to maintain law and order and had been passed according to criminal procedure code. As such the rights of the impleading petitioner will not be in any way affected by the impugned order."

7. This Court has already clarified that the order of the Revenue Divisional Officer



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is not final and the petitioner has to workout his remedies before the Civil Court. Therefore, it is not proper for the petitioner to approach this Court seeking to quash the very same order. The remedy for the petitioner as has been clarified by this Court in the Criminal Revision petition is before the Civil Court.

8. In such view of the matter, this petition is not maintainable and the same is accordingly dismissed. Consequently, the connected miscellaneous petitions are closed."

11. Again aggrieved by the above order, the matter was taken up to the Apex Court by the first respondent in S.L.P.(Crl.) No.838 of 2015. The Hon'ble Apex Court, appreciating the order passed by the High Court, clarifying the order passed by the Sub Divisional Magistrate dated 1.4.2010, relegated the first respondent to seek redressal of its grievance before a competent civil Court. The relevant portion of the order passed by the Apex Court reads as follows:-

"We have given our thoughtful consideration to the submissions advanced at the hands of the learned counsel for the petitioner. We have also heard the learned counsel for respondent no.3, who has entered appearance on caveat.

According to the learned counsel for the petitioner, findings on title and possession have been recorded in the order passed by the Magistrate on 1.4.2010, and they would prejudice the petitioner in all judicial proceedings. Having given our thoughtful consideration, and keeping in mind the mandate contained in Section 145(4) of the Cr.P.C., it is apparent, that the determination of the Magistrate is without reference to merits of the claims of any of the parties. Even, learned counsel representing the caveator states, that he has no objection if an order is passed to the effect, that the order passed by the Magistrate on 1.4.2010 would not be treated to be an order on merits either on the question of possession or on the question of title. We affirm the aforesaid legal position by clarifying, that the observations recorded by the Magistrate in the order dated 1.4.2010, will not be treated as a binding



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determination on the issues pertaining to possession and title.

In view of the above, we are satisfied that the interests of the petitioner were fully protected by the High Court by relegating the petitioner to seek the redressal of its grievance, before a competent civil Court.

Disposed of in the above terms."

In spite of the above orders, the first respondent, till date, has not questioned or challenged the title or ownership of the property in question by filing a civil suit before the competent civil Court.

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 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: -



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(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 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.

(emphasis supplied)

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."

13. When the above Full Bench of our High Court has settled the legal position ruling clearly that an absolute sale deed can be cancelled at the instance of the transferor only by taking recourse to the competent civil Court for cancellation of the



sale deed on the ground of fraud or any other valid reasons, the first respondent/writ petitioner, alleging fraud, cannot maintain the writ petition, because the allegations of fraud, misrepresentation etc., are to be tried by the trial Court, namely, the competent civil Court on consideration of both the oral and documentary evidence to be produced to establish the fraud, misrepresentation etc. Besides, a three-Judge Bench of 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 held 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, unless the aggrieved party challenges the registration and validity of the document before the civil Court. The relevant portion of the Apex Court judgment reads as follows:-

"33. In our considered view, the decision in the case of Thota Ganga Laxmi, (2010) 15 SCC 207 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." (emphasis supplied)

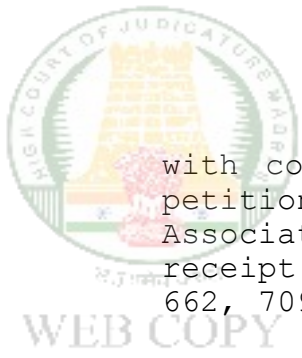
Since the above legal position has been settled by the Apex Court after considering the Full Bench judgment of the Andhra Pradesh High Court in Yanala Malleshwari, AIR 2007 AP 57 (FB) holding that if any person is aggrieved by the Extinguishment Deed or its registration, his remedy is to seek appropriate relief in the civil Court and the writ petition is not a proper remedy, the entertaining of the writ petition and the consequent passing of the impugned order by the learned single Judge are legally unsustainable in law.



14. Mr.AR.L.Sundaresan also advanced an argument that the procedural irregularity committed by the Registrar while registering the sale deed or any deed, can be questioned under Article 226, simultaneously, challenging the validity of the same before the civil Court. In our view, such an argument is farfetched, in the light of the aforementioned two decisions, one by the 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 and another by the Hon'ble Apex Court in the case of Sathya Pal Anand v. State of M.P., and others, (2016) 10 SCC 767 holding clearly that the aggrieved party has to challenge the registration and validity of the disputed document only before a competent civil Court. Further, this argument will pave way for the multiplicity of proceedings opposed to public policy.

15. In the light of the above, when there was an order passed by the Sub Divisional Magistrate and Revenue Divisional Officer, Tambaram dated 1.4.2010 directing the parties to approach the civil Court, that was also confirmed by this Court in two separate proceedings, namely, in the criminal revision case and in the criminal original petition and finally, the Apex Court also, as highlighted above, directed the parties to approach the civil Court, the first respondent, for the reasons best known, has not chosen to file any civil suit before the competent civil Court for redressal of the grievances. Even a mere perusal of Volume-3 of the paperbook filed by the appellant in W.A.No.59 of 2016 shows that the Asset Reconstruction Company (India) Limited, the first respondent herein has only chosen to file impleading petitions in the pending civil suits in O.S.Nos.33, 35 & 45 of 2009 filed by M/s Infovision Private Limited and others etc., before the District Munsif Court, Alandur. Moreover, concealing all these facts and judicial proceedings, the first respondent has resorted to file the writ petition under Article 226 of the Constitution of India and has obtained an order that is impugned in these appeals. Since the orders passed by this Court and the Hon'ble Apex Court giving liberty to the first respondent to file a civil suit for redressal of its grievance have not been complied with and contrary thereto, has chosen to pursue a wrong remedy through writ proceedings under Article 226 and thereby wrongfully wasted the precious time of this Court, while setting aside the order passed in the writ petition, we are inclined to impose costs on the first respondent.

16. For all the aforementioned reasons, the writ appeals are allowed and the order passed in the writ petition is set aside



with costs of Rs.10,000/- payable by the first respondent/writ petitioner to the Madras High Court Advocate Clerks Welfare Association within a period of four weeks from the date of receipt of a copy of this order. Consequently, C.M.P.Nos.654, 662, 7095, 7096 of 2016 are closed.

Sd/-
Deputy Registrar(CS)

//True Copy//

Sub Assistant Registrar

rri/ss
To

1. The Inspector General of Registration
No.100, Santhome High Road
Chennai 600 028
2. The Sub Registrar-Alandur
12, 1st Main Road
Nanganallur Co-operative Society Limited
Nanganallur
Chennai 600 061
3. The President,
High Court Advocate Clerks Welfare Association,
High Court, Madras 104.

+3 CCs to M/s.K.Surendar, Advocate, Sr.No. 49908.
+2 Ccs to M/s.M.L.Ramesh, Advocate, Sr.No. 49978,49979.
+1 CC to M/s.Anirudh Krishnar, Advocate, Sr.No. 50326.

W.A.Nos.59 & 60 of 2016

RR(CO)
LS(04/10/2021)