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IN THE HIGH COURT OF JUDICIATURE AT MADRAS

DATED : 26.08.2021

CORAM :

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

W.A.NO.3596 OF 2019
AND
C.M.P.NO.23125 OF 2019

M.Ramasamy

... Appellant

Versus

1. The District Registrar (Administration),
O/o.Registration,
Tiruppur,
Tiruppur District.

2. The Sub Registrar,
O/o.Registration,
Kangayam,
Tiruppur District.

3. M.Y.Habibur Rahman

... Respondents

PRAYER:-

Appeal filed under Clause 15 of the Letters Patent against the order dated 08.07.2019 in W.P.No.1513 of 2018 passed by His Lordship Mr.Justice P.D.Audikesavalu.

Prayer in W.P.No.1513 of 2018:-

Petition under Article 226 of the Constitution of India praying to issue a Writ of Mandamus, directing the 1st respondent to conduct proper enquiry and cancel the Document No.3405/2008 , dated 24.04.2008 within stipulated time as fixed by this Court by giving opportunity to all the parties.



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For Appellant : Mr.C.Prakasam
For Respondents : Mr.T.Arunkumar
Government Advocate
For R1 & R2

JUDGMENT

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

The appellant/writ petitioner, after withdrawing the above Writ Petition No.1513 of 2018, 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, has again come to this Court with this writ appeal.

2. When the appellant/writ petitioner has approached this Court under Article 226 of the Constitution of India for issuance of writ of mandamus to direct the first respondent to conduct proper enquiry and cancel the document No.3405/2008 dated 24.04.2008 within a stipulated time as fixed by this Court by giving opportunity to all the parties, it was pointed out by the learned Special Government Pleader appearing for respondents 1 and 2 that the writ petitioner cannot call upon the Registering Authority to cancel registration of a document executed between some other persons relating to the property claimed to be owned by him and his remedy in that regard was to institute suit in the jurisdictional Civil Court invoking Section 31 of the Specific Relief Act 1963 as held by the above judgment of the Full Bench of this Court.

3. It is the claim of the appellant that the appellant and his brother owned a patta land measuring an extent of 5.68 acres situated in Old S.No.215 R.S.Nos.184/1, 3 & 189/5, Ganapathipalayam Village, Kangayam Taluk, Tiruppur District and the same was registered through Court by his vendor's vendor in the year 1915. Thereafter, the same was sold to Raja Gounder and a suit was filed by the appellant's vendor's vendor. As the said land was partitioned by his father on 25.03.1982, the appellant has been in possession of the land thereafter. While so, the third respondent and his men trespassed into their land on 31.12.2012. When the same was questioned, he replied that he purchased the said land from Shanmugam, Nagarajan, Narayanasamy, Thangamani, Panneerselvam and Balu. Due to their threat, the appellant lodged a police complaint and the same was registered in Crime No.1 of 2013 on the file of the Inspector of Police, Land Grabbing Cell, Tiruppur against the said persons.



4. Learned counsel appearing for the appellant submitted that now charge sheet has been filed and a case is pending. In the meanwhile, the appellant has approached the first respondent/the District Registrar (Administration) and produced all the relevant documents showing his ownership, but, the first respondent returned the petition on the ground that the Circular issued by the Inspector General of Registration was stayed by this Court. Finally, the appellant has approached this Court for issuance of writ of mandamus directing the first respondent to conduct proper enquiry and cancel the document No.3405/2008 dated 24.04.2008 within a stipulated time as fixed by this Court.

5. Mr.T.Arunkumar, learned Government Advocate appearing for respondents 1 and 2, vehemently opposing the prayer, submitted that the appellant, having opined by the learned Single Judge not to pursue the matter, since there has been a Full Bench judgment of our High Court in the case of Latif Estate Line India Limited vs. Hadeeja Ammal and others reported in 2011 (2) CTC 1, has withdrawn the above writ petition. Again, he was wrongly advised to come to this Court by way of filing this appeal. Therefore, whether the appellant was before the learned Single Judge or before the Division Bench, the judgment of the Full Bench will apply to the appellant as well. Therefore, this writ appeal is liable to be dismissed.

6. We also find merits on the submission made by the learned Government Advocate appearing for respondents 1 and 2. While entertaining the similar and identical issue, 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, has held as follows:

'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



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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 shall 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 cases on merits.'

7. Since the aforementioned ratio is 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 withdrawing the writ petition. Therefore, we are inclined to dismiss this appeal. Accordingly, the writ appeal stands dismissed. Consequently, C.M.P. No.23125 of 2019 is closed. No costs.

Sd/-

Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

vga

To

1. The District Registrar (Administration),
O/o.Registration, Tiruppur,
Tiruppur District.



2. The Sub Registrar,
O/o.Registration,
Kangayam,
Tiruppur District.

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+1cc to the Government Pleader, High Court, S.R.No.43386

W.A.NO.3596 OF 2019 AND
C.M.P.NO.23125 OF 2019

GP (CO)
PBS/21/09/2021