



W.P.No.10154 of 2015

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.11.2022

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THE HONOURABLE MR. JUSTICE M.DHANDAPANI

W.P.No.10154 of 2015
and MP.NO.1 of 2015

T.K.Jaishankar

.. Petitioner

Vs.

1.The Inspector General of Registrations,
Office of the Inspector General of Registrations,
Santhome, Chennai 600 028.

2.The District Collector,
Office of the District Collector,
Kancheepuram District.

3.The Sub Registrar,
Guduvanchery Registrar's Office,
Guduvanchery,
Kancheepuram District.

4.Nazneen

5.Aslam Mustafa

.. Respondents

Prayer :- Writ Petition filed under Article 226 of the Constitution of India praying of issuance of Writ of Mandamus directing the 3rd respondent to declare as null and void the Cancellation Deed dated 28.10.2014 executed by Power of Attorney Agent of 5th respondent and registered as Doc. No.14385/2014, cancelling the Sale Deed dated 20.10.2005 and registered as Document No.8530/2005 in the office of the 3rd respondent.



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(prayer amended as per order dated 25.11.2015 in MP.No.2/2015)

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For Petitioner : Mr.Ashok Menon

For RR1 to 3 : Mr.G.Krishna Raja
Additional Government Pleader

For RR4 and 5 : No appearance

ORDER

The petitioner has filed this petition for issuance of writ of Mandamus directing the 3rd respondent to declare the Cancellation Deed dated 28.10.2014 executed by Power of Attorney Agent of 5th respondent as null and void.

2. The case of the petitioner is that he had purchased the property bearing plot nos. 18 and 19 situate in Amman Nagar Layout, old no.89, New No.143, Athanancherry Village, Sriperumbudur Taluk, Kancheepuram District, in S.F.No.245/3D, of a total extent of 3745 sq.ft from the 4th respondent and is in absolute possession and peaceful enjoyment of the said properties. While so, to his shock and surprise, the petitioner has received a notice from the Court of the District Munsif cum Judicial Magistrate, Sriperumbudur, claiming that the 5th



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respondent is the owner of plot nos.18 and 19 on the strength of a Sale Deed dated 28.07.1993 and the 5th respondent has filed a Suit in O.S.No.254/2014 alleging that the 4th respondent had manipulated the 5th respondent's signature and had fraudulently created Sale Deeds in favour of the petitioner. It is alleged by the petitioner that the 5th respondent had filed the Suit merely to grab the property of the petitioner because of the great increase of land prices. While so, the petitioner was informed in November 2014 that the 3rd respondent had registered a Deed of Cancellation on 28.10.2014, cancelling the Sale Deed dated 20.10.2005. Aggrieved by the Deed of cancellation, the petitioner is before this Court.

3. The learned counsel appearing for the petitioner submitted that issue arises in the present case is no longer res integra as the same has already been settled by this Court in the decision of ***Latif Estate Line India Ltd., Vs. Hadeeja Ammal reported in 2011(2) MLJ 569*** and prays for appropriate orders.



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4. The learned Additional Government Pleader did not dispute the submission made by the learned counsel appearing for the petitioner.

5. This Court has carefully considered the rival submissions and also perused the materials available on record. Though notice has been served on the respondents 4 and 5, no one has appeared on behalf of them. This Court considering the pendency of this case, is inclined to dispose of the matter based on available records.

6. Facts in the present case is not in dispute. Admittedly the petitioner had purchased the property in the year 2006 based on the earlier Sale Deed executed in favour of the 4th respondent dated 20.10.2005, however subsequently the 3rd respondent highhandedly cancelled the Sale Deed dated 20.10.2005, vide the impugned Cancellation Deed dated 28.10.2014. However, the issue raised in this writ petition is no longer *res integra*. Similar issue has already been settled by the Hon'ble Full Bench of this Court in the decision reported in **2011(2) MLJ 569 (Latif Estate**



Line India Ltd., Vs. Hadeeja Ammal) and the relevant portion of which

reads 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 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. "



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7. The decision cited supra makes it clear that a 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. In the present case on hand, the dispute pertaining to the execution and registration of the Sale Deed dated 20.10.2005 is the subject matter of pending Civil Suit in O.S.No.254/2014 filed by the 5th respondent and when the said dispute is pending for adjudication, without any order or decree of the Civil Court, the 3rd respondent has no authority to cancel the Sale Deed by way of the impugned Cancellation Deed. Hence, this Court is inclined to set aside the impugned order.

6. Accordingly, this writ petition is allowed and, the impugned Cancellation Deed dated 28.10.2014 registered by the 3rd respondent is set aside and it is open to the petitioner to canvass all the issue with regard to the further alienation done by the respondents 4 and 5 in the manner known to law. No costs. Consequently connected miscellaneous petition is closed.

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To

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M.DHANDAPANI,J.

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