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W.P.No.21733 of 20...

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 12.10.2022

Coram

The Honourable Mr.Justice M.DHANDAPANI

W.P.No.21733 of 2013

1.Ashfaq Hussain (deceased)

2.Shamshad Begum
W/o. Late Ashfaq Hussain

3.Arfaath Hussain
S/o. Late Ashfaq Hussain

(P2 & P3 are impleaded vide order dated 12.10.2022 made in
W.M.P.No.25146 of 2022)

...Petitioners

Versus

1.Feroz Abdul Latheef
S/o. Haji Abdul Latheef
represented by his Power Agent
M/s.Latheef Estate Line India Ltd.,
No.16, Millers Road,
Kilpauk,
Chennai – 600 010.

2.The Sub Registrar,
Office of the Sub Registrar,
Padappai,
Sriperumbudur Taluk,
Kancheepuram District.

...Respondents



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Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of declaration declaring that the Cancellation Deed dated 20.08.2007 and registered as Document No.6075 of 2007 on the file of the second respondent is illegal, improper and opposed to principles of natural justice.

For Petitioners : Mr.G.Govarthanan

For Respondents : Mr.G.Krishnaraja,
Additional Government Pleader

ORDER

The relief sought in this writ petition is to declare the Cancellation Deed dated 20.08.2007 which was registered as Document No.6075 of 2007 on the file of the second respondent as illegal, improper and against the principles of natural justice.

2. Originally, the first petitioner has filed this writ petition, but, during the pendency of this petition, he died on 07.07.2020. Therefore, his legal heirs viz., Mrs.Shamshad Begum (wife of the deceased petitioner Ashfaq



Hussain) and Mr.Arfaath Hussain (son of the deceased petitioner Ashfaq Hussain) have been impleaded as petitioners 2 & 3 in this writ petition.

3. The case of the petitioners is that when the first petitioner was doing freelance business at Taif, Saudi Arabia, a company viz., M/s.Latheef Estates Lines India Ltd. requested him to be their marketing agent. After negotiations, he accepted their offer with few conditions. He had done several business for M/s.Latheef Estates Lines India Ltd., for which, the said company ought to have paid commission to him as per their agreement, however, it did not pay so. So, he stopped doing business for M/s.Latheef Estates Lines India Ltd. as marketing agent. The said company ought to pay a sum of Rs.17.42 Lakhs as commission to him.

3.1. While so, the first respondent represented by his Power Agent M/s.Latheef Estates Lines India Ltd. informed the first petitioner that there is a layout known as Royal Court, Phase II situated at Manimagalam Village, Sriperumbudur Taluk, Kancheepuram District and a Plot No.C9 measuring to an extent of 6,000 Sq.ft is available for sale consideration of Rs.36,000/- apart from incidental charges. Believing the words of first respondent, the



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first petitioner purchased the Plot No.C9 comprised in S.No.265/2 measuring to an extent of 6,000 Sq.ft by paying a sum of Rs.5.50 Lakhs. One Mr.Habeeb Abdul Latheef represented by his Power Agent M/s.Latheef Estates Lines India Ltd. executed the Sale Deed dated 21.02.2003 in favour of first petitioner and the said Sale Deed was registered as Document No.1002 of 2003 on the file of second respondent. The first petitioner purchased the above plot only after paying the entire sale consideration of Rs.36,000/- to the vendor.

3.2. While so, when the first petitioner came back to India in the year 2012, he came to know that the first respondent has executed a Deed of Cancellation dated 29.08.2007 and registered the same as Document No.6075 of 2007 on the file of second respondent. Without issuing any prior notice to the first petitioner, the first respondent has cancelled the Sale Deed dated 21.02.2003. Therefore, the first petitioner gave a complaint to the Superintendent of Police, Land Grabbing Cell, Kancheepuram, requesting to take proper and necessary action against the first respondent, however, no action has been taken against the first respondent. Thereafter, the first petitioner gave a complaint to the second respondent, requesting to take



proper action against the first respondent for cancelling the Sale Deed after its execution, but, the second respondent has not taken any steps with regard to his complaint. Hence, left with no other alternative, the first petitioner has knocked the doors of this Court with the present writ petition.

4. The learned counsel for the petitioners contended that the first respondent has executed the Cancellation Deed 20.08.2007 unilaterally without the knowledge and consent of first petitioner. The first respondent is in the habit of executing cancellation of sale deeds after conveying the sale deeds in favour of several persons without any valid reason.

4.1. He further contended that the first petitioner purchased the subject property only after paying the entire sale consideration which is also clearly stated in the Sale Deed 21.02.2003. The first petitioner has become an absolute owner of the subject property, right from the date of execution of Sale Deed and the title to the subject property is vested in him. While so, title to the subject property cannot be handed over to first respondent by way of execution or registration of a Cancellation Deed. He also contended that an unilateral cancellation of sale deed executed by the first respondent does



not create any encumbrance in the subject property.

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4.2. In support of his contentions, the learned counsel brought to the notice of this Court that before this Court, earlier two writ petitions were filed in W.P.Nos.17555 & 27291 of 2008 as against the aforesaid M/s.Latheef Estates Lines India Ltd. The subject matter of the said writ petitions was unilateral cancellation of sale deeds. This Court vide order dated 10.02.2009, allowed the said writ petitions and quashed the cancellation deeds. Challenging the orders passed in W.P.Nos.17555 & 27291 of 2008, the respondents therein have preferred two writ appeals in W.A.Nos.592 & 938 of 2009. The Division Bench of this Court referred the said writ appeals before the Full Bench of this Court for deciding the correctness of the orders passed in W.P.Nos.17555 & 27291 of 2008. Thereafter, the Full Bench of this Court vide judgment dated 11.02.2011, disposed those writ appeals by holding that unilateral cancellation of a sale deed executed by the transferor cannot be accepted for registration since such a document does not create any encumbrance in the property already transferred. It also held that once title to the property is vested with the transferee by way of sale, the same cannot be divested unto the transferor by execution and registration of a deed of



cancellation even with the consent of the parties. The operative portion of the judgment passed by the Full Bench of this Court in the case of ***M/s.Latif Estate Line India Ltd. Vs. Mrs.Hadeeja Ammal*** reported in ***2011 (2) CTC 1 (W.A.Nos.592 & 938 of 2009 dated 11.02.2011)*** is usefully extracted hereunder:

“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.



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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.”

Therefore, the learned counsel prayed this Court to declare the Deed of Cancellation executed by the first respondent as illegal, improper, null and void.

5. The learned Additional Government Pleader appearing for the respondents submitted that he has no objection to such relief being granted by this Court.

6. Heard the learned counsel on either side and perused the materials placed before this Court.



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7. The only issue to be decided in the present case is whether the unilateral cancellation of sale deeds is permissible in law or not.

8. So far as this case is concerned, the first petitioner has purchased the subject property by way of valid Sale Deed dated 21.02.2003. He has paid the entire sale consideration. While so, without his consent, the first respondent has unilaterally cancelled the Sale Deed by way of execution of Cancellation Deed dated 29.08.2007. Therefore, the petitioners are praying to declare such Cancellation Deed as null and void.

9. In the case of *M/s.Latif Estate Line India Ltd. Vs. Mrs.Hadeeja Ammal* reported in *2011 (2) CTC 1 (W.A.Nos.592 & 938 of 2009 dated 11.02.2011)*, the Full Bench of this Court has answered the questions in favour of the respondents therein by categorically holding that a vendor cannot annul a registered Sale Deed by way of execution of Cancellation Deed and such act of a vendor is against the public policy. The said decision of the Full Bench of this Court is squarely applicable to the facts and circumstances of the case on hand.



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10. Thus, following the ratio laid down by the Full Bench of this Court in the case of *M/s.Latif Estate Line India Ltd. Vs. Mrs.Hadeeja Ammmal* reported in *2011 (2) CTC 1 (W.A.Nos.592 & 938 of 2009 dated 11.02.2011)* cited *supra*, this writ petition stands allowed and the Cancellation Deed dated 20.08.2007 which was registered as Document No.6075 of 2007 on the file of second respondent is declared as null and void. It is needless to state that the second respondent shall remove the entry from the Register with regard to the said Cancellation Deed. There shall be no order as to costs.

12.10.2022

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Index : Yes/No

Speaking Order (or) Non-Speaking Order



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Copy to

The Sub Registrar,
Office of the Sub Registrar,
Padappai,
Sriperumbudur Taluk,
Kancheepuram District.



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M.DHANDAPANI, J.

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