IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 27.04.2022

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.NO.6272 OF 2022
AND
W.M.P.NO.6342 OF 2022

Nirmala Sankaran ...Petitioner

Vs

1.The Inspector General of Registration
Santhome, Chennai.

2.The District Registrar
Chennai North.

3.The Sub Registrar
Konnur, No.5/5, 4th Main Road
SIDCO Nagar, Villivakkam
Chennai - 600 079.

4.J.Gopi

5.The HDFC Bank
Ceebros Building
I Floor, B Wing
No.110, Nelson Manickam Road
Aminjikarai, Chennai - 600 029. ...Respondents

Writ Petition filed under Article 226 of the Constitution of India praying this Court to issue a Writ of Mandamus directing the respondents 1 to 3 to cancel/annul the sale deed dated 09.03.2020 registered as Document No.1299 of 2020 executed by the petitioner's husband in favour of the fourth respondent on the file of the third respondent vide petitioner's representation dated 16.03.2020.

For Petitioner : Mr.AR M.Arunachalam

For Respondents : Mr.Yogesh Kannadasan,
Spl. GP for RR-1 to 3

Mr.A.Thiagarajan for R-4

Ms.Sanjana Grace Varma for
for M/s.AAV Partners for R-5

ORDER

The present petition is filed seeking cancellation/ annulment of the sale deed dated 09.03.2020 registered as Document No.1299 of 2020 on the file of the third respondent, which was executed by the petitioner's husband in favour of the fourth respondent.

2. It is the case of the petitioner that she is a citizen of the United States holding Passport No.561901254 and had been living there for the past 30 years along with her husband Muthiah Sankaran and she holds Overseas Citizen of India Card No.A-020654.

3. It is the case of the petitioner her husband had purchased an independent house property at Nolambur Village, HIG-II-Phase I, No.14, 2nd Cross Street, Nolambur, Mogappair West, Chennai – 600 037, measuring an extent of 3548 sq.ft. of land, together with building vide registered sale deed dated 01.07.2009. It is further averred that during the year 2019, her husband decided to dispose of the said property and in view of the intent shown by the 4th respondent to purchase the property through one Muthukumar and Loganathan, on consensus, the 4th respondent agreed to purchase the property for a sale consideration of Rs.2,03,00,000/- (Rupees Two Crores and Three Lakhs) and towards discharge of the sale consideration the 4th respondent issued two cheques dated 09.03.2020 bearing Nos.000151 and 000152 drawn on HDFC Bank, Chennai, whereupon, on receipt of the cheques, the sale deed dated 09.03.2020 was executed and registered as Document No.1299 of 2020 and the same was registered. However, the said cheques on presentation were returned dishonoured on 13.03.2020 citing insufficiency of funds.

4. It is the further case of the petitioner that her husband addressed a letter to the 3rd respondent on 16.03.2020 complaining of non-payment of sale consideration and requested them not to entertain any further alienation. Thereafter, pursuant to various meetings, the last of which was held on 9.12.21, the 4th respondent agreed to pay a total consideration of Rs.3,12,00,000/= *Rupees Three Crores and Twelve Lakhs only) inclusive of the sale consideration value of Rs.2,03,00,000/= (Rupees Two Crores and Three Lakhs only). Thereafter, the 4th respondent paid a sum of Rs,1,00,00,000/- (Rupees One Crore only) by way of two cheques and the same was deposited into the petitioner's account, however, the remaining amount was not paid.

5. It is the further case of the petitioner is that the petitioner's husband breathed his last on 11.12.2021. Thereafter the petitioner came to know that the 4th respondent

had mortgaged the property with the 5th respondent and availed loan. Though the 4th respondent had undertaken to settle the dues by 31.03.2022 as per the memorandum of understanding dated 9.12.2021, however, on 04.03.2022, without discharging the dues towards the sale consideration, the 4th respondent called upon the petitioner to vacate the premises and to hand over the same by 20.03.2022. Aggrieved by the non-payment of the sale consideration and the representation sent to the 3rd respondent not to entertain further encumbrance on the said property having not evoked any response, the present petition has been filed.

6. Learned counsel appearing for the petitioner submitted that the entire sale transaction got concluded only on the consensus that the cheques issued towards the discharge of the sale consideration would be cleared on the execution of the sale deed. However, not only the cheques got dishonoured, but inspite of the undertaking given by the 4th respondent to settle the amount due towards the sale consideration, without honouring the said undertaking, the 4th respondent has asked the petitioner to vacate the premises. It is the submission of the learned counsel that without the payment of the sale consideration, the registration of sale deed cannot be held to be legal, as non-payment of the sale consideration renders the execution of the sale deed void.

7. It is the submission of the learned counsel that the sale gets concluded only when both the parties to the sale deed perform their part of the contract, and without passing of the sale consideration, the sale cannot be said to be a completed sale. It is therefore submitted that due to non-fulfilment of the undertaking by the 4th respondent, and non-payment of the sale consideration, the sale cannot be held to be completed and, therefore, the said sale is void and is liable to be cancelled.

8. Per contra, learned counsel appearing for the 4th respondent submitted that it is true that a sum of Rs.2,03,00,000/- (Rupees Two Crores and Three Lakhs only) was agreed as sale consideration and the 4th respondent purchased the property and in lieu thereof, two cheques were given to the vendor towards the discharge of the sale consideration. However, in the sale deed, the date of the cheques was wrongly mentioned as 09.03.2019 instead of 09.03.2020. On coming to know about the said mistake, the 4th respondent requested the vendor, viz., the husband of the petitioner to execute a rectification deed for which the vendor did not co-operate. Only for the aforesaid reason, the cheques could not be honoured.

9. It is the further submission of the learned counsel for the 4th respondent that to show his bona fides, pursuant to the

meeting between the vendor and the 4th respondent, in which a memorandum of understanding was arrived at, a sum of Rs.1,00,00,000/- (Rupees One Crore only) was paid and the balance amount is yet to be paid. It is further submitted that the 4th respondent is ready to pay the balance amount to the legal heirs of the vendor, provided, the petitioner produces the legal heir certificate and hand over the possession of the premises to the 4th respondent. It is the further submission of the learned counsel that till date the legal heirs of the vendor have not produced the certificate, which has prevented the 4th respondent from paying the balance sale consideration. Therefore, non-compliance of the requirements for receipt of the amount cannot be put against the 4th respondent for cancelling the sale deed.

10. Learned counsel appearing for the 5th respondent submitted that the 4th respondent had mortgaged the property, which was purchased by him vide the sale deed dated 09.03.2020 and agreement was entered into between the 4th and 5th respondents on 27.08.2020 and loan to the tune of Rs.2,49,00,000/- (Rupees Two Crores and Forty Nine Lakhs only) has been availed from the 5th respondent Bank and the 4th respondent has paid only seven installments and, thereafter, committed default in payment of the loan amount.

11. In reply to the submission on behalf of the 5th respondent, learned counsel appearing for the 4th respondent submitted that he has no instructions with regard to the loan availed by the 4th respondent. Further, learned counsel for the 4th respondent, on the above facts, submitted that disputed questions of fact are involved, which cannot be gone into in a petition under Article 226 of the Constitution and further submitted that the petitioner has not produced legal heir certificate to establish that she is the legal heir of the 4th respondent’s his vendor.

12. This Court paid its undivided attention to the submissions advanced by the learned counsel appearing on either side and perused the materials available on record.

13. Admittedly, purchase of the property by the 4th respondent from one Muthiah Sankaran is not disputed through sale deed dated 9.3.2020. So also the sale consideration to the tune of Rs.2,03,00,000/- (Rupees Two Crores Three Lakhs only) payable to the vendor by the 4th respondent. It is also not in dispute that the total sale consideration has not passed on to the vendor and without receiving the sale consideration the vendor has also left his mortal coil on 11.12.2021.

14. It is also not disputed that towards discharge of the sale consideration, two cheques were given to the vendor, which, on its presentment, stood dishonoured citing insufficiency of funds. It is the stand of the 4th respondent that the reason for the said dishonour is that the date of the cheques has been wrongly shown as 09.03.2019 instead of 09.03.20. It is the further stand of the 4th respondent that the vendor did not co-operate to execute the rectification deed so as to enable the 4th respondent to discharge the sale consideration. Meetings were held subsequent to the dishonour of the cheques, which also is not disputed and a sum of Rs.1 Crore has been paid to the vendor is also not disputed by either side.

15. Though in the case of cancellation of a deed of sale, normally writ petition should not be entertained, as there would be disputed questions of fact, which cannot be gone into under Article 226 of the Constitution, in the present case, on an overall conspectus of the issue, there is no dispute with regard to any facts and all the facts are admitted facts, which are clearly demonstrable through documentary evidence. Therefore, the stand of the 4th respondent that the writ petition is not maintainable, as it involves disputed questions of fact and the same cannot be agitated under the extraordinary jurisdiction of this Court, is nothing but an attempt on the part of the 4th respondent to wriggle out of paying the sale consideration to the petitioner.

16. The 4th respondent has further taken a stand that the petitioner has not produced the legal heir certificate for him to pay the balance sale consideration to the petitioner. The above contention is too far-fetched to be accepted. The writ petition has been filed in the year 2022, more particularly, presented on 16.3.2022. The husband of the petitioner, who is the vendor of the 4th respondent, had died on 11.12.2021, about four months prior to the filing of the present petition. The sale deed has been executed on 9.3.2020. Almost for more than a year and a half, inspite of the execution and registration of the sale deed, the sale consideration has not been paid to the vendor. Inspite of entering into a memorandum of understanding on 9.12.2021, just two days prior to the death of the petitioner’s husband, in and by which the balance sale consideration was agreed to be paid on or before 31.3.22, yet till date the balance sale consideration has not been paid.

17. It is to be pointed out that the sale transaction is a bilateral transaction, where the parties to the transaction have to perform their part of the contract. However, in the case on hand, the petitioner’s husband, who is the vendor, had executed and registered the sale deed on 9.3.20, however, the cheques, which have been given towards the discharge of the sale

consideration has not been honoured. Though the petitioner claims that the discrepancy in the sale deed with regard to the date of the cheque, for which rectification deed was required to be executed for which the vendor was called upon, the act of the vendor in not taking part in the execution of the sale deed has rendered the 4th respondent from performing his part of the bargain, yet this Court is at a loss to understand as to the necessity for executing a rectification deed.

18. In the considered opinion of this Court, the above contention put forth on the side of the 4th respondent is nothing but an attempt on the part of the 4th respondent to absolve himself from paying the said amount to the petitioner, who is the legal heir of the vendor of the 4th respondent, who, though is a citizen of the United States, but with his birth place being the Indian subcontinent and is a son of this soil. Further, it is to be pointed out that rectification deed is required only if the sale deed contains any error with respect to the description of the property or the marketability of the same with regard to the petitioner’s title. However, such is not the case before this Court. The error relates only with regard to passing on of sale consideration through two cheques, the dates of which have been erroneously mentioned in the sale deed. The said error, in no way, affects the sale deed and, in fact the error was not taken to be an error by the 3rd respondent, which led to the registration of the sale deed. That being the case, the stand of the 4th respondent that non-execution of the rectification deed had prevented him from paying the sale consideration is nothing but an attempt to play foul with the petitioner’s husband.

19. Further, the above contention of the 4th respondent also falls down like a pack of cards as the 4th respondent had no intention to pay the balance sale consideration to the petitioner’s husband, as is evident from the fact that by mortgaging the property, for which sale consideration is yet to be paid, the 4th respondent had obtained loan to the tune of Rs.2,50,00,000/= (Rupees Two Crores Fifty Lakhs only), from the 5th respondent, which is much more above the sale consideration entered into between the petitioner’s husband and the 4th respondent.

20. A perusal of the loan document and the materials available on record reveals that mortgaging the property purchased from the petitioner’s husband, the 4th respondent had availed the loan of Rs.2,50,00,000/= (Rupees Two Crores Fifty Lakhs only) on 27.8.20 from the 5th respondent bank by executing the necessary documents. It is also borne out by record that only after obtaining the loan, the 4th respondent has paid the amount of Rs.1,00,00,000/- to the petitioner’s husband, which

clearly shows that the loan amount was utilised for the purpose of paying part of the sale consideration, that too after a lapse of almost a year and a half. Further pursuant to the meeting dated 9.12.2021, the 4th respondent had agreed to settle the balance sale consideration on or before 31.3.2022. In fact, it is to be pointed out that the loan amount was also not utilised in its entirety to pay the sale consideration. Further, the mortgage transaction by the 4th respondent with the 5th respondent bank and availment of loan was not put to the knowledge of the petitioner's husband even when the memorandum of understanding was arrived at. Fortunately for the 4th respondent and unfortunately for the petitioner, the petitioner's husband breathed his last on 11.12.2021, which has put the petitioner now in the precarious situation of having to go behind the 4th respondent to recover the balance sale consideration. The memorandum of understanding was entered on 9.12.2021 and the petitioner's husband had passed away on 11.12.2021. The pressure and turmoil in which the petitioner's husband had been put into due to the act of the 4th respondent in not parting either with the property or the sale consideration towards the purchase of the property would definitely have had a telling effect on the health of the petitioner's husband, who is a senior citizen, which had resulted in the petitioner's husband succumbing to the pressure and breathing his last. It is to be pointed out that apart from the payment of Rs.1,00,00,000/- (Rupees One Crore only), the balance sale consideration has not been paid till date to the petitioner. What transpires from the above is that masking the mortgage entered into with the 5th respondent bank on 27.8.20, the 4th respondent had, after a period of one year and three months, entered into the memorandum of understanding with the petitioner's husband on 9.12.2021 to settle the amount on or before 31.3.2022.

21. Further, after entering into the memorandum of understanding and upon the death of the petitioner, without paying the balance of sale consideration to the petitioner, the 4th respondent has called upon the petitioner to vacate and hand over possession of the property. This act of the petitioner clearly shows that the 4th respondent is aware of the marital relationship of his vendor with the petitioner and the claim of the 4th respondent that he was unable to settle the balance sale consideration as legal heir certificate was not produced is not only an after-thought, but a clearly charted course to delay any payment that may required to be made to the petitioner. Had the 4th respondent been not aware of the marital relationship of the petitioner with his vendor, the course that the 4th respondent would have taken would only be to lodge a complaint about the occupation of the premises purchased by him by the petitioner and not calling upon the petitioner to hand over possession. The 4th respondent cannot blow hot and cold over the same matter

and more so, when the 4^{th} respondent has not even taken any steps to pay the amount to the petitioner till date.

22. The devious and cunning mind and the intention of the 4^{th} respondent is writ large on the actions performed by him since the date of purchase of the property till this day. Inspite of doing all illegal acts, yet the 4^{th} respondent has the temerity to come before this Court and claim that it is only on account of the act of the petitioner in not producing the legal heir certificate, certifying her to be the legal heir of his vendor, Muthiah Sankaran, the 4^{th} respondent has not discharged the balance sale consideration. The said contention is nothing but an ingenious attempt on the part of the 4^{th} respondent to escape payment of the balance sale consideration, which stands revealed by the fact that the 4^{th} respondent, but for paying seven instalments with respect to the loan obtained from the 5^{th} respondent bank, is a defaulter insofar as the 5^{th} respondent bank is concerned. Therefore, the 4^{th} respondent is not only trying to take the petitioner for a ride, by not paying the amount legally due to the petitioner, but also making a mockery of the banking system by not paying the amount obtained as loan on a document, which is sham and void, in view of the 4^{th} respondent not complying with his part of the bargain in paying the sale consideration, which is sine qua non to render the document a valid one. Without the sale consideration being parted with in full, mere execution and registration of the document would not cloth the said transaction with any legality and the fraudulent acts on the part of the 4^{th} respondent would render the sale deed executed a fraudulent one, which had been obtained by playing fraud on the vendor. This Court, being the custodian and arbiter of justice, is duty bound to go to the rescue of such of those persons, like the petitioner, to provide them with the necessary relief, to meet the ends of justice, as otherwise, persons, unscrupulous as the 4^{th} respondent, will act in a manner detriment to the interests of persons, who abide by the law.

23. Further, the act of the 4^{th} respondent in mortgaging the said property, without in actuality getting title to it, as he had not parted with the sale consideration to his vendor, the 4^{th} respondent having no title to the property on the said date, the 5^{th} respondent cannot have any lien over the said property. The act of the 4^{th} respondent, as aforesaid, definitely deserves to be dealt with iron hands by this Court by invoking its inherent and extraordinary jurisdiction under Article 226 of the Constitution by setting aside the sale deed, viz., Document No.1299/2020 dated 9.3.20, entered into between the petitioner's husband and the 4^{th} respondent.

24. Further, it is to be pointed out that the sale deed entered into between the petitioner's husband and the 4th respondent elucidates the details of the cheque and further reveals that the purchaser has paid the amount of sale consideration by way of cheques and the receipt of the said sum is acknowledged by the vendor. Though on the date of the execution of the deed, the cheque has been given, it is to be presumed that the receipt of the said sum, as provided in the said sale deed, would not go to mean that the actual consideration has been passed on, but it would only signify that on the presentment of the cheques, the cheques would get honoured. However, as stated above, the cheques were dishonoured for insufficiency of funds. Therefore, what has been stated by the purchaser in the said sale deed is a false claim of having made payment of the sale consideration and definitely this warrants the invocation of Section 82 of the Registration Act by the 2nd respondent. In such a backdrop, this Court feels that necessarily a direction should be issued to the 2nd and 3rd respondents to initiate prosecution as provided u/s 83 of the Registration Act against the 4th respondent for perpetrating fraud by executing the sale deed without paying the actual sale consideration to the vendor.

25. It is brought to the notice of this Court that since 25.2.2021, the jurisdiction within which the property of the petitioner is falling has since been transferred to the Sub Registrar, Villivakkam. However, the Sub Registrar, Villivakkam is not a party to the present petition. In such circumstances, necessary directions have to be given to the Sub Registrar, Villivakkam, to act in consonance with the directions issued by this Court in this writ petition.

26. For the reasons aforesaid, this Court, while allowing the writ petition, is is inclined to issue the following directions :-

(i) The sale deed executed and registered as Document No.1299/2020 dated 9.3.2020, on the file of the 3rd respondent, shall stand cancelled and the Sub Registrar, Villivakkam, under whose jurisdiction the property belonging to the petitioner falls as on date, is directed to clear all encumbrances in the said document and restore it back to its original position as on 9.3.2020;

(ii) The Sub Registrar, Villivakkam is further directed to clear all lien, if any, over the property, created by the 4th respondent with the 5th respondent Bank, if the mortgage had been registered, pursuant to the loan availed by the 4th respondent from the 5th respondent bank;

(iii) The petitioner is directed to deposit a sum of Rs.1,00,00,000/- (Rupees One Crore Only) with the 5th respondent Bank, to the credit of the loan account of the 4th respondent with the 5th respondent bank towards discharge of part of the loan amount without prejudice to the rights of the 5th respondent to claim the balance amount from the 4th respondent, within a period of two weeks from the date of receipt of a copy of this order;

(iv) On receipt of the amount of Rs.1,00,00,000/- (Rupees One Crore only) from the petitioner towards the credit of the loan account of the 4th respondent, as directed above, the 5th respondent is directed to hand over the original parent documents pertaining to the property mortgaged by the 4th respondent, if lying in deposit with the bank, back to the petitioner with due intimation to the 4th respondent;

(v) The 5th respondent is at liberty to proceed against the 4th respondent in a manner known to law for the purpose of realising the balance amount due and payable by the 4th respondent towards the loan obtained from the 5th respondent bank;

(vi) It is further made clear that there would be no lien on the property standing in the name of Muthiah Sankaran, the husband of the petitioner, which has been mortgaged by the 4th respondent with the 5th respondent and any lien as appearing in the records of the 5th respondent and any registration made thereto shall stand cancelled;

(vii) The 2nd respondent is directed to take action u/s 83 of the Registration Act against the 4th respondent for infraction of Section 82 of the Registration Act by lodging appropriate criminal complaint before the law enforcing agency; and

(viii) The 5th respondent is granted liberty to file appropriate petition before the appropriate forum as well as before the law enforcing agency for initiating action against the 4th respondent for perpetrating fraud against the 5th respondent.

Consequently, connected miscellaneous petition is closed. There shall be no order as to costs.

26. Registry is directed to communicate a copy of this order to the Sub Registrar, Villivakkam, for due compliance of the directions issued by this Court above.

Sd/-
Assistant Registrar(CS-IX)

// True Copy //

Sub Assistant Registrar

GLN

To

1.The Inspector General of Registration,
Santhome, Chennai.

2.The District Registrar,
Chennai North.

3.The Sub Registrar,
Konnur,
No.5/5, 4th Main Road,
SIDCO Nagar,
Villivakkam,
Chennai – 600 079.

4.The Sub Registrar
Villivakkam.

+3ccs to Mr.M.Arunachalam, Advocate, Sr.No.29456, 30261

+1cc to Mr.A.Thiagarajan, Advocate, Sr.No.29222

+1cc to M/s.AAV Partners, Advocates, Sr.No.30148

+1cc to the Government Pleader, Sr.No.30460

W.P.NO.6272 OF 2022

BR(CO)
RVM(29/04/2022)