



WEB COPY

W.P.No.21374 of 2018



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.09.2023

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.21374 of 2018

1.Mrs.Aruna Srikanth
2.Mr.Akshay Srikanth
3.Mr.Aakash Srikanth

... Petitioners

Vs.

1.The Sub-Registrar,
Office of the Sub-Registrar,
Adyar.

2.Mr.E.S.Rajabather
3.Mrs.SanthaRajabather

... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Declaration to declare that the impugned Deed of Revocation of Settlement Deed dated 06.07.2015, registered as Document No.1864 of 2015 and the subsequent Settlement Deed dated 15.07.2015 bearing Document No.1978 of 2015, on the file of the 1st respondent herein as null and void and also for a consequential direction to remove the entries in the Encumbrance register pertaining to the aforesaid transaction.

For Petitioner : M/s.K.F.Manavalan

For R1 : Mr.T.Arunkumar,
Additional Government Pleader

For R2 & R3 : Mr.S.Rajendrakumar
for M/s.Norton & Grant



ORDER

The Writ of declaration has been instituted to declare the deed of rejection of Settlement Deed dated 06.07.2015 registered as Document No.1864 of 2015 and the subsequent Settlement Deed dated 15.07.2015 bearing Document No.1978 of 2015, on the file of the 1st respondent and also to remove the entries in the Encumbrance register pertaining to the aforesaid transaction.

2. It is not in dispute between the parties that the 2nd respondent had executed a Settlement Deed in favour of the writ petitioner on 27.11.2009 in Document No.1944 of 2009 on the file of the SRO, Adayar. The Settlement Deed executed by the 2nd respondent was unilaterally cancelled by executing revocation of Settlement Deed on 06.07.2015 in Document No.1864 of 2015.

3. The learned counsel for the petitioner mainly contended that unilateral cancellation of Settlement Deed is impermissible under the provisions of the Registration Act and therefore, the registering authority has erroneously entertained the cancellation of Document and executed the same. Thus, the Writ Petition is to be considered.



4. The learned counsel appearing on behalf of the respondents 2 and 3 raised an objection by stating that the recitals in the Settlement Deed would reveal that it is a will and not a settlement.

5. The learned counsel for the petitioner drew the attention of this Court with reference to the conditions stipulated in the Settlement Deed dated 27.11.2009 so as to form an opinion that the Settlement Deed is to be treated as a will for all purposes and thus, the power of cancellation remained with the Executor of the Settlement Deed.

6. May that as it be. Writ Court cannot adjudicate the disputes of civil nature, more specifically with reference recitals in the Settlement Deed. The intention of the Executor cannot be gone into writ proceedings, which requires examination of documents and evidences.

7. This being the basic principles and powers of judicial review under Article 226 of the Constitution in exercising such nature of complex disputed facts, there is a possibility of prejudice on the either side of the parties, more specifically in the matter of civil nature.



8. As far as the cancellation of Settlement Deed is concerned, it is impermissible under the provisions of the Registration Act. Issues regarding the unilateral cancellation of settlement deed is no *res integra* and the Hon'ble Full Bench of this Court in the case of ***Latif Estate Line India Ltd. -vs- Hadeeja Amma*** reported in [(2011) 2 CTC 1] held as follows:-

“ 48. Section 54 of the Transfer of Property Act defined the word “Sale”, which means transfer of ownership by one person to another. In other words, sale is transfer of all rights, title and interest in the properties which are possessed by the transferor to another person namely, the purchaser. In case of transfer by way of sale, the transferor cannot retain any part of his interest or right in that property. Such transfer of ownership must be for a price paid or promised or part-paid and part-promised. Even if the whole price is not paid, but the document is executed and registered, the sale would be complete. The transfer is complete and effective upon the completion of the registration of the Sale Deed. Once the vendor is divested himself of his ownership of the property, then he retains no control or right over the said property.

....

54. There is no provision in the Transfer of Property Act or in the Registration Act, which deals with the cancellation of Deed of Sale. The reason according to us is that the execution of a Deed of Cancellation by the vendor does not create, assign, limit or extinguish any right, title or interest in the



WEB COPY



immovable property and the same has no effect in the eye of law. A provision relating to the cancellation of a document is provided in Section 31 of the Specific Relief Act, 1963 (Old Section 39). Section 31 reads as under:

“31. When cancellation may be ordered.—

(1) Any person against whom a written instrument is void or voidable, and who has reasonable apprehension that such instrument, if left outstanding, may cause him serious injury, may sue to have it adjudged void or voidable, and the Court may, in its discretion, so adjudge it and order it to be delivered up and cancelled.

(2) If the instrument has been registered under the Indian Registration Act, 1908 (16 of 1908), the Court shall also send a copy of its decree to the officer in whose office the instrument has been so registered; and such officer shall note on the copy of the instrument contained in his books the fact of its cancellation.”

55. From the reading of the aforesaid provision, it is manifest that three conditions are requisite for the exercise of jurisdiction to cancel an instrument i.e.,

- (1) An instrument is avoidable against the Plaintiff;*
- (2) The Plaintiff may reasonably apprehend serious injury by the instrument being left or outstanding;*
and
- (3) In the circumstances of the case, the Court*



considers it proper to grant this relief of preventive justice.

56. *A Full Bench of the Madras High Court in the case of Muppudathi Pillai v. Krishnaswami Pillai, 1959 (2) MLJ 225 : AIR 1960 Madras 1, elaborately discussed the provision of Section 39 (New Section 31) and held:*

“12. The principle is that such document though not necessary to be set aside may, if left outstanding, be a source of potential mischief. The jurisdiction under Section 39 is, therefore, a protective or a preventive one. It is not confined to a case of fraud, mistake, undue influence, etc. and as it has been stated it was to prevent a document to remain as a menace and danger to the party against whom under different circumstances it might have operated. A party against whom a claim under a document might be made is not bound to wait till the document is used against him. If that were so he might be in a disadvantageous position if the impugned document is sought to be used after the evidence attending its execution has disappeared. Section 39 embodies the principle by which he is allowed to anticipate the danger and institute a suit to cancel the document and to deliver it up to him. The principle of the relief is the same as in quia timet actions.”

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*



WEB COPY



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.

9. The said position has been reiterated by another order of the Hon'ble Full Bench of this Court in ***Sasikala -vs- Revenue Divisional Officer*** reported in [(2022)7 MLJ 1] and the relevant paragraph are extracted hereunder:-

54. The third step namely the act of registration, is something that the Registering Authority is called upon to do statutorily. While the executant of the document and the person claiming under the document (claimant) are the only actors involved in the first two steps, the Registering Officer is the actor in the third step. Apart from the third step which is wholly in the domain of the Registering Authority, he may also have a role to play in the second step when a document is presented for registration and the execution thereof is admitted. The role that is assigned to the Registrar in the second step is that of verification of the identity of the person presenting the document for registration.



WEB COPY



55. Thus, the first two steps in the process of registration are substantial in nature, with the parties to the document playing the role of the lead actors and the Registering Authority playing a guest role in the second step. The third step is procedural in nature where the Registering Authority is the lead actor.

...

*59. Much ado was sought to be made by contending that the Appellant approached the High Court without disclosing the previous orders of the High Court and this Court, relegating them to civil court for the adjudication of their claim. Reliance was also placed in this regard on the decision of this Court in **Raj Kumar Soni vs. State of U.P.** (2007) 10 SCC 635.*

10. In view of judgment cited supra, the impugned order cannot be sustained and consequently, the deed of revocation of Sale Deed dated 06.07.2015, registered as Document No.1864 of 2015 and the subsequent Deed dated 15.07.2015 registered as Document No.1978 of 2015 on the file of the 1st respondent are quashed and the 1st respondent is directed to make necessary entries in the encumbrances within the period of four (4) weeks from the date of receipt of a copy of this order. If at all any civil dispute exist between the parties, it is for them to approach the competent Civil Court of law.



WEB COPY

W.P.No.21374 of 16



11. Accordingly, the Writ Petition stands allowed. No costs.

21.09.2023

skr

Index : Yes

Speaking order

Neutral Citation : Yes

To

The Sub-Registrar,
Office of the Sub-Registrar,
Adyar.



WEB COPY

W.P.No.21374 of 2018



S.M.SUBRAMANIAM, J.

skr

W.P.No.21374 of 2018

21.09.2023