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WP No.15972 of 2



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06-07-2023

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

WP No.15972 of 2018

And

WMP Nos.18994 to 18996 of 2018 and 26278 of 2022

R.Monisha (Minor)
Represented by her mother and guardian
Ezhilarasi, Door No.99, West Street,
Thenmahathevamangalam Village,
Polur Taluk,
Tiruvannamalai District.

... Petitioner

Vs.

1.The Sub Registrar,
Kadaladi,
Polur Taluk,
Tiruvannamalai District.

2.V.Ramajayam

3.A.Anwar (Deceased)

4.Megaboobi

5.Amreen



6.Ayleshabi

[R-4 to R-6 substituted as LR's of the
deceased R-3 A.Anwar vide order of
Court made in WMP No.23325 of 2022
in WP 15972 of 2018 dated 13.09.2022]

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari Mandamus, calling for the records on the file of the first respondent registered as Document No.2864 of 2014 on 25.09.2014 and consequently the registered Sale Deeds dated 20.02.2015 and 07.08.2015 registered as Document Nos.456 of 2015 and 2315 of 2015 on the file of the first respondent's office and quash the same.

For Petitioner : Mr.K.P.Prabhu Raj for
M/s.A.K.Mylsamy Associates.

For Respondents-1 and 2: Mr.D.Ravichander,
Special Government Pleader.

For Respondent-3 : Died

For Respondents-4 to 6 : No Appearance



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ORDER

The writ on hand has been instituted to call for the records on the file of the first respondent registered as Document No.2864 of 2014 on 25.09.2014 and consequently the registered Sale Deeds dated 20.02.2015 and 07.08.2015 registered as Document Nos.456 of 2015 and 2315 of 2015 on the file of the first respondent's office and quash the same.

2. The petitioner states that the second respondent, who is the grandfather of the writ petitioner, executed the Settlement Deed in favour of the writ petitioner minor daughter Ms.R.Monisha on 01.02.2012 settling the entire extent of land and building more fully described in the document.

3. The Settlement Deed was registered as document No.259 of 2012 on the file of the first respondent-Sub Registrar, Kadaladi, Polur Taluk in Thiruvannamalai District.

4. The second respondent after canceling the Settlement Deed executed the Sale Deed on 20.02.2015 and 07.08.2015 in favour of the third



respondent and registered as Document Nos.456 of 2015 and 2315 of 2015 respectively on the file of the first respondent.

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5. During the pendency of the writ petition, the third respondent Mr.A.Anwar died. Therefore, the petitioner has impleaded the respondents 4 to 6, who all are legal heirs of the third respondent. Notice sent to the impleaded respondents and they refused to receive the same. Therefore, the case has to be taken up for passing final orders. As far as the unilateral cancellation of Settlement Deed is concerned, it is untenable and the issues are no more res integra.

6. It is not in dispute that the second respondent-grandfather of the writ petitioner executed the Settlement Deed in favour of the minor daughter on 01.02.2012 in Document No.259 of 2012. After canceling the said document, he has further executed the Sale Deed in favour of the third respondent.

7. This being the factum, the unilateral cancellation of Settlement Deed is void in view of the judgment of the Full Bench of this



Court in the case of **Latif Estate Line India Ltd vs. Hadeeja Ammal**

[(2011) 2 CTC 1], wherein in paragraphs 48, 54 to 59, it has been observed

as under:-

“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 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 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.

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.”

8. In an yet another Full Bench judgment in the case of



Sasikala vs. Revenue Divisional Officer [(2022) 7 MLJ 1], wherein the

Full Bench of this Court in paragraphs-54, 55 and 59 observed as under:-

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“54.Hence, we have no hesitation to answer the issue by holding that the Sub-Registrar namely, the Registering Authority has no power to accept the deed of cancellation to nullify the deed of conveyance made earlier.

Regarding gift or settlement:

55. With regard to unilateral cancellation of gift deed, which is not revokable and does not come under the purview of Section 126 of the Transfer of Property Act, the Registrar has no power to accept the deed of cancellation to nullify the registered settlement deed. Section 126 of the Transfer of Property Act, reads as follows:

“126. When gift may be suspended or revoked.—The donor and donee may agree that on the happening of any specified event which does not depend on the will of the donor a gift shall be suspended or revoked; but a gift which the parties agree shall be revocable wholly or in part, at the mere will of



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the donor, is void wholly or in part, as the case may be. A gift may also be revoked in any of the cases (save want or failure of consideration) in which, if it were a contract, it might be rescinded. Save as aforesaid, a gift cannot be revoked. Nothing contained in this section shall be deemed to affect the rights of transferees for consideration without notice.

“59. As a result of our forgoing conclusions, we answer the reference by holding that the Registrar has no power to accept the deed of cancellation to nullify the deed of conveyance made earlier, when the deed of conveyance has already been acted upon by the transferee. Since anyone may try to mislead or misinterpret our judgment by referring to the question of reference we insist that our answer to the reference should be understood in the light of our conclusions summarised in the previous paragraph.”



9. In view of the Full Bench judgments of this Court, cited supra, the impugned orders are untenable. Accordingly, Document No. Document No.2864 of 2014 on 25.09.2014 and consequently the registered Sale Deeds dated 20.02.2015 and 07.08.2015 registered as Document Nos.456 of 2015 and 2315 of 2015 on the file of the first respondent's office shall stand quashed.

10. Accordingly, the present writ petition stands allowed. However, there shall be no order as to costs. Consequently, the connected miscellaneous petitions are closed.

06-07-2023

Index : Yes/No
Internet: Yes/No
Speaking order/Non-Speaking order
Neutral Citation : Yes/No
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To

The Sub Registrar,
Kadaladi,
Polur Taluk,



Tiruvannamalai District.

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S.M.SUBRAMANIAM, J.

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