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W.P.No.32673 of 2



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.07.2023

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.32673 of 2017

C.Chinnasamy

... Petitioner

Vs.

1.The Sub Registrar,
Perundurai.

2.Chennimalai Gounder

3.C.Parthasarathy

4.S.Kandasamy

5.Kandasamy

6.Kuppusami

... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, to issue a writ of Declaration, declaring that the Document No.3806 of 2009 dated 30.09.2009 and consequent encumbrances on the file of the 1st respondent herein are null and void and not binding on the petitioner herein.



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For Petitioner	: Mr.Gowri Shankar for M/s.G.Jeremiah
For R1	: Mr.D.Ravichander, Special Government Pleader
For R2	: Not ready in notice
For R3	: Mr.N.Chinna Raj
For R4 & R5	: No appearance
For R6	: Mrs.Zeenath Begum & Mr.Sunny and Mrs.V.Srimathi

ORDER

The writ petition has been filed to declare that the Document No.3806 of 2009 dated 30.09.2009 as null and void.

2. The petitioner states that the 2nd respondent is none other than the father of the writ petitioner, who settled his property in favour of the writ petitioner through Gift Deed dated 08.07.2009 registered as Document No.2632 of 2009 and the said gift deed executed in favour of the writ petitioner was unilaterally cancelled by the 2nd respondent and thus, the petitioner is constrained to move the present writ petition.



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3. Unilateral cancellation of settlement deed or gift deed is impermissible, rightly conferred in favour of the settlee. In view of the principles laid down in 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] 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.

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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



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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



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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.”

4. 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.

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.”*

5. In view of the legal positions settled in the judgments cited supra, the unilateral cancellation of settlement deed is liable to be set aside.



Consequently, the cancellation of Document No.3806 of 2009 dated 30.09.2009 on the file of the 2nd respondent is quashed and the 2nd respondent is directed to make necessary consequential entries in the registries. The said exercise shall be completed within a period of 6 weeks from the date of receipt of a copy of this order.

6. Accordingly, the writ petition stands allowed. No costs.

04.07.2023

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Index : Yes

Speaking order

Neutral Citation : Yes

To

The Sub Registrar,
Perundurai.



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S.M.SUBRAMANIAM, J.

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