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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.09.2024

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THE HONOURABLE MR.JUSTICE M.DHANDAPANI

**W.P.No.12571 of 2010
and C.R.P.No.262 of 2010
and M.P.no.1 of 2010 (2 nos)**

W.P.no.12571 of 2010:

K.Madhavan

.. Petitioner

Vs.

1. Inspector General of Registration,
Santhome High Road,
Chennai.

2. The Sub Registrar,
Adyar, Chennai-20.

3. N.Ranganathan

..Respondents

Petition filed under Article 226 of the Constitution of India, for issuance of Writ of Declaration, declaring that the registration by the second respondent of the deed of cancellation dated 22.08.1996 duly registered as document No.4218 of 1996 executed by the 3rd respondent is invalid and consequently, for directing the second respondent to effect requisite entries in the records of the Sub-Registry deleting the entire of the said registration.



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CRP.No.262 of 2010:

D.Martin (Deceased)

Madavan

....Petitioner

Vs.

1. N.Ranganathan

2. Inspector General of Registration,
Santhome High Road,
Chennai.

3. The Sub Registrar,
Adyar, Chennai-20.
Respondents

...

Petition filed under Article 227 of the Constitution of India, to set aside the order dated 24.11.2009 made in IA.Sr. No.35722 of 2009 in OS.No.7434 of 2005 on the file of the IV Assistant City Civil Court, Chennai.

For Petitioner	: Mr.R.Gunasekaran in both the cases
For Respondents	: Mr.P.Harish, GA RR1 & 2 in W.P.No.12571 of 2010 for RR2 and 3 in CRP.No.262 of 2010 Mr.Wilson Topaz R3 in W.P.No.12571 of 2010 for R1 in CRP.No.262 of 2010

COMMON ORDER

This Petition has been filed seeking a direction to the respondents 1
-4 to issue disability certificate to petitioners father Mr.P.K.M.Thurai



aged 81 residing at No.18 4th cross street Trustpuram Kodambakkam chennai-600 024 and consequentially appoint the petitioner(elder son)herein as the limited guardian under section 14 of the Rights of persons with Disability Act 2016.

2. It is the case of the petitioner that the third respondent herein had mortgaged the house bearing No.25/B, Ranjith Road, Adayar, Kotturpuram, Chennai comprised in TS.No.7/2, Block No.14, to an extent of 3 grounds and 1136 sq. ft. in favour of the petitioner Martin under a registered deed of mortgage dated 24.11.1995 on the file of the second respondent for a sum of Rs.4,00,000/- in the year 1995. Subsequently, the third respondent availed a loan in a sum of Rs.1,60,177/- from the petitioner for the purpose of discharging a subsisting mortgage and execute a promissor note on 24.11.1995. The third respondent again availed a loan for a sum of Rs.60,000/- from the petitioner on 24.11.1995 and executed another promissory note. Due to difficulty for paying the interest, the third respondent sold one portion of the property to one deceased petitioner Martin in the year 1996.

3. The third respondent seems to have executed deed of



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cancellation seven months after the execution of the sale deed, that is on 22.08.1996 which deed of cancellation was duly registered as document No.4218 of 1996 on the file of the second respondent. Such cancellation deed was not made known to the petitioner Madhavan. Only in the year 2005 when the said Martin with a view to develop the property, had applied for encumbrance, the above act of cancellation by the 3rd respondent was noticed. Immediately the said Martin filed a suit challenging the deed of cancellation praying for a declaration that such cancellation was null and void in O.S.No.7434 of 2005. The said deceased Martin settled his property to the petitioner Madhavan and the said Martin died on 26.05.2009. The petitioner has filed an application to substitute himself as a plaintiff in the said suit. However, the learned Judge has impleaded as defendant in the said suit. Challenging the said IA dated 24.11.2009, the petitioner has filed the present CRP. Before this Court. The patta has also been issued in favour of the petitioner in respect of the subject property and he has been paying the property tax. Though the sale deed had been cancelled even on 22.08.1996, as the execution of the said deed of cancellation unilaterally by the third respondent came to be known to predecessor in interest D.Martin only in the year 2005 resulting in the suit for declaration. The deed of settlement was executed



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in favour of the petitioner on 30.10.2008 and he have become full and absolute owner of the property. Challenging the deed of cancellation dated 22.08.1996 executed by the third respondent, the petitioner has filed the present writ petition before this Court.

4. The learned counsel for the petitioner submitted that the deed of cancellation was executed and registered on 22.08.1996 and a circular has also been issued by the Inspector General of Registration on 05.10.2007 in terms of Section 34 A of the Registration Act stating that such deed of cancellation cannot be executed and registered by the vendor alone without the consent of the purchaser and without the purchaser joint in execution. In the light of the said circular, the action of the 3rd respondent in unilaterally executing the deed of cancellation is invalid.

5. Heard the learned counsel for the petitioner and the learned Government Counsel and perused the materials available on record.

6. The facts of the case are not in dispute. Since it is a dispute with regard to the subject properties in question, which is purely civil in nature, the petitioner has to approach the competent Forum to work out



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his remedy and not before this Court by way of a writ petition under Article 226 of the Constitution of India. Under these circumstances, this Court does not want to interfere with it.

7. Considering the fact and circumstances of the case, this Court, without going into the merits of the case, permits the petitioner to file a suit against the private respondent before the competent forum for establishment of his right over the subject properties. If the petitioner files a suit, the concerned Judge, shall decide the issue on merits, as expeditiously as possible.

8. With the above directions, the writ petition is dismissed. No costs. Consequently, the Civil Revision Petition and miscellaneous petitions are closed.

24.09.2024

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Speaking Order/ Non Speaking Order
Index: Yes/ No
Internet: Yes/ No

To

1. Inspector General of Registration,



Santhome High Road,
Chennai.

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2. The Sub Registrar,
Adyar, Chennai-20.



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M.DHANDAPANI,J.

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