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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.03.2024

CORAM

**THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM
and**

THE HONOURABLE MR.JUSTICE K.RAJASEKAR

W.A.Nos.937, 929 and 938 of 2021

and

C.M.P.Nos.5473, 5523 and 5528 of 2021

W.A.No.937 of 2021

Palaniammal

... Appellant

Vs.

1. The Inspector General of Registration,
No.100, Santhome High Road,
Mylapore, Chennai – 600 028.

2. The Sub-Registrar,
Kundrathur, Chennai – 600 069.

3. S.Indraniammal

... Respondents

Prayer: Appeal filed under Clause 15 of the Letters Patent against the order dated 03.01.2020 passed in W.P.No.34241 of 2019.

W.A.No.929 of 2021

S.Banumathiammal

... Appellant

Vs.



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1. The Inspector General of Registration,
No.100, Santhome High Road,
Mylapore, Chennai – 600 028.

2. The Sub-Registrar,
Kundrathur,
Chennai – 600 069.

3. S.Indraniammal

... Respondents

Prayer: Appeal filed under Clause 15 of the Letters Patent against the order dated 03.01.2020 passed in W.P.No.34243 of 2019.

W.A.No.938 of 2021

J.Geetha

... Appellant

Vs.

1. The Inspector General of Registration,
No.100, Santhome High Road,
Mylapore, Chennai – 600 028.

2. The Sub-Registrar,
Kundrathur,
Chennai – 600 069.

3. S.Indraniammal

... Respondents

Prayer: Appeal filed under Clause 15 of the Letters Patent against the order dated 03.01.2020 passed in W.P.No.34247 of 2019.

For Appellant : Mr.MA.Gouthaman (in all W.As)

For R1 and R2 : Mr.B.Vijay,



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W.A.Nos.937, 929 and 938 of 2



Additional Government Pleader

For R3

: Mr.A.V.Arun
assisted by Mr.M.A.Arunesha

COMMON JUDGMENT

(Judgment of the Court was made by **S.M.SUBRAMANIAM, J.**)

The facts are not in dispute between the parties. Four Settlement Deeds were registered by the 3rd respondent in favour of her Daughters in Document Nos.3000 of 1991, 8449 of 2013, 8451 of 2013 and 8452 of 2013 on 27.09.2011, 14.03.2013. Three Settlement Deeds were executed in favour of the appellant herein. Subsequently, the Settlement Deeds executed in favour of the appellant were unilaterally cancelled by the 3rd respondent through Cancellation Deeds dated 01.09.2016 in Documents Nos.13549, 13550 and 13551 of 2016.

2. Mr.Gouthaman, learned counsel for the appellant would submit that unilateral cancellation of Settlement Deed is impermissible in view of the judgement of the Full Bench of this Court. The learned Single Judge dismissed the Writ Petition relying on the Judgement of the Division Bench in the case of the *P.Rukmani and others -vs- Amudhaveni and others* vide



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order dated 17.07.2019 in W.A.No.229 of 2018. The said Judgement cannot be relied upon in view of the ratio laid down by the Full Bench of this Court in the case of ***Latif Estate Line India Ltd., -vs- Mrs.Hadeeja Ammal*** reported in **(2011) 2 CTC**. In view of the wrong application of the Judgement, the present Writ Appeal came to be instituted.

3. The learned Additional Government Pleader appearing on behalf of the respondents 1 and 2, Mr.B.Vijay would oppose the said contention by stating that the cancellation of Settlement Deed is permissible under the provisions of the Registration Act, 1908. The Hon'ble Supreme Court in the case of ***Sathyapal Anand -vs- State of Madhya Pradesh*** in Civil Appeal No.6673 of 2014 dated 26.10.2016 also has considered these issues in Paragraph No.37, which reads as under:-

“37. Admittedly, the documents in question do not fall within Sections 31, 88 and 89. Further, Section 32 does not require presence of both parties to the document when it is presented for registration. In that sense, presentation of extinguishment deed by the authorised person of the Society for registration cannot be faulted with reference to Section 34 of the 1908 Act. That provision stipulates the enquiry to be done by the Registering Officer before registration of the document. The same reads thus:



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“34. Enquiry before registration by registering officer.—(1) Subject to the provisions contained in this Part and in Sections 41, 43, 45, 69, 75, 77, 88 and 89, no document shall be registered under this Act, unless the persons executing such document, or their representatives, assigns or agents authorised as aforesaid, appear before the registering officer within the time allowed for presentation under Sections 23, 24, 25 and 26:

Provided that, if owing to urgent necessity or unavoidable accident all such persons do not so appear, the Registrar, in cases where the delay in appearing does not exceed four months, may direct that on payment of a fine not exceeding ten times the amount of the proper registration fee, in addition to the fine, if any, payable under Section 25, the document may be registered.

(2) *Appearances under sub-section (1) may be simultaneous or at different times.*

(3) *The registering officer shall thereupon—*

(a) enquire whether or not such document was executed by the persons by whom it purports to have been executed;

(b) satisfy himself as to the identity of the persons appearing before him and alleging that they have executed



the document; and

(c) in the case of any person appearing as a representative, assignee or agent, satisfy himself of the right of such person so to appear.

(4) Any application for a direction under the proviso to sub-section (1) may be lodged with a Sub-Registrar, who shall forthwith forward it to the Registrar to whom he is subordinate.

(5) Nothing in this section applies to copies of decrees or orders.”

Even this provision does not require presence of both parties to the document when presented for registration before the Registering Officer.”

4. We find that the observations made in Paragraph No.37 in ***Sathyapal Anand's*** case cited supra is about the appearance of the parties before the Registrars, while registering the documents. The issue was relating to the power to register. Therefore, the unilateral cancellation of Settlement Deed was not an issue discussed in Paragraph No.37 in ***Sathyapal Anand's*** case cited supra.

5. Two different Full Benches of this Court has held that unilateral



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cancellation of Settlement Deeds are impermissible. In the present case, the appellant is the Daughter of the 3rd respondent. 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 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



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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.

6. 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.”*

7. In view of the fact that two different Full Bench of this Court have decided the issues, the Writ Court has applied the principles laid down by the Hon'ble Division Bench of this Court in W.A.No.229 of 2018, which incorrect. Thus, we are inclined to consider the Writ Appeal.

8. Accordingly, the orders impugned dated 03.01.2020 in W.P.Nos.34241, 34243 and 34247 of 2019 are set aside and the Writ Appeal stands allowed. 3rd respondent is at liberty to approach the competent authority under the



Maintenance and Welfare of Parents and Senior Citizens Act, 2007 or before the Civil Court, as the case may be. No costs. Consequently, the connected Miscellaneous Petitions are closed.

(S.M.S.,J.) (K.R.S.,J.)
25.03.2024

skr

Index : Yes

Speaking order

Neutral Citation : Yes

To

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and
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