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W.P.No.19836 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05..06..2024

Coram

THE HON'BLE MR JUSTICE N.SATHISH KUMAR

Writ Petition No.19836 of 2023

Mrs.Lakshmy Suresh,
Post Box No.668,
Postal Code 114, Jibroo,
Sultanate of Oman

Rep. By her Power Agent,
G.Anandan, Son of Gurusamy,
No.3/437, Bazaar Street,
Kanakamma Chatram,
Thiruthani Taluk,
Thiruvellore District.

..... Petitioner

-Versus-

1.The Sub-Registrar,
Thiruvalangadu,
Thiruthani Taluk,
Thiruvellore District.

2.Kanniya Naidu

3.Mrs.Girija

4.I.V.Singam

..... Respondents

Petition filed under Article 226 of The Constitution of India, praying to
issue a Writ of Certiorarified Mandamus calling for the records of the 1st



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respondent relating to the registration of unilateral Cancellation Deed dated 08.01.1999, bearing Registered Document No.24 of 1999 registered on the file of the 1st respondent – Sub-Registrar, Thiruvalangadu and to quash the same and to direct the 1st respondent to delete or make necessary endorsement in the entries relating to the registration of the said cancellation deed dated 08.01.1999 in the records maintained by the 1st respondent.

*For Petitioner(s) : Mr.Abdul Saleem,
Senior Counsel for
M/s.T.Fenn Walter Associates*

*For Respondent (s) : Mr.Yogesh Kannadasan,
Special Government Pleader
for R1*

No Appearance for RR2 to 4

ORDER

Challenge is to the Unilateral Cancellation Deed dated 08.01.1999 registered as Doc.No.24 of 1999 on the file of the 1st respondent.

2. It is the case of the petitioner that her parents K.N.Iyer Mahadevan and Janaki Mahadevan had purchased the landed property measuring an extent of 1.00 Acre comprised in S.No.184/8 (part) at No.46, Kaveri Rajapuram village, Tirutani Taluk, Thiruvallur District from one Kanniah Naidu and Girija represented by their Power Agent, the 4th respondent herein by way of



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registered sale deed dated 29.04.1997 registered as Doc.No.929* of 1997 on

the file of the 1st respondent-Sub Registrar, Thiruvallangadu. After the purchase of the said property, the parents of the petitioner were in possession and enjoyment of the same. While so the father of the petitioner died on 08.09.2006 and her mother also died on 27.12.2000 leaving behind the petitioner as their only legal heir. The petitioner has been residing in Oman and the parents of the petitioner were initially residing at Coimbatore and for some time at Bangalore, they later on moved their residence in Oman where the petitioner was residing.

3. While so, taking advantage of the absence of the parents of the petitioner in the locality where the subject property is situated, the vendors of her parents, through their Power Agents had unilaterally cancelled the sale deed dated 29.04.1997 executed in favour of the parents of the petitioner vide Doc.No.929 of 1997 registered on the file of the Sub Registrar, Thiruvallangadu through a Deed of Cancellation of Sale Deed dated 08.01.1999 which was registered as Doc.No.24 of 1999 on the file of the 1st respondent. Hence, this writ petition.

4. A counter affidavit has been filed by the 1st respondent opposing the writ petition inter alia contending that it is for the petitioner to work out her



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remedy before the competent civil court.

WEB COPY 5. Heard both sides.

6. The learned counsel for the petitioner would strenuously submit that though the deed of cancellation of sale deed was executed in 1999, as the petitioner was all along settled in Oman, she only recently came to know about the execution of deed of cancellation of sale made in favour of her parents by Kanniah Naidu and Girija (Vendors) through their power of agent-I.V.Singam, the 4th respondent.

7. Despite notice having been served, the 4th respondent had not chosen to enter his appearance in person or through a counsel and file counter affidavit.

8. This court has perused the entire materials placed on record carefully.

9. The Deed of Cancellation of Sale Deed executed unilaterally by the vendors of the petitioner through their power agent is put to challenge in the writ petition.

10. The law on the subject is no longer *res integra*. A Full Bench of this Court in the case of **Latif Estate Line India Limited v. Hadeeja Ammal** reported in **2011 (2) CTC 1 : AIR 2011 Mad 66** has held that a settlement deed or deed of conveyance cannot be unilaterally cancelled. The relevant



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paragraph of the judgement of the Full Bench of this Court reads as follows:-

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“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



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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."

11. Subsequently, another Full Bench of this Court in the case of **Sasikala v. Revenue Divisional Officer cum Sub Collector and another** reported in **2022 (5) CTC 257** following the Hon'ble Supreme Court in the case of Thota Ganga Lakshmi Vs Government of Andhra Pradesh reported in [(2010)15 SCC 207] and the judgement of the Full Bench of this Court in the case of Latif Estate Line India Limited (cited supra) has held as under:-

“44.From the discussions and conclusions we have reached above with reference to various provisions of Statutes and precedents, we reiterate the dictum of Hon'ble Supreme Court in Thota Ganga Laxmi and Ors.-vs- Government of Andhra Pradesh & Ors., reported in (2010) 15 SCC 207 and the Full Bench of this Court in Latif Estate Line India Ltd., case, reported in AIR 2011(Mad) 66 and inclined to follow the judgment of three member Bench of Hon'ble



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Supreme Court in Veena Singh's case reported in (2022) 7 SCC 1 and the judgment of two member Bench of Hon'ble Supreme Court in Asset Reconstruction Company (India) Ltd., case, reported in 2022 SCC On-line SC 544 for the following propositions:-

(a) A sale deed or a deed of conveyance other than testamentary dispositions which is executed and registered cannot be unilaterally cancelled.

(b) Such unilateral cancellation of sale deed or a deed of conveyance is wholly void and non est and does not operate to execute, assign, limit or extinguish any right, title or interest in the property.

(c) Such unilateral cancellation of sale deed or deed of conveyance cannot be accepted for registration.

(d) The transferee or any one claiming under him or her need not approach the civil Court and a Writ Petition is maintainable to challenge or nullify the registration.

(e) However, an absolute deed of sale or deed of conveyance which is duly executed by the transferor may be cancelled by the Civil Court at the instance of transferor as contemplated under Section 31 of Specific Relief Act.

(f) As regards gift or settlement deed, a deed of revocation or cancellation is permissible only in a case which fall under Section 126 of Transfer of Property



Act, and the Registering Authority can accept the deed of cancellation of gift for registration subject to the conditions specified in para 42 of this judgement.

(g) The legal principles above stated by us cannot be applied to cancellation of Wills or power of Attorney deed which are revocable and not coupled with interest."

12. In the light of the settled position of law, unilateral cancellation of the deed is not valid in the eye of law. The deed of cancellation of sale which is sought to be set aside has admittedly been executed unilaterally cancelling the sale made by the vendors viz., Kanniah Naidu & Girija through their power agent, the 4th respondent in favour of the parents of the petitioner. Thus, the deed of cancellation of sale deed will not have any significance in respect of the title of the parents of the petitioner over the subject property and the same is liable to be set aside. This writ petition succeeds accordingly.

In the result, the writ petition is allowed. The Deed of Cancellation of Sale Deed dated 08.01.1999 registered as Doc.No.24 of 1999 on the file of the 1st respondent cancelling the sale deed dated 29.04.1997 executed by Kanniah Naidu and Girija through their power agent-I.V.Singam, the 4th respondent in



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favour of K.N.Iyer Mahadevan and Janaki Mahadevan, the parents of the petitioner, registered as Doc.No.929 of 1997 on the file of the 1st respondent is set aside. The 1st respondent is directed to make necessary entries in the encumbrance in respect of order of this court setting aside the deed of cancellation of sale deed dated 08.01.1999 vide Doc.No.24 of 1999. No costs.

Index : yes / no
Neutral Citation : yes / no
Speaking / Non Speaking Order
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To

1.The Sub-Registrar,
Thiruvallangadu,
Thiruthani Taluk,
Thiruvallore District.



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N.SATHISH KUMAR.J.,

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