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W.A.No.2052 of 2



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.03.2024

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

and

THE HONOURABLE MR.JUSTICE K.RAJASEKAR

W.A.No.2052 of 2022

and

C.M.P.No.15478 of 2022

A.Selvan

... Appellant

Vs.

1. The Sub-Registrar,
Office of the Sub-Registrar – Anna Nagar,
J.J.Complex, Jawaharlal Nehru Road,
Thirumangalam, Chennai – 600 040.

2. A.Sai Premkumar

3. A.Ayyappan

4. A.Venakatachalapathy

5. Manovathy

6. P.Sankaram

... Respondents

Prayer: Appeal filed under Clause 15 of the Letters Patent against the order dated 17.08.2022 passed in W.P.No.11823 of 2019.

For Appellant

: Mr.T.Sai Krishnan



For R1 : Mr.U.Baranidharan,
Additional Government Pleader

For R2 : Mr.V.Ravikumar

For R4 : No appearance

For R3, R5 & R6 : Not ready in notice

J U D G M E N T

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

The Writ Appeal has been instituted challenging the order dated 17.08.2022 passed in W.P.No.11823 of 2019.

2. The writ petitioner is the appellant before us. The writ was instituted to quash the unilateral Cancellation Deed executed by the Grandfather of the appellant.

3. Mr.T.Sai Krishnan, learned counsel appearing on behalf of the appellant would submit that the Grandfather of the appellant executed a Settlement Deed in favour of the appellant on 08.10.2003. Without the knowledge of the appellant, his Grandfather unilaterally cancelled the Settlement Deed dated 20.06.2008. The appellant, his brother and other



family members are residing in the subject property. Thus, the appellant had no knowledge about the Cancellation Deed executed by his Grandfather in the year 2008. Subsequently, the brother of the appellant started claiming right over the property and thereafter, the appellant came to know that the Cancellation of Settlement Deed was executed unilaterally by his Grandfather in the year 2008.

4. The writ court, relying on the earlier order dated 06.04.2022 passed in W.P.No.33892 of 2012, relegated the parties to approach the Civil Court of law. Thus, the present Writ Appeal is filed.

5. No doubt, disputes of civil nature are to be adjudicated before the Civil Court. However, the issue mainly raised in the Writ Petition is that unilateral cancellation made by a person under the provisions of the Registration Act, 1908 is valid or not? In other words, whether the Settlement Deed registered can be cancelled and such deed can be registered under the provisions of the Registration Act, 1908. The issue in this regard are no more *res integra* and two different Full Benches of this Court held that unilateral cancellation of Sale Deed is impermissible under the



provisions of the Registration Act, 1908.

6. In the case of “***Latif Estate Line India Ltd. -vs- Hadeeja Amma***”

reported in [(2011) 2 CTC 1], the Hon'ble Supreme Court 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



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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.”

....

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.”

7. The said position has been reiterated by another order of the Hon'ble Full Bench of this Court in the case of “**Sasikala -vs- Revenue Divisional Officer**” reported in [(2022)7 MLJ 1] and the relevant paragraphs 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



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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.

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59. Much ado was sought to be made by contending that the Appellant approached the High Court without disclosing the previous



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*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.”*

8. In view of the ratio laid down by two different Full Benches of this Court that unilateral cancellation of Sale Deed is impermissible under the Registration Act, 1908, we are inclined to consider the Writ Appeal.

9. Accordingly, the order under challenge dated 17.08.2022 passed in W.P.No.11823 of 2019 is set aside and subsequently, the prayer in the Writ Petition stands allowed. The Sub-Registrar is directed to carryout necessary changes in the Encumbrance Register by following the procedures, as contemplated.

10. Accordingly, the Writ Appeal stands allowed. Consequently, the connected Miscellaneous Petition is closed. No costs.



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(S.M.S.,J.) (K.R.S.,J.)
20.03.2024

skr

Index : Yes

Speaking order

Neutral Citation : Yes

To

The Sub-Registrar,
Office of the Sub-Registrar – Anna Nagar,
J.J.Complex, Jawaharlal Nehru Road,
Thirumangalam, Chennai – 600 040.



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S.M.SUBRAMANIAM, J.
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