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W.P.No.31228 of 2



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.10.2024

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THE HONOURABLE MR. JUSTICE S. SOUNTAR

W.P No.31228 of 2024

K.Kalingarajan

...Petitioner

Vs.

1. The District Registrar,
Salem, Salem District.
2. The Sub Registrar,
Jalakandapuram, Mettur Taluk,
Salem District.
3. R.Venkatachalam
4. N.Sethupathi
5. S.Manivannan

...Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Mandamus directing the respondents 1 & 2 to consider the petitioner's representation dated 23.07.2024 in order to cancel the sale deed in Doc.No.4735 of 2023 dated 28.08.2023 registered before the second respondent office.

For Petitioner : Mr.M.Elango

For R1 & R2 : Mr.P.Harish
Government Advocate



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ORDER

The petitioner herein seeks a direction to the respondents 1 and 2 to consider his representation dated 23.07.2024 seeking cancellation of the sale deed dated 28.08.2023 registered as document No.4735 of 2023 on the file of the second respondent.

2. It is the case of the petitioner that the property covered by the above mentioned sale deed was allotted to the petitioner's wife as per the partition decree passed in O.S.No.250 of 1999 and the same was also registered before the second respondent. The petitioner and his daughter Thilaka are entitled to the above mentioned property as per law of succession (as recited in the document). The petitioner agreed to sell the property to private respondents 3 to 5 for a sale consideration of Rs.20,00,000/- and executed a sale deed on 28.08.2023. The said sale deed was registered on the file of the second respondent as document No. 4735 of 2023.

3. It is the further case of the petitioner that out of sale consideration of Rs.20,00,000/-, the purchaser paid a sum of Rs.5,00,000/- by cash and the



remaining amount was paid by way of cheque. The cheques issued by the purchaser / private respondents were dishonored for want of sufficient funds.

Therefore, the petitioner approached the purchaser requesting to pay the balance sale consideration. The son-in-law of the third respondent issued a cheque dated 26.03.2024 for a sum of Rs.15,00,000/- and the same was also returned with an endorsement "insufficient funds". Therefore, the petitioner claims that the sale deed executed in favour of the respondents 3 to 5 is not valid due to non-payment of full sale consideration. It is further stated by the petitioner that the said sale deed to be treated as a fraudulent document and it is liable to be cancelled by the first respondent. Therefore, the petitioner submitted a representation before the respondents 1 and 2 seeking cancellation of sale deed and they have not taken any further action on the said representation. Hence, the petitioner is before this Court.

4. As per the averments found in the writ affidavit, portion of the sale consideration of Rs.5,00,000/- was paid by way of cash and the remaining consideration of Rs.15,00,000/- was paid by way of cheque. The cheque issued by the purchaser was dishonored. Hence, it is not in dispute that portion of the sale consideration of Rs.5,00,000/- was already paid to the petitioner. Therefore, the balance sale consideration remains unpaid to the



petitioner. The non-payment of portion of sale consideration will not affect validity of sale deed. It is always open to the petitioner to enforce the charge available to unpaid vendor and work out his remedy.

5. A perusal of the sale deed dated 28.08.2023 would indicate that Rs.20,00,000/- was agreed as sale consideration. The recitals found in the sale deed would indicate that the said amount was transferred to the account of petitioner's daughter, who also joined as one of the executants in the sale deed by two installments through RTGS. Therefore, as per recitals in the sale deed the entire sale consideration of Rs.20,00,000/- was transferred from the bank account of the purchaser to the bank account of the second seller namely the petitioner's daughter. In these circumstances, the averment found in the writ petition affidavit as if, the purchaser issued cheque for balance sale consideration of Rs.15,00,000/- and the same was dishonored is against the recitals found in the sale deed.

6. In any event, this Court cannot go into the disputed question of fact with regard to the payment of the sale consideration or otherwise of the same, especially, in the light of the contradiction between the recitals found in the sale deed and the averments found in the writ affidavit. The averments of the



petitioner requires leading of evidence. However, Section 77 (A) of the Registration Act which empowered official respondents to cancel the registered document on the ground of fraud was already struck down in ***M.Kathirvel Vs The Inspector General of Registration*** in W.P.Nos.10291 of 2022 etc. batch. Therefore, as on today, the official respondents are not empowered to cancel the registered documents. In such circumstances, this court is not inclined to issue any positive direction to the respondents to consider the representation of the petitioner as stated supra.

7. In view of the disputed question of facts involved in this matter and legal position with regard to the unpaid sale consideration, this Court is not inclined to grant any relief to the petitioner. Accordingly, this writ petition is dismissed. No costs.

25.10.2024

Index : Yes/No
Internet : Yes/No
Speaking Order/Non-Speaking Order
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S. SOUNTHAR, J.

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To

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Salem District.

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