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W.A.NO.1057 OF 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.06.2024

CORAM:

**THE HONOURABLE MR. JUSTICE R.SUBRAMANIAN
AND
THE HONOURABLE MR. JUSTICE R.SAKTHIVEL**

W.A.NO.1057 OF 2023

AND

CMP NOS.10562 AND 10563 OF 2023

Dr.P.V.R.K.Anjaneeya Guptha

...

Appellant /
3rd Respondent

Vs.

1.M.Anbazhagan

...

1st Respondent /
Writ Petitioner

2.The District Registrar

Registration Department

Government of Puducherry

Saram, Puducherry – 605 013.

3.The Sub Registrar

Registration Department

O/o. District Registrar

Government of Puducherry

Saram, Puducherry – 605 013.

4.Parvathi

...

2 to 4th Respondents /
Respondents 1, 2 & 4



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PRAYER: Writ Appeal filed under Clause 15 of the Letter Patent against the order dated 12.08.2022 made in W.P.No.1471 of 2022.

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For Appellant : Mr.K.Aadhishankaran
Mr.V.Chandrasekharan

For Respondent-1 : Mr.S.K.Sivasankaran
for M/s.K.Shyam Sunder

Respondents 2&3 : Mr.R.Sreedhar
Additional Govt. Pleader (Pondy)

For Respondent 4 : Mr.E.P.Senniyangiri

J U D G M E N T

(Judgment of the Court was made by R.SUBRAMANIAN, J.)

Challenge in this appeal is to the order of the Writ Court granting the extraordinary relief of cancellation of Sale Deeds for non-payment of sale consideration.

2.The facts that led to the filing of the Writ Petition seeking a Writ of Mandamus directing the respondents to consider the petitioner's



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representation dated 21.01.2022 and cancel the Sale Deeds dated

17.04.2019 and 13.10.2021 as mentioned in the Understanding Deed dated

30.03.2021 are as follows:

2.1.It is the case of the petitioner before the Writ Court that he is in the business of construction of buildings and he purchased the property subject matter of the Writ Petition in the year 2006. Due to certain financial difficulties experienced by him, he wanted to sell the property and the third respondent expressed his interest in purchasing the property for a consideration of Rs.48,87,000/- (Rupees Forty Eight Lakhs Eighty Seven Thousand Only). After further negotiation, an advance of Rs.5,00,000/- (Rupees Five Lakhs Only) was paid by way of cheque bearing No.325832 drawn on State Bank of India, Villianur Branch, Puducherry and on presentation, the cheque was honoured.



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2.2. According to the petitioner, the third respondent who

agreed to pay the balance of consideration, issued two cheques bearing Nos.927730 and 927731, dated 17.04.2019, drawn on Punjab National Bank, for a sum of Rs.21,93,000/- and Rs.21,94,000/- respectively. After receipt of the two cheques, the Sale Deed was registered on 17.04.2019.

It should be pointed out at this juncture that there was no recital in the Sale Document regarding the non-payment of consideration. Subsequently, when the cheques were presented, they were returned citing 'insufficiency of funds' as a reason. According to the petitioner, despite his repeated demands, the third respondent did not come forward to pay the balance of sale consideration.

2.3. The petitioner also found to his shock and surprise that the third respondent has mortgaged the property with the fourth respondent for a sum of Rs.10,00,000/- (Rupees Ten Lakhs Only) vide a Mortgage Deed dated 21.08.2019 and it was also the further contention that the pandemic



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intervened and thereafter, the petitioner was able to trace the third respondent and an Understanding Deed was entered into between them on 30.03.2021 wherein the third respondent agreed to pay the balance of consideration within a specific time, failing which, he would get the Sale Deed cancelled.

2.4.In the interregnum, the third respondent has also created a document of Cancellation of the Mortgage and a fresh Mortgage for a sum of Rs.75,00,000/- (Rupees Seventy Five Lakhs Only) was also created on 11.03.2021.

2.5.It was the further case of the petitioner that the third respondent had conveyed the property to the fourth respondent for consideration on 13.10.2021 vide Document No.24894 of 2021. The petitioner had approached the Police invoking the provisions of Land Grabbing Act also. A representation was also made on 21.01.2022 to the



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District Collector, Puducherry and the District Registrar, Puducherry

seeking cancellation of Sale Deeds on the ground that the consideration was not paid and a fraud was perpetuate. The Undertaking that was given by the third respondent on 30.03.2021 was also sought to be enforced through the Authorities of the Registration Department. Since no action was taken by the Registration Department, a Writ Petition seeking a Mandamus was filed before this Court.

3.We find from the order of the Hon'ble Single Judge that the respondents 1 and 2 therein were directed to pass orders and the orders have to be produced before this Court. Pursuant to the said direction, the first respondent therein conducted an enquiry and rejected the representation on the ground that non-payment of consideration is not a ground for cancellation and the Authorities under the Registration Act are not empowered to cancel the Sale Deeds on the ground of non-payment of sale consideration. The Hon'ble Single Judge however went on to hear the Writ Petition as if it is a challenge to the order passed by the Registering



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Authorities rejecting the representation and chose to set aside the order of the Registering Authorities rejecting the representation of the petitioner and further went on to cancel the Sale Deeds. Aggrieved, the third respondent is on appeal.

4.We have heard Mr.K.Aadhishankaran, learned counsel appearing for the appellant; Mr.S.K.Sivasankaran, learned counsel appearing for the first respondent; Mr.R.Sreedhar, learned Additional Government Pleader (Pondy) appearing for the respondents 2 and 3 and Mr.E.P.Senniayangiri, learned counsel appearing for the fourth respondent.

5.Mr.K.Aadhishankaran, learned counsel appearing for the appellant would submit that the Sale Deeds registered under the provisions of the Registration Act, 1908 cannot be cancelled on the ground that the consideration has not been paid. It is open to the vendor to exercise his rights to recover the purchase-money and Section 55(4)(b) of the Transfer of Property Act, 1882 creates a charge on the property in the hands of the



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buyer in respect of the payment of balance of purchase-money. Therefore,

while it is open to the vendor to sue for balance of purchase-money, it is

not open to the Registration Authorities to cancel the instrument on the

ground of non-payment of consideration. He would also draw our attention

to Section 68 of the Registration Act, 1908, which has been invoked by the

Hon'ble Single Judge, to contend that Section 68 is a provision meant for

investing certain powers in the Registrar and Inspector General of

Registration.

5.1.Learned counsel appearing for the appellant would

contend that the power under Section 68 of the Registration Act is

restricted to examine the actions of the Sub Registrar and rectify the same,

if there is any act or omission in respect of rectification of any error

regarding the book or the office in which the document has been

registered. Therefore, according to the learned counsel, Section 68 of the

Registration Act cannot be read to invest a power of cancellation of

instruments, which have been duly registered by the Sub Registrars.



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6. Contending contra, learned counsel appearing for the first

respondent in the Writ Petition would submit that the non-payment of consideration / dishonour of the cheques would amount to fraud on registration and therefore, the Registering Authorities will have the power to cancel the instruments. Learned counsel would also draw our attention to the order of the Hon'ble Single Judge to contend that Section 68(2) of the Registration Act would empower the Registering Authorities to cancel the Sale Deed.

7. We have considered the rival submissions.

8. Section 68 of the Registration Act, 1908 reads as follows:

'68. Power of Registrar to superintend and control Sub-Registrars.

(1) Every Sub-Registrar shall perform the duties of his office under the superintendence and control of the Registrar in whose district the office of such Sub-Registrar is situate.

(2) Every Registrar shall have authority to issue (whether on complaint or otherwise) any order consistent with this Act which he considers necessary in respect of any act or omission of any Sub-Registrar subordinate to him or in respect



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*of the rectification of any error regarding the book or the office
in which any document has been registered.'*

9.The power that is vested in the Registrar or Inspector General of Registration under Section 68 of the Registration Act is in the nature of a supervisory jurisdiction. Sub-section (1) of Section 68 makes a Sub Registrar subject to the superintendence and control of the Registrar of the District. Sub-section (2) of Section 68 enables the Registrar to issue any order consistent with the Act which he considers necessary in respect of any act or omission of a Sub Registrar subordinate to him or in respect of rectification of any error regarding the book or the office in which any document has been registered. This power of superintendence cannot be invoked by a Registrar to cancel an instrument which has been duly registered under the provisions of the Registration Act. Moreover, the Registration Act is a procedural enactment and the law relating to transfer of immovable property is governed by the substantive law which is the Transfer of Property Act, 1882, a Central enactment.



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10. Section 55 of the Transfer of Property Act, 1882

enumerates the rights and liabilities of the buyer and the seller. Sub-section

(4) of Section 55 of the Transfer of Property Act, 1882 sets out the rights of the seller. Clause (b) thereof which reads as follows:

'(b) where the ownership of the property has passed to the buyer before payment of the whole of the purchase-money, to a charge upon the property in the hands of the buyer,

any transferee without consideration or any transferee with notice of the non-payment, for the amount of the purchase-money, or any part thereof remaining unpaid, and for interest on such amount or part from the date on which possession has been delivered.'

deals with the rights of the seller in respect of the unpaid purchase-money.

It creates a charge over the property subject matter of the sale for the

amount of the unpaid purchase-money in favour of the seller. It is open to

the seller to recover the said unpaid purchase-money through an

appropriate Suit in a Civil Court. No doubt, it is claimed that there is an

Understanding between the parties on 30.03.2021 wherein the appellant

had given an undertaking to pay the balance sale consideration or have the



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Sale Deeds cancelled. This being a contract between the parties, can be specifically enforced through a Court of Law. The Registering Authority cannot act upon the contract between the parties and cancel an instrument on the basis of such contract.

11.The question as to whether this contract is true or not or as to whether this contract could be specifically enforced has to be necessarily decided by a competent Civil Court and the Authorities functioning under the Registration Act cannot decide as to the validity or otherwise of a contract as they are not entitled to receive evidence or decide upon that evidence in exercise of the powers under Section 68 of the Registration Act.

12.In fact, the Hon'ble Supreme Court in ***STATE OF RAJASTHAN VS. NAHATA [2005 (12) SCC 77]*** has held that the whole aim of the Registration Act is to govern documents and not the transactions embodied therein. The object of the registration has to be borne in mind



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before any order is passed cancelling an instrument. The object of the

Registration Act is only to provide a procedure for transfer of immovable property and to maintain a record of such transfers. The Registration Act does not either create or extinguish title in immovable property by itself.

13.In ***SATYA PAL ANAND VS. STATE OF MADHYA PRADESH [2016 (10) SCC 767]*** the Hon'ble Supreme Court had dealt with the powers of the Registering Authorities and in doing so, it has observed as follows:

“34. The role of the Sub-Registrar (Registration) stands discharged, once the document is registered (see Raja Mohammad Amir Ahmad Khan [State of U.P. v. Raja Mohammad Amir Ahmad Khan, AIR 1961 SC 787]). Section 17 of the 1908 Act deals with documents which require compulsory registration. Extinguishment deed is one such document referred to in Section 17(1)(b). Section 18 of the same Act deals with documents, registration whereof is optional. Section 20 of the Act deals with documents containing interlineations, blanks, erasures or alterations. Section 21 provides for description of property and maps or plans and Section 22 deals with the



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description of houses and land by reference to government maps and surveys. There is no express provision in the 1908 Act which empowers the Registrar to recall such registration. The fact whether the document was properly presented for registration cannot be reopened by the Registrar after its registration. The power to cancel the registration is a substantive matter. In absence of any express provision in that behalf, it is not open to assume that the Sub-Registrar (Registration) would be competent to cancel the registration of the documents in question. Similarly, the power of the Inspector General is limited to do superintendence of Registration Offices and make rules in that behalf. Even the Inspector General has no power to cancel the registration of any document which has already been registered.”

14.A reading of the above passage would show that the Hon'ble Supreme Court has frowned upon the cancellation of instruments by the Sub Registrars. The power under Section 68 of the Registration Act was examined by the Hon'ble Supreme Court and it has been held that the power under Section 68 is limited to the superintendence of the Registration Officers and makes rules in that regard. It cannot go beyond the mandate of the provision.



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15.A Hon'ble Single Judge of this Court in

G.RAJASULOCHANA VS. THE INSPECTOR GENERAL OF

REGISTRATION AND OTHERS [W.P.NO.29706 OF 2022 DECIDED

ON 16.04.2024] has also considered the scope of the power under Section

68 of the Registration Act and held as follows:

“6.The above provision makes it clear that the said section confers power upon the Registrar to supervise and control all the acts of the Sub-Registrar. Sub-Section 2 empowers the Registrar to issue any order consistent with the Act, which he considers necessary in respect of any act or omission of any Sub-Registrar subordinate to him. Similarly, the Registrar shall also have power in respect of the rectification of any error regarding the book or the office in which any document has been registered. The above power empowering the Registrar to issue any order is a power of superintendence and supervision and not a power vested to cancel the registration of the document. . .”

16.The Hon'ble Single Judge who decided

G.Rajasulochana's case (cited supra) has also taken note of the judgment



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of the Division Bench of this Court in ***N.RAMAYEE VS. SUB-***

REGISTRAR [2020 (6) CTC 697] wherein the effect of the

pronouncement of the Hon'ble Supreme Court in ***Satya Pal's case (cited supra)*** was clarified stating that cancellation of registration is a substantive issue and the same cannot be done by the Registering Authorities.

17. At least in Tamil Nadu, the Legislature has introduced Section 22-A and B and corresponding Rule 55-A in Registration Act, which enables the Registrars to cancel the document under certain limited circumstances. Equivalent provisions or similar provisions have not been introduced in Puducherry. Therefore, the power or role of the Registering Authorities functioning in Puducherry is limited and it cannot be extended to cancellation of instruments. Even assuming the sale consideration has not been paid, we do not think that the cancellation of the instrument could be ordered even by the Court. It will be open to the first respondent herein to enforce the Understanding Deed dated 30.03.2021 by invoking the civil remedy of specific performance.



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18. In view of the above, we are unable to sustain the order of

the Hon'ble Single Judge cancelling the Sale Deeds for non-payment of balance of sale consideration. We therefore, allow the Writ Appeal and set aside the order of the Hon'ble Single Judge. The order of the Registering Authority dated 05.08.2022 is upheld and the Writ Petition will stand dismissed. It will however be open to the first respondent to initiate appropriate civil proceedings, if he is so advised and the period spent in prosecuting the Writ Petition and this Writ Appeal will stand excluded in computing the limitation for the civil proceedings, if so lodged. No costs. Consequently, connected Civil Miscellaneous Petitions are closed.

[R.S.M., J.]

[R.S.V., J.]

13.06.2024

Index : Yes
Internet : Yes
Neutral Citation : Yes
Speaking Order
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To

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Registration Department
Government of Puducherry
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2.The Sub Registrar
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O/o. District Registrar
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