
(2022) 08 KL CK 0086
In the High Court Of Kerala
Case No : Writ Petition (C) No. 3809 Of 2021

A.Basheerkutty

APPELLANT

Vs

Registration Inspector General Office Of The Inspector
General, Vanchiyoor, Thiruvananthapuram 695035

RESPONDENT

Date of Decision : 10-08-2022

Acts Referred:

Specific Relief Act 1963 — Section 31

Citation : (2022) 08 KL CK 0086

Hon'ble Judges : T.R. Ravi, J

Bench : Single Bench

Advocate : G.Sudheer, R.Harikrishnan, C.S.Sheela, K.Mohanakannan,
H.Praveen, D.S.Thushara, A.R.Pravitha, T.V.Neema

Judgement

T.R. Ravi, J.

1. The petitioner's father had executed Ext.P1 settlement deed in favour of the petitioner on 21.4.2007. Mutation was effected in favour of the petitioner and the petitioner was paying land tax as is evident from Ext.P2 dated 24.11.2007. It appears that on 3.3.2012, the petitioner's father executed Ext.P3 cancellation deed cancelling Ext.P1 settlement deed. Subsequently, on 11.12.2012, a power of attorney was executed by the petitioner's father in favour of the 7th respondent with regard to the properties covered by Ext.P1. On 25.10.2013, the petitioner's father expired. The petitioner contends that he was not aware of the cancellation deed. 0.0229 Ares of the property covered by Ext.P1 was acquired for the development of National Highway 66 under the National Highways Act. Ext.P5 is the notice issued in July, 2020 to the petitioner directing him to produce the relevant records regarding the property along with an encumbrance certificate for the purpose of claiming the compensation. The petitioner obtained an encumbrance certificate on 5.8.2020, copy of which is marked as Ext.P6, which showed the existence of Ext.P3 cancellation deed. It is in the above circumstances that the petitioner has approached this Court praying to quash

Ext.P11 issued by the 2nd respondent to the petitioner stating that there is no power available to cancel the cancellation deed and that the petitioner has to approach the civil court under Section 31 of the Specific Relief Act. The petitioner has also sought direction to respondents 1 to 3 to revoke Ext.P3 cancellation deed and make necessary entries regarding the same in their records and issue a fresh encumbrance certificate without showing the details of the cancellation deed. The petitioner relies on the judgment of the Hon'ble Supreme Court in *Thotta Ganga Laxmi v. Government of Andra Pradesh* [2011 (3) KLT 345 (SC)] and that of a Division Bench of this Court in *Hamsa P.A. v. District Registrar General, Kozhikode & Ors.* [2011 (3) KHC 342] to submit that Ext.P3 cancellation deed, which has been executed unilaterally by the vendor of the property is not valid.

2. Heard Sri G.Sudheer, on behalf of the petitioner, Sri K.Mohanakannan on behalf of the 7th respondent and Smt.C.S.Sheela, on behalf of the official respondents.

3. The law regarding cancellation deeds executed unilaterally is no longer *res integra*. A learned Single Judge of this Court considered the issue in the judgment in *Pavakkal Noble John v. State of Kerala & Ors.* reported in [2010 3 KLT 941] and held that such unilateral cancellation is impermissible. The judgment in *Noble John (supra)* was carried in appeal before a Division Bench. While the appeal was pending, the issue again came up before another Division Bench of this Court and in the decision in *Hamsa P.A. v. District Registrar General, Kozhikode & Ors.* [2011 (3) KHC 342], the Division Bench categorically held that the cancellation deed executed in such a manner is a meaningless transaction and void and non est. The Division Bench had relied on the judgment of the Apex Court in *Thotta Ganga Laxmi v. Government of Andra Pradesh* [2011 (3) KLT 345 (SC)]. At the time when the Division Bench rendered the judgment in *Hamsa (supra)*, apparently, the decision of the Hon'ble Supreme Court had not been reported. The judgment of the Supreme Court in *Thotta Ganga Laxmi (supra)* was rendered in a case that arose from the State of Andhra Pradesh and was challenging a Full Bench judgment of the High Court of Andhra Pradesh. The Supreme Court categorically held that after having executed a registered document transferring property in favour of another person, the same cannot be cancelled unilaterally and such transaction is a meaningless transaction and void and non est. The appeal filed against the judgment in *Noble John (supra)* came up for consideration much later, before a Division Bench of this Court, and in the judgment in *Santhosh Antonio S.Netto v. Joshy Thomas & Ors.* reported in [2020 (3) KLT 408], this Court upheld the decision of the learned Single Judge.

4. In view of the above judgments of the Apex Court and the Division Bench of this Court, Ext.P3 cancellation deed must be held to be non est and void and a meaningless transaction, since it is without the junction of the person in whose favour the property was transferred as per Ext.P2. The petitioner is entitled to the relief prayed for. Ext.P11 is set aside. Ext.P3 cancellation deed is declared to

be void and non est in law and not liable to be acted upon. Respondents 1 to 3 are directed to revoke the registration of Ext.P3 cancellation deed and make necessary entries in the records and issue a fresh encumbrance certificate to the petitioner without showing the details of the registration of Ext.P3 cancellation deed. Necessary orders shall be issued within one month from the date of receipt of a copy of this judgment.