

(2012) 06 MAD CK 0122

In the Madras High Court

Case No : Writ Petition No's. 17182 of 2011 and 5046 of 2012 and M.P. No's. 1 of 2011 and 1 of 2012

D. Mohan and Another

APPELLANT

Vs

Sub Registrar, (District Registrar Cadre), Registration Dept.,
Chennai 600004 and Others

RESPONDENT

Date of Decision : 07-06-2012

Acts Referred:

Registration Act, 1908 — Section 32A, 34, 71
Transfer of Property Act, 1882 — Section 126, 35

Citation : (2012) 5 MLJ 169

Hon'ble Judges : Vinod K. Sharma, J

Bench : Single Bench

Advocate : K.M. Vijayan, for K.M. Vijayan Associates, for the Appellant; V. Jayaprakashnarayanan, Additional Government Pleader and T.V. Sekar, for the Respondent

Final Decision : Allowed

Judgement

Vinod K. Sharma, J.—As the common question of law and facts are involved in these two writ petitions, these are being disposed of by common order.

For the sake of brevity, the facts are taken from W.P.No. 17182 of 2011. The petitioner is the son of Mr. D. Thangam, respondent No. 2, who was the original owner of the property bearing Plot No. 31, Cresnet Avenue, Kesavaperumalpuram, Greenways Road, Chennai 28, measuring about 4050 sq.ft. The property was acquired from City Co-operative Housing Society in the year 1961, in the name of Mr. B. Dharmarajan, and the possession of the property was handed over to the father of the petitioner after payment of the dues. The petitioner along with his two brothers took care of the family and also conducted marriages to his sisters in the year 1974 and 1980 out of their earnings. Both the sisters are well settled abroad and are foreign citizens.

2. The sisters of the petitioners visit India once in two years. In the year 1986,

mother of the petitioner decided to give separate share to the petitioner and common undivided share to the brothers by sub dividing the property.

3. The second respondent executed the registered Will. The respondent No. 2 also executed lease deed in favour of the petitioner for 25 years enabling him to construct the building for his personal residence.

4. The sisters of the petitioner had no objection for construction of residential complex in the share falling to the petitioner. The petitioner constructed the building after getting planning permission.

5. On 9.5.2008, the second respondent out of love and affection, executed settlement deed with all rights keeping in mind, the earlier Will and lease deed.

6. The case of the petitioner is that the sisters of the petitioner compelled the respondent No. 2, to cancel the settlement deed and got registered the cancellation deed on 19.8.2010. After expiry of two years of deed of cancellation, the respondent No. 2 created another settlement deed by dividing the property in equal shares including share for daughters on 24.9.2010.

7. The respondent No. 4 and 5 thereafter asked the petitioner to demolish the house and develop it as flats which was not accepted by the petitioner.

8. The stand of the petitioner is that cancellation of settlement deed in favour of the petitioner is outcome of the mental torture by the sisters of the petitioner, even though the respondent No. 2 had no such intention.

9. The registration of cancellation deed has been challenged to be violative of provisions of the Registration Act.

10. The writ petitions are opposed by the respondent No. 2, by contending that the writ petitions are not competent, as the petitioner can go to civil Court to challenge the cancellation of settlement deed executed in favour of the petitioner. The petitioner has not filed the settlement deed dated 9.5.2008 registered as Doc. No. 1075 of 2008 by his father, but has only filed settlement deed in favour of the grandson Arvind which pertains to other property.

11. It is also the stand of the respondent No. 2 that she had made it clear that the Will executed by her was intended to be revoked.

12. It is also submitted that her intention as well as her husband's intention was to divide the property equally.

13. It is stated in the counter that the petitioner and his brother asked the respondent No. 2, to execute settlement deed as the Government was to give certain concession with the assurance that Will would also be revoked subsequently.

14. It was made clear by the respondent No. 2 to her sons and daughters, that her intention was to divide the property equally and furthermore, she was assured by the petitioner and his brothers that the property will be divided

equally.

15. She did not know to read and write english, so did not know about the settlement deed at the time of registration.

16. It was after her two daughters came from America and scrutinised the documents that it was disclosed that the settlement was in favour of the petitioner and two grandsons, and the sisters of the petitioner were not included in the settlement deed.

17. The submission of the respondent No. 2 is that on coming to know about the settlement deed, she took steps to cancel it.

18. The learned counsel for the respondent No. 2 also challenged the maintainability of the writ petition on the ground that it was not open to the petitioner to challenge the registration of cancellation deed, as the Sub Registrar can only consider objection under Rule 55 of the Registration Act, and once the person executing the document is genuine, the Registrar has no option, but to register the document.

19. As already observed above, the stand of the respondent No. 2 is that the petitioner could file a civil suit to challenge the cancellation of settlement deed in favour of the petitioner, but cannot question the cancellation by invoking writ jurisdiction.

20. The learned senior counsel for the petitioner vehemently contended that in view of Section 126 of the Transfer of Property Act, when the gift deed absolute and not a conditional gift, the donee gets absolute title under the gift. The settlement deed after it is acted upon, cannot be revoked.

21. In support of this contention, the reliance was placed on the judgment of this Court in Bharathi Vs. Palaniammal, Panneerselvam and Pattathammal

22. Reliance was also placed on the judgment of this Court in E.R. Kalaivan Vs. The Inspector General of Registration and The Sub-Registrar Registration Officer, to contend that the Registrar before registration of documents is bound to enquire about the validity of document presented for registration and its rescission can be done only bilaterally and not unilaterally. Therefore, it was not open to the respondent No. 2 unilaterally execute the deed of cancellation of settlement deed.

23. It was also the contention of the learned counsel for the petitioner that even a contract cannot be revoked unilaterally.

24. The Hon"ble Supreme Court in Asokan Vs. Lakshmikutty and Others, was pleased to lay down as under:

30. Once a gift is complete, the same cannot be rescinded. For any reason whatsoever, the subsequent conduct of a donee cannot be a ground for rescission of a valid gift.

25. This contention of the learned senior counsel for the petitioner cannot be considered at this stage, as this Court is not to go into the question, as to whether the gift deed was rightly revoked or not, as it can be determined in the civil Court. It is for the parties to challenge the settlement deed in the civil Court.

26. The only question to be determined in this case is:

Whether the Sub Registrar could register the cancellation deed unilaterally without the consent of the petitioner.

The answer is in the negative.

27. In support of the contention that the gift deed cannot be unilaterally cancelled, the learned senior counsel for the petitioner placed reliance on the judgment of this Court in *Latif Estate Line India Ltd. Vs. Mrs. Hadeeja Ammal, The Inspector General of Registration and The Sub Registrar Ambattur*, , laying down as under:

20. On the issue of Public Policy and Registration Laws, learned counsel contended that the Government of Tamil Nadu issued a notification in G.O. Ms. No. 150 dated 22.9.2000 under the powers conferred on it u/s 22-A of the Registration Act. According to the learned counsel, the Section is based purely on public policy. This Court had struck down the provision as illegal in *Captain Dr. R. Bellie and Dr. Smt. Seetha Bellie Vs. The Sub Registrar*, . Accepting the verdict, the Government of Tamil Nadu issued G.O. Ms. No. 139 dated 25.7.2007. For useful reference, the said G.O. is quoted hereunder.

Registration Act, 1908 - Notification issued u/s 22-A of the Act declaring registration of certain categories of documents as opposed to public policy - Cancellation of the Notification - Orders - issued.

In exercise of the powers conferred by sub-section (1) of Section 22-A of the Registration Act, 1908 (Central Act 61 of 1908) read with Section 15 of the Tamil Nadu General Clauses Act, 1891 (Tamil Nadu Act 1 of 1891) the Government of Tamil Nadu hereby revokes the Commercial Taxes Department Notification issued in G.O. Ms. 150, Commercial Taxes Department, dated 22.9.2000 and published as Notification No. 11(2)/CT/1024 (e)/ 2000 at pages 1 to 2 of Part II - Section 2 of the Tamil Nadu Government Gazette, Extraordinary dated the 22.9.2000.

According to the learned counsel, when this Court had expressed that public policy is a matter to be well defined in the statute and quashed the Notification, it is not within the realm of the Court to declare through a judgment that cancellation of sale deed is opposed to public policy as had been done in the matter under Appeal. Learned counsel submitted that the Government of Tamil Nadu had amended the law in Act 53 of 2008 but so far had failed to notify it.

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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.

59. After giving our anxious consideration on the questions raised in the instance 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 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.

28. The learned senior counsel for the petitioner, by placing reliance on the judgment of the Hon'ble Full Bench of this Court, vehemently contended that the registration of cancellation of gift deed is against the public policy, as it was not open to the Sub-Registrar to have registered the cancellation deed, when the gift deed was unconditional and irrevocable. The party aggrieved by the gift deed could have approached the Civil Court to get it set aside, but certainly could not unilaterally cancel it, by registering the cancellation of Settlement deed with the Sub-Registrar. The cancellation deed and its registration, therefore, being without jurisdiction, is liable to be set aside.

29. The learned senior counsel for the petitioner also referred to Section 126 of the Transfer of Property Act, to contend that once the gift deed was incapable of being revoked, it was not open to the Sub Registrar to register the cancellation deed.

30. The reliance in support was placed on the judgment of the Kerala High Court in the case of Noble John v. State of Kerala, 2010 (3) KLT 941 : LNIND 2010 Ker 547, holding therein as under:

"Summary

Questions raised are:

- (i) Whether Registering authority can refuse registration if it is clear that person purporting to have executed cancellation deed is not the person entitled to the property as on date of execution?
- (ii) Whether reasons mentioned in Rule 191 for which Registering authority can refuse to register a document presented before him for registration exhaustive?
- (iii) Whether cancellation deed of a sale deed should contain photograph of both parties?

Fourth respondent executed and got registered a sale deed dated 9.1.1996 assigning the properties in favour of petitioner. After more than 13 1/2 years of execution of sale deed, fourth respondent executed and got registered a cancellation deed dated 1.8.2009 cancelling earlier sale deed on the ground that petitioner has not paid balance sale consideration agreed upon, even though sale deed had acknowledged receipt of full sale consideration and that too after suffering an injunction in a civil suit. Petitioner challenges registration of cancellation deed.

Court allowing the writ petition and relying on the minority view Yanala Malleshwari and Others Vs. Ananthula Sayamma and Others, and dissenting from (2008) 4 KLT 928 and majority view in Yanala Malleshwari and Others Vs. Ananthula Sayamma and Others, held that a Registering authority can refuse registration on cursory enquiry if it is made out that person purporting to have executed the cancellation deed is not the person entitled to the property as on date of execution, and (ii) cancellation deed of sale deed being a re-transfer of immovable property back to vendor, should contain photograph of both parties to sale deed without which cancellation deed cannot be validly registered.

Held: If a person is not entitled to transferable property, he cannot execute a document in respect of transfer of the property and therefore he is not a person competent to present such a document for registration. Under sub-clause VII of Rule 191 of the Rules, the Sub Registrar can validly refuse registration of a document if it is presented by a person who has no right to present it. By cancelling a sale deed executed by him earlier, the vendor is actually attempting to retransfer the property to himself, which he cannot do, since he is no longer entitled to that property as the title had already passed to the purchaser on the execution of the sale deed unless the sale deed stipulates otherwise and for becoming entitled to be competent to execute a document in respect of that property he has to first get the earlier sale deed annulled by a Court of law. On reading of all these provisions together, I am satisfied that a Registering

Authority can refuse registration, if, on a cursory enquiry, it is clear that the person purporting to have executed the cancellation deed is not the person entitled to the property as on the date of execution. This he can easily do by merely looking at the document and the previous documents registered in respect of the property as per the register available in his office in respect of the property, which would show who is the present owner of the property. Section 35 of the Act indicates that such an enquiry is not alien to the powers and duties of the Sub-Registrar. Going by Section 34 of the Indian Registration Act and Rule 67 of the Registration Rules (Kerala), at first blush it may appear that the Registering Officer cannot enquire into the validity of the document or the right of the executing party to execute the document. But, to hold that under no circumstances the Registering Officer shall enquire into the competency of the person to execute the document and he shall blindly register the document except for the reasons mentioned in Rule 191, would lead to very disastrous and anomalous results. A reasonable interpretation commensurate with the object of the Act and Rules would be that if by reading the document and looking at the previous documents registered in respect of the property he is satisfied that the document cannot be validly executed by the person purporting to have executed the same, he has to refuse to register the same and act in accordance with Section 71 of the Act. By refusing to register a deed of cancellation of a sale deed, the Sub- Registrar is only performing a duty cast upon him by the Registration Act and Rules, notwithstanding Rule 67 of the Registration Rules (Kerala) and the same is in consonance with the object of the Registration Act and Rules.

31. The learned counsel for the respondents contended the writ petitions on the ground of maintainability. The contention of learned counsel for the respondents was that the petitioner could challenge the deed of cancellation, by filing civil suit, and no writ is competent, as the Sub Registrar was bound to register the document once conditions under Rule 55 of the Registration Act were satisfied.

32. In support of this contention, learned counsel for the respondents placed reliance on the decision of this Court in the case of *M. Muthu Gangai Anandi and Others v. The Sub Registrar, Nallur, Tripur District and Others* (W.P. No. 17400 of 2011) decided on 1.12.2011, laying down as under:

9. In the decision relied on by the learned counsel for the petitioners, the question referred was, whether unilateral cancellation of sale deed executed is valid or not and the registering officer is bound to register the same if other provisions like Section 32-A of the Registration Act are complied with or he is obliged to reject and refuse to register the unilaterally executed deed of cancellation of sale deed without the consent of other parties. Whether the said judgment can be applied to the deed of cancellation of settlement, where there is no consideration was paid and only out of love and affection or family arrangement settlement deed was executed, is an issue, not raised before the Full Bench. In the said Full Bench decision it is further held that it is for the Civil

Court of competent jurisdiction to give declaration in favour of third party or a stranger if the third party can claim title to the property against the purchaser, who purchased the property for valuable consideration and came into possession. Cancellation of sale deed by the Vendor unilaterally after getting consideration was treated as fraud and opposed to public policy. Hence, it was held that cancellation of sale deed can be registered only if the said deed is presented by both Vendor and Purchaser for registration.

10. Since serious disputed facts are involved in these cases and it is contended that the second respondent is empowered to revoke the settlement under the provisions of Chapter-VII of the Transfer of Property Act, 1882, I am of the view that the writ petitions filed with the above prayer are not maintainable and the petitioners can only approach the Civil Court.

33. On consideration, I find that these writ petitions deserves to succeed. As per Section 126 of Transfer of Property Act, except for the conditions stipulated therein, the gift is irrevocable. It is not disputed that none of the conditions entitling revoking of gift exists in this case. As the gift was irrevocable and unconditional, it was not open to respondent No. 2 to register the cancellation deed, being opposed to the public policy.

34. The impugned order of registration, therefore, cannot be sustained in law, in view of the decision of the Hon''ble Full Bench of this Court, and decision of the Hon''ble Kerala High Court in *Latif Estate Line India Limited v. Hadeeja Ammal* (supra).

35. The judgment of this Court in *M Muthu Gangai Anandi and Others v. The Sub Registrar, Nallur, Tripur District and Others* (supra) cannot advance the case of petitioner, as in the said case, there was serious dispute of facts. The stand in the said case was that the Sub-Registrar was empowered to revoke the settlement under the provisions of Chapter-VII of the Transfer of Property Act, 1882.

36. There is no such plea in those cases, rather the ground raised is, that the respondent No. 1 had no right to execute the gift deed with respect to the ancestral property and on the ground of fraud.

37. It will be for respondent No. 1 or persons drawing their title from her to challenge the Gift Deed in the civil Court, but gift deed could not be revoked by way of cancellation deed, once the case did not fall within the exceptions, u/s 126 of the Transfer of Property Act.

38. The ratio of the judgments is that a person having no right in the property cannot get it cancelled by getting it registered. In the case of gift, the donor after executing the gift deed when it is accepted by the donee, is left with no interest in the property, therefore, it was not open to the respondent to get the cancellation deed registered, as she could have challenged it by filing civil suit and proving the allegations of fraud.

39. For the reasons stated hereinabove, registration of impugned deed of cancellation, cannot be sustained in law, being against the public policy.

40. The writ petitions are accordingly allowed. The registration deed of cancellation is ordered to be quashed. The subsequent settlement deed can be challenged by the petitioner in civil Court. It is also made clear that this decision be not taken as upholding the gift deed executed in favour of the petitioner. It will be open to the respondents to challenge the gift deed in accordance with law in the Civil Court, if so advised.

No costs.

Connected miscellaneous petitions are closed.