(2017) 06 MAD CK 0045

In the Madras High Court

Case No : 1290, 1995 and 1996 of 2013 and MP(MD)No 1 of 2013

G.Muniratnam, & Anr. APPELLANT

Vs

The District Collector, Tuticorin, & Ors. RESPONDENT

Date of Decision : 01-06-2017

Acts Referred:

Constitution of India, Article 227 - Power of superintendence over all courts by the High Court
Code of Civil Procedure, 1908, Section 9, <a href=3859 — Order 7Rule 11>Orde

Citation : (2017) 06 MAD CK 0045

Hon'ble Judges : G.Jayachandran

Bench : SINGLE BENCH

Advocate : G.Jayachandran

Judgement

1. The revision petitioners in all these three petitions are the father and his minor daughter who are the defendants in the suits O.S. 264/2013, O.S.374/2013 and O.S.290/2013 pending on the file of Principal District Munsif, Thoothukudi.

2. The subject matter in all these revision petitions centres around 68 cents of land purchased on 03.03.2004 by G.Muniratnam, who is the first revision petitioner herein. After purchase, the first revision petitioner has executed a General Power of Attorney to one M.Sumathi w/o Murali on 15.07.2010 authorising her to deal with the said property as his Agent. Based on the power, his Agent Sumathi has sold 4 cents to her elder daughter Mallika on 26.07.2010. Soon thereafter, on 25.10.2010, the first revision petitioner has settled the property in the name of his minor daughter Sakthi Mageshwari, the second revision petitioner herein. According to the first revision petitioner, on settling the property in the name of his minor daughter, the General Power of Attorney dated 15.07.2010 executed by him in favour of Tmt.Sumathi got implicitly revoked under Section 207 of the Indian Contract Act and he also explicitly cancelled the power by informing his Agent through telegram and to the general public through

paper publication. Whereas, Tmt.Sumathi, the Power Agent of the first revision petitioner on knowing the settlement deed executed by the principal, has lodged a criminal complaint against the first revision petitioner on 03.05.2011 resulting in a counter complaint by the first revision petitioner on 09.05.2011.

3. After complaints against each other, Tmt.Sumathi based on the power of attorney deed dated 15.07.2010, claiming herself as Power Agent of G.Munirathinam has conveyed about 13 cents of the subject land to her son Senthilkumar and two others by names, Nallathambi @ Thangam and Muthuraman on 18.05.2011 and another 13 cents to her second son M.Madhavan and second daughter Nagajothi on 23.05.2011. In this connection, the first revision petitioner had given a complaint to the District Registrar, Registration Department to cancel these two sale deeds and succeeded in getting those two sale deeds cancelled. Aggrieved by the cancellation of the sale deeds, Muthuraman who is one of the purchasers from the Power Agent Tmt.Sumathi has filed O.S. 445/2012 to set aside the order of of the District Registrar cancelling the sale deed dated 18.05.2011. The other purchasers from the power agent filed W.P.21979/2012 to set aside the order passed by the District Registrar. The writ petition was allowed on 18.09.2012 with a direction to the District Registrar to hear the purchasers before passing any order on the complaint given by the revision petitioners.

4. In the said background, O.S.374/2011 was filed by Senthilkumar, Nallathambi and Muthuraman and O.S 390/2011 was filed by M.Madhavan and M.Nagajothi against the revision petitioners and Tmt.Sumathi for the following reliefs:- a)To declare the settlement deed dated 25.10.2010 of the first defendant/first revision petitioner herein in favour of the second defendant/ second revision petitioner herein as null and void and

b)to restrain the first defendant/ first revision petitioner or his men or agents from interfering with their enjoyment of the suit property by way of injunction.

5. In the above two suits, the revision petitioners, alleging fraud and collusion, want of cause of action and maintainability filed interlocutory applications to reject the plaints under Order VII Rule 11 of CPC. The Trial Court dismissed the same holding that the plea raised by the revision petitioners involves mixed question of law and facts. Only after trial, the validity of the settlement deed or the sale deeds could be decided. CRP.1995/2013 and CRP.1996/2013 are directed against the orders passed in those interlocutory applications.

6. Pending these two suits, the District Registrar on the direction of the Hon''ble High Court in the order passed in W.P. 21979/2012, after notice to the respondents has concluded his enquiry by annulling the sale deeds dated 18.05.2011 and 23.05.2011 executed by the Power Agent. Aggrieved by the order of the District Registrar, Tuticorin, dated 25.04.2013, Senthil Kumar and Nallathambi has filed O.S.264/2013 against the revision petitioners and the District Registrar for the following reliefs:- a)To declare the order passed by the

District Registrar in Na.Ka 961/Aa 1/ 2013 dated 25.03.2013 as null and void.

b)To pass an order of permanent injunction restraing the revision petitioners herein from encumbering the schedule properties in any manner on the basis of the order passed by the District Registrar. .

7. The revision petitioners who are the 3rd and 4th defendants in the suit O.S.264/2013 has filed CRP.1290/2013 to strike off the plaint.

8. The genesis for the above three suits are i)The power of attorney deed dated 15.07.2010 executed by G.Muniratnam (the first revision petitioner) in favour of Tmt.Sumathi (Power Agent) and the settlement deed dated 25.10.2010 executed by the first revision petitioner in favour of his minor daughter Sakthi Maheshwari (the second revision petitioner) and ii)two sale deeds dated 18.05.2011 and 23.05.2011 executed by the Power Agent in respect of the properties already settled by the principal in the name of his minor daughter. The registration of these two sale deeds happen to be cancelled by the District Registrar nullifying the alienation.

9. The revision petitioners are defendants in all these three suits. The grievance and the grounds of attack about the maintainability of these suits are also same. Hence, all these three revision petitions are heard together and common order is passed.

10. O.S.374 and O.S.390 of 2011 Though the plaintiffs in the above two suits are different, the plaint pleadings and the defendants are same. Since the plaint pleadings are identical, the gist of it is extracted below.

The first revision petitioner Munirathinam and one Murali are friends and were jointly carrying on real estate business. When the suit property came for sale, the said Murali had no money, so the revision petitioner lent interest free loan to purchase the property but got the property registered in his name on 03.03.2004. Though the property stood in the name of Muniratnam, the possession was with Murali and he had put up construction at his costs. The loan borrowed from Muniratnam was later cleared by Murali and his wife Sumathi in two three instalments. On receipt of the money lent free of interest, Muniratnam was ready to convey the property to Murali, but for the shortage of fund to get the document registered and due to the fact that Munirathinam was residing at Chennai and not in a position to come over to Thoothukudi to execute the deed, Muniratnam executed a power of attorney deed in the name of Tmt.Sumathi w/o Murali on 15.07.2004 and got it registered at Sub-Registrar Office at Kodambakkam, Chennai.

11. On the strength of the said Power of Attorney deed on 26.07.2010, Tmt.Sumathi sold 4 cents of land to one Mallika. On 18.05.2011 sold 13.142 cents of vacant land to the plaintiffs (Senthilkumar, Nallathambi @ Thangam and T.Muthuraman) in O.S. 374/2011 and on 23.05.2011 sold 13.31 cents of vacant land to the plaintiffs (M.Madavan and M. Nagajothi) in O.S. 390/2011. The

properties under these two sale deeds are the suit schedule properties. The plaintiffs purchased the property only after ensuring that the power of attorney executed by Muniratnam in favour of Tmt.Sumathi is not cancelled and in force. Hence they are bona fide purchasers for value. While so, without cancelling the power deed, the principal Muniratnam had settled the property in his daughter''s name on 25.10.2010 which is illegal and not valid. Only on applying for encumbrance certificate, the above fact came to the notice of the plaintiffs, hence the suit to declare the settlement deed executed by Munirathinam in favour of his minor daughter Sakthi Maheshwari as null and void.

12. O.S.264/2013 This suit is filed for a decree to declare the order of the District Registrar, Thoothukudi dated 25.04.2013 as null and void and permanent injunction restraining the revision petitioners from encumbering the suit schedule property. This suit is filed by M.Senthilkumar and Nallathambi @ Thangam. They are also the first and second plaintiffs in O.S.374 / 2013. So, apart from the pleadings as found in that suit, the gist of it already been extracted above, in addition, it is averred that the revision petitioners herein suppressing the pendency of civil litigations, made a false complaint to the District Registrar against the plaintiffs and other purchasers regarding the registration of the sale deeds in their favour. The District Registrar without proper enquiry cancelled the registration of the sale deeds. The Inspector General of Registration earlier rejected the complaint of the revision petitioners with a direction to approach the civil court. Overlooking the said proceedings passed by his superior, the District Registrar has cancelled the sale deeds registration arbitrarily. Since the order of cancellation of the sale deed duly registered is without authority and contrary to law, the order of the District Registrar is to be declared as null and void.

13. The revision petitioners who are the defendants in all the three suits were unsuccessful in their application to reject the plaint in O.S.Nos.374/11 and 390/11. Further, in the subsequent suit O.S.No. 264/13 filed challenging the legality of the order passed by the District Registrar, Tuticorin, who has cancelled the sale deeds of the plaintiffs, the revision petitioners who are the defendants in this suit has preferred revision petition under Article 227 of the Constitution to strike off the plaint since it is frivolous and vexatious litigation. Submission of the respective counsels:-

14. The case of the revision petitioners is that the suit property was purchased in his name from the fund advanced by him. It was not purchased for and on behalf of Murali as alleged. Such transaction in fact is prohibited in law since it amounts to Binami transaction. The sale deeds executed by Sumathi in favour of her sons and daughters and to the person known to her sons are sham and nominal. They are created fraudulently to defeat the right of the minor child knowing fully well that on the date of conveyance, the property was already settled in favour of the minor child and the power of attorney got impliedly revoked. The plaintiffs who are not party to the power of attorney deed has no locus standi to question the settlement deed which has impliedly revoked the power of attorney deed. When

there is no real cause of action in the suit, it is liable to be rejected. The Trial Court has failed to consider that there is no privity of contract whatsoever between the revision petitioners and the plaintiffs, to question the validity of the settlement deed. When fraud and collusion between the power agent Sumathi and her family members is clearly and palpably seen from the documents and their conduct, the vexation suits cannot be kept on file when cause of action pleaded is based on illusion.

15. Per contra, the counsel for the respondents submitted that the power of attorney executed by the first revision petitioner in favour of Tmt.Sumathi was cancelled only on 27.05.2011. Whereas, the sale deeds were executed on 18.05.2011 and 23.05.2011. Therefore, the sale deeds in their favour are perfectly valid and legal. The alleged settlement deed executed by the revision petitioner in favour of his own daughter is only to defeat the lawful right of the bona fide purchasers. In any event, these are the matters to be tried and decided finally after a full14 fledged trial. The right of the purchasers/plaintiffs cannot be foreclosed by way of an application to reject the plaint.

16. Further, it is contended by the counsel for the respondents that the District Registrar has no power to cancel a duly registered deed. The Circular No.67 dated 03.11.2011 of the Inspector General for Registration relied by the revision petitioners empowering the District Registrar to cancel the sale deeds registered by way of fraud was subsequent to the sale deeds and the circular being a ex-post facto executive order, it cannot have a retrospective effect empowering the District Registrar to cancel the sale deeds registered prior to the date of the Circular. Further, it is also learnt that the circular itself is now been challenged and the matter is pending before the High Court.

17. It is also contended by the learned counsel for the respondents that if civil right of a person is infringed, Section 9 CPC empowers the aggrieved person to approach the Civil Court if there is no other efficacious and alternate remedy available in any other law governing the facts. Furthermore, the revision petitions to reject the plaint and challenging the order of the lower Court dismissing the I.A filed under Order 7 Rule 11 are not maintainable under law since the issue involved in the suit is both mixed question of fact and law which cannot be decided summarily without examination of witness and trial.

18. In support of the respective arguments, the counsels have relied upon a catena of judgments rendered by the Hon''ble Supreme Court and High Courts.

19. The points for consideration before this Court are (i)whether the principal can deal with the property after executing power of attorney and appointing an agent to act on his behalf; (ii)whether the settlement of the property in favour of the second revision petitioner impliedly revokes the power of attorney executed in favour of Tmt.Sumathi and (iii)under what circumstances, the Court can interfere in the pending trial under Article 227 to reject the plaint or strike off the plaint.

20. Let us first discuss the power of the High Court under Article 227 in cases

arising out of a petition to reject the plaint. This Court in N.A.Chinnasamy vs. S.Vellingirinathan reported in 2013 (6) CTC 809, after referring various judgments rendered on this point, has concluded in the following words:-

''''27.As held by the Hon''ble Apex Court, its aim being to secure quiet with the community, to suppress fraud and perjury to quicken diligence and to prevent oppression. Hence while invoking Order 7 Rule 11 of the Code of Civil Procedure, the Court has to go through and consider the whole pleading of the plaintiff, for which the averments of the written statement shall be gone into. It has been made clear that the plaint could be rejected, as per the averments of the pleading of the plaintiff that (1) where there is no cause of action to seek the relief sought for in the suit (2) the suit is barred by any statute and (3) if the suit being filed is found as an abuse of process of law. If any one of the aforesaid grounds is established, the Court can invoke Order 7 Rule 11 CPC to reject the plaint. When a revision petition is filed invoking Article 227 of the Constitution, the requirement to struck off the plaint is more than what is required to reject the plaint under Order 7 Rule 11 CPC. If filing of the suit itself is a clear abuse of process, based on the plaint averments and the admitted facts of the plaintiff, this Court can pass appropriate orders to struck off the plaint under Article 227 of the Constitution. However, merely, based on the inordinate delay or the grounds raised under the Limitation Act, plaint cannot be rejected. If the plaintiff, having sufficient knowledge about the occurrence, after a lapse of time, without any bonafide intention, approaches the Court, after the period of limitation, the same shall be presumed as an abuse of process of Court. If the suit filed is an abuse of process of law and court, this Court can pass appropriate orders, invoking Article 227 of the Constitution of India to struck off the plaint, in order to prevent abuse of process of court and to meet the ends of justice.''''

21. The complete reading of the plaints in these cases, the cause of action, the relief sought and the locus standi of the plaintiffs clearly goes to show that the suits are sheer abuse of process of law. Therefore, to prevent such abuse, exercising the power under Article 227 of the Constitution is apt and appropriate.

22. Admittedly, the property was purchased in the name of the first petitioner from and out of the money given by him. The case of the respondents contra to the written document is that though money was given by the first revision petitioner for purchasing the property and property was purchased in his name, the property was intended to be purchased for one Murali, so the possession was left with Murali. Surprisingly, the said Murali is not a party in none of the three suits, but his wife, sons and daughters are the parties in the proceedings. This Court is conscious of the fact that Murali, is none other than the husband of the power agent Tmt.Sumathi. The suit property was purchased in the year 03.03.2004. Whereas, the power of attorney was given to Tmt.Sumathi only on 15.07.2010. Soon thereafter, Tmt.Sumathi has sold 4 cents of land in favour of one of her daughters. The case of the first revision petitioner is that since Tmt.Sumathi failed to render accounts as per the terms in the power of attorney

document, he has cancelled the power of attorney by impliedly revoking it through the settlement deed dated 25.10.2010.

23. In Deb Ratan Biswas vs. Anand Moyi Devi, reported in AIR 2011 SC 1653, the Hon''ble Supreme Court has held as under

''''It is well settled that even after execution of a power of attorney the principal can act independently and does not have to take the consent of the attorney. The attorney is after all only an agent of the principal. Even after executing a power of attorney the principal can act on his own.''''

24. Section 207 of the Indian Contract Act reads as under:-

''''207. Revocation and renunciation may be expressed or implied.-Revocation or renunciation may be expressed or may be implied in the conduct of that principal or agent respectively.

Illustration : A empowers B to let A''s house. Afterwards A lets it himself. This is an implied revocation of B''s authority."

25. As pointed out, the Hon''ble Supreme Court in Deb Ratan Biswas''s case(supra) has categorically held that the principal can act independently and need not take the consent of the power of attorney while dealing with the property. In this case, when there is no legal impediment for the principal to deal with the property which stands in his name despite the fact of executing a power of attorney, alienation of the property renders the power of attorney deed otis and defunct. Therefore, notice of revocation as contemplated under Section 206 gets attracted only if there is any damage by such revocation. Even in such cases, the remedy is compensation for the said damage and no other right will accrue on the erstwhile Agent.

26. From the reading of the plaint, it is very clear that the respondents/ purchasers are not third parties who are unaware of the litigation between the principal and the agent. They are all the children of the agent. In fact, the entire transaction right from purchase of the property in the year 2004 in the name of the first petitioner is narrated in the plaint. It is also admitted in the plaint that a criminal complaint was given against Tmt.Sumathi and Tmt.Sumathi has also given a complaint against Muniratnam as early as 03.05.2011 in which Tmt.Sumathi has admitted that power of attorney given in her favour by Muniratnam was cancelled by him. While so, knowing fully well that the power of attorney dated 15.07.2010 executed in her favour was cancelled by Muniratnam, the said Tmt.Sumathi has subsequently created sale deeds in favour of her sons and daughter. There is no grave question of law or fact involved in this case for conducting a fullfledged trial.

27. Admittedly, the property was purchased in the name of Muniratnam. Though there is a pleading that sale consideration was returned in installments to Muniratnam, it is so vague and bald without any date or amount paid to Muniratnam. Further, the said averment is contrary to the written documents

namely, sale deed dated 03.03.2004 and power of attorney deed dated 15.07.2010. In any event, after obtaining power of attorney from Muniratnam, Tmt.Sumathi has sold 4 cents of land to one of her daughters. Thereafter, Muniratnam had settled the property in favour of his minor daughter. The sale deeds dated 18.05.2011 executed by Tmt.Sumathi in favour of her son Senthil Kumar and others and the sale deed dated 23.05.2011 in favour of her son Madhavan and daughter Nagajothi are all subsequent to the police complaint given by her on 03.05.2011 against Muniratnam alleging fraudulent cancellation of power of attorney without notice or consent. In the said police complaint, there is an express statement that she has come to know that Muniratnam has cancelled the power of attorney.

28. In the light of the abovesaid facts, it is relevant to refer the judgment of the Hon''ble Supreme Court in T.Arivandandam vs. T.V.Satyapal and another reported in 1977 (4) SCC 467, wherein, the Apex Court has held as under:-

''''5.We have not the slightest hesitation in condemning the petitioner for the gross abuse of the process of the court repeatedly and unrepentantly resorted to. From the statement of the facts found in the judgment of the High Court, it is perfectly plain that the suit now, pending before the First Munsif''s Court, Bangalore, is a flagrant misuse of the mercies of the law in receiving plaints. The learned Munsif must remember that if on a meaningful-not formalreading of the plaint it is manifestly vexatious, and meritless, in the sense of not disclosing a clear right to sue, be should exercise his power under Or. VII R. 11 C.P.C. taking care to see that the ground mentioned therein is fulfilled. And, if clever, drafting has created the illusion of a cause of action, nip it in the bud at the first hearing by examining the party searchingly under Order X C.P.C. An activist Judge is the answer to irresponsible law suits. The trial court should insist imperatively on examining the party at the first bearing so that bogus litigation can be shot down at the earliest stage.''''

29. In similar facts and circumstances, the Hon''ble Supreme Court in Church of Christ Charitable Trust and Educational Charitable Society vs. Ponniamman Educational Trust reported in 2012 (8) SCC 706 after referring T.Arivandandam''s case(supra) has held as under:-

''''52. Execution of a power of attorney in terms of the provisions of the Contract Act as also the Powers of Attorney Act is valid. A power of attorney, we have noticed hereinbefore, is executed by the donor so as to enable the donee to act on his behalf. Except in cases where power of attorney is coupled with interest, it is revocable. The donee in exercise of his power under such power of attorney only acts in place of the donor subject of course to the powers granted to him by reason thereof. He cannot use the power of attorney for his own benefit. He acts in a fiduciary capacity. Any act of infidelity or breach of trust is a matter between the donor and the donee." An attorney-holder may however execute a deed of conveyance in exercise of the power granted under the power of attorney and convey title on behalf of the grantor."

30. It is also appropriate to extract below the relevant portion in the case of Suraj Lamp and Industries [P] Ltd., vs. State of Haryana, reported in 2012 (1) SCC 656.

''''20. A power of attorney is not an instrument of transfer in regard to any right, title or interest in an immovable property. The power of attorney is creation of an agency whereby the grantor authorises the grantee to do the acts specified therein, on behalf of grantor, which when executed will be binding on the grantor as if done by him (see Section 1-A and Section 2 of the Powers of Attorney Act, 1882). It is revocable or terminable at any time unless it is made irrevocable in a manner known to law. Even an irrevocable attorney does not have the effect of transferring title to the grantee.

21. In State of Rajasthan v. Basant Nahata, (2005) 12 SCC 77. this Court held: (SCC pp. 90 & 101, paras 13 & 52) "13. A grant of power of attorney is essentially governed by Chapter X of the Contract Act. By reason of a deed of power of attorney, an agent is formally appointed to act for the principal in one transaction or a series of transactions or to manage the affairs of the principal generally conferring necessary authority upon another person. A deed of power of attorney is executed by the principal in favour of the agent. The agent derives a right to use his name and all acts, deeds and things done by him and subject to the limitations contained in the said deed, the same shall be read as if done by the donor. A power of attorney is, as is well known, a document of convenience.''''

31. The specific case of the plaintiffs in O.S.No.374/11 and 390/11 is that the settlement deed executed by the first revision petitioner in favour of his minor daughter who is the second revision petitioner is null and void. As pointed out by the learned counsel for the revision petitioners, the plaintiffs in these two suits have no privity of contract with the revision petitioners on the alleged date of sale. So, they are nowhere concern with the settlement deed of the first revision petitioner. If somebody is aggrieved by that can only be Tmt.Sumathi in whose favour the power of attorney was given by Muniratnam. By settling the property in favour of the second revision petitioner, the power of attorney given in favour of Tmt.Sumathi is impliedly superseded. Being aggrieved by that, she has already approached the police and given complaint. Without pursuing the legal course, she has created documents in favour of her sons and daughter as if the power deed is in force. The most appropriate person to challenge the settlement deed can be Tmt.Sumathi, but she is not the dominant litus in O.S.Nos.374 and 390/11. The cause of action as framed by the plaintiffs in O.S.Nos.374 and 390/11 are only an illusionary cause of action. The plaintiffs do not have any privity of contract in so far as the document which they challenge and seek declaration as null and void since they trace their right through their mother Tmt.Sumathi who acted as power agent of the principal Muniratnam but on the date of said sale, the principal himself had no title over the property. The circumstances under which the settlement deed executed by Muniratnam in favour of his daughter and thereafter creation of sale deeds by Tmt.Sumathi in

favour of her own kith and kin obviously make their case frivolous and vexatious.

32. As pointed out by the Hon''ble Mr.Justice Krishna Iyer in T.Arivandandam''s case(supra), by a clever drafting, a cause of action has been created which is nothing but an illusion. After revocation of the power of attorney deed and same being put to notice to the power agent, any document created on the strength of the power of attorney deed is non est in law. No right flows through such sale deed. It is well seen that on the date of transaction, the person who executed the sale deed in favour of the plaintiffs had no right to deal with the property and furthermore, the executant and the claimants being mother and children. No extraordinary forensic skill or trial is required to hold that those documents are sham and nominal documents and the suits are based on those documents. Entertaining such suits and forcing the defendants to undergo the ordeal of trial would amount to abuse of process of court. Therefore, this Court has no hesitation to allow CRP(MD)Nos.1995 and 1996/2013.

33. O.S.264/2013 In so far as CRP(MD)No.1290/13 is concerned, it is directed against the suit O.S.No.264/13 and it is slightly on a different footing. The prayer in the suit is to declare the order of the 2nd defendant namely, District Registrar, Turicorin, who has cancelled the sale deeds dated 18.05.2011 and 23.05.2011. In the plaint, it is contended that the District Registrar has no authority to cancel the sale deed. Circular No. 67 dated 03.l1.2011 is the subject matter of writ petition pending before the High Court. Counsel for the respondents claims that Circular No.67 has already been stayed by the High Court. Whereas, the said assertion is denied by the counsel for the revision petitioners and contended that the validity of the Circular No.67 dated 03.11.2011 has been upheld by the High Court in Ramasamy vs. State of Tamil Nadu, reported in 2014 (4) CTC 627.

34. When the cancellation of the registration of these two sale deeds was challenged in W.P.21979/12 by Nagajothi D/o. Muralai and Tmt.Sumathi, this Court has directed the District Registrar to enquire into the complaint given by Muniratnam and pass orders after giving adequate opportunity to Tmt.Sumathi, Sentil Kumar, Nallathambi, Muthuraman, Nagajothi and Madhavan who are the purchasers from Tmt.Sumathi. Pursuant to the said direction, the District Registrar has passed the order which is impugned in the suit.

35. While there is a specific direction by the Hon''ble High Court to work out the remedy before the District Registrar, a contra plea questioning the very power and authority of the District Registrar cannot be pleaded in a suit. Reverence to the direction of the High Court in W.P.21979/12, the District Registrar has conducted enquiry and passed an order cancelling the sale deed. Any order passed by the District Registrar is appealable to the Inspector General for Registration. Without resorting to the appeal remedy prescribed under the statute namely, The Registration Act, the suit as framed in O.S.No.264/13 is not maintainable.

36. The learned counsel for the respondents referred to the Full Bench judgment

of this Court in the case of Latiff Estate Line India Ltd., vs. Hadeeja Ammal reported in 2011 (2) CTC 1. It is a case where the sale deed executed was cancelled by the vendor and that was the subject matter of the writ appeal, wherein, the Full Bench has held that deed of cancellation has no effect in the eye of law. A unilateral cancellation of sale by the vendor will only encourage fraud and will be against public policy.

37. The learned counsel for the respondents citing certain passages in Satya Pal Anand vs State of M.P and others reported in 2016 (10) SCC 767 emphasised that cancellation of a registered document after its registration is not within the scope of power of authorities/officers under the Registration Act. The power of the Inspector General is limited to do superintendence of Registration Officers and make rules in that behalf. Even the Inspector General for Registration has no power to cancel the registration of any document which has already been registered.

38. The facts of the case cited supra are also pertaining to deed of extinguishment presented unilaterally. The allotment of plot made in favour of the member of the housing society was cancelled for non compliance of Bye-law and the same was re-allotted to third parties and got registered. In the said circumstances, the Apex Court has observed that there is no express provision in the 1908 Act which empowers the Registrar to recall such registration. The power to cancel the registration is a substantive matter. In the absence of any express provision in that behalf, it is not open to assume that the Sub Registrar would be competent to cancel the registration of the document in question.

39. Since there is no specific rule in the State of Madhya Pradesh, the Supreme Court distinguished its judgment rendered in Thota Ganga Laxmi vs. Government of Andhra Pradesh reported in 2010 (15) SCC 207 which arose from the State of Andhra Pradesh where specific rules and procedure were available to cancel registered deeds by the Registration authorities. Therefore, the Supreme Court itself pointed out the dicta on this issue has no universal application to all States and only State like Madhya Pradesh where there is no express provision, the dicta laid down in Satya Pal Anand''s case applies. So far as Tamil Nadu is concerned, Circular No.67 dated 03.11.2011 is in force and its validity is also upheld by the High Court.

40. The facts of this case are entirely different from the facts of the case referred to above. In the present case, the sale deed was not cancelled by the vendor but by the competent registering authority who has passed the order of cancellation of the registration in view of the proven fraud and collusion. If any body is aggrieved by such order, the redressal is only by way of appeal to the higher authority and not by way of suit. The person who is competent to register a document, if it is found to be a fraudulent document, has power to cancel the same by virtue of the power conferred under Circular No.67 dated 03.11.2011 and more so when the proceedings was in pursuant to the High Court direction.

41. The other judgment referred to by the counsel for the respondents is Mayar (H.K) Ltd., and others vs. Owners & Parties, Vessel M.V.Fortune Express & others reported in AIR 2006 SC 1828, wherein, the Apex Court has held as under:-

''''11.From the aforesaid, it is apparent that the plaint cannot be rejected on the basis of the allegations made by the defendant in his written statement or in an application for rejection of the plaint. The Court has to read the entire plaint as a whole to find out whether it discloses a cause of action and if it does, then the plaint cannot be rejected by the Court exercising the powers under Order VII Rule 11 of the Code. Essentially, whether the plaint discloses a cause of action, is a question of fact which has to be gathered on the basis of the averments made in the plaint in its entirety taking those averments to be correct. A cause of action is a bundle of facts which are required to be proved for obtaining relief and for the said purpose, the material facts are required to be stated but not the evidence except in certain cases where the pleadings relied on are in regard to misrepresentation, fraud, wilful default, undue influence or of the same nature. So long as the plaint discloses some cause of action which requires determination by the court, mere fact that in the opinion of the Judge the plaintiff may not succeed cannot be a ground for rejection of the plaint. In the present case, the averments made in the plaint, as has been noticed by us, do disclose the cause of action and, therefore, the High Court has rightly said that the powers under Order VII Rule 11 of the Code cannot be exercised for rejection of the suit filed by the plaintiff-appellants.''''

42. In the suits which are the subject matter of the present revision petitions, the very averment in the plaint itself does not disclose any real cause of action or right to the plaintiffs to sustain the suit challenging the settlement deed executed by the first revision petitioner in favour of the second revision petitioner. It is not the case of the plaintiffs that Muniratnam only lent his name, but sale consideration for the purchase of the suit property was paid by Murali. Nor it is the case of the plaintiffs that their power agent Tmt.Sumathi has invested considerably based on the power of attorney document and has accrued interest on the property. It is claimed and averred that Murali spent money on the property, but he is nowhere in the litigation. Therefore, it is not an inference from the written statement of the defendant or from the application to reject the plaint, but the very pleadings found in the plaint itself renders the suit not maintainable in law for want of cause of action. Hence, this Court is of the opinion that the order of the District Registrar passed in pursuant to the direction of this Court can be challenged only by way of departmental appeal as contemplated under the Act and not by way of suit. Hence, the plaint in O.S.No.374/11 deserves to be struck off.

43. In the result, CRP.1290/13 is allowed. The plaint in O.S.No. 264/2013 on the file of the Principal District Munsif Court, Tuticorin, is struck off. CRP.1995 and 1996/13 are allowed. The order dated 06.09.2013 in IA 1664 of 2011 in OS 374 of 2011 on the file of the Principal District Munsif at Thoothukudi and the order

dated 06.09.2013 in IA 1561 of 2011 in OS 390 of 2011 on the file of the Principal District Munsif at Thoothukudi are set aside. Consequently, I.A.Nos.1561 & 1664/2011 are allowed and plaints in O.S.Nos.374 & 390/2011 are rejected. No costs. Consequently, connected miscellaneous petition is closed.

