
(2015) 07 MAD CK 0057

In the Madras High Court

Case No : W.P. (MD) No. 8570 of 2013 and M.P. (Md) No. 1 of 2013

Nambikkai Mary

APPELLANT

Vs

Sub-Registrar-II, Thanjavur District and Others

RESPONDENT

Date of Decision : 31-07-2015

Acts Referred:

Specific Relief Act, 1963 — Section 31, 39

Citation : (2015) 6 CTC 824 : (2015) 5 LW 648 : (2015) 7 MLJ 10

Hon'ble Judges : R. Mahadevan, J.

Bench : Single Bench

Advocate : S. Deenadhayalan, Advocate, for the Appellant; K. Guru, Additional Govt. Pleader for D.R. Murugesan, Advocate, for the Respondent

Final Decision : Disposed Off

Judgement

R. Mahadevan, J.—This writ petition has been filed seeking a Writ of Certiorari to call for the records of the impugned unilateral cancellation of settlement deed, dated 01.02.2013, in Document No. 137/2013, registered with the first respondent and quash the same. Heard both sides.

2. Brief facts necessary for the disposal of this writ petition, are as under:

2.1. The case of the petitioner is that the properties in S. Nos. 73/15 and 33 to an extent of 1 cent, situated at No. 77, Anthonyar Koil Street, Nadiambalpuram, Pattukkottai, Thanjavur District, originally belonged to the father of the petitioner and after his demise, they devolved upon the brothers of the petitioner. Thereafter, the above said property was allotted to the second respondent by way of oral partition and he executed a settlement deed in Document No. 56/2013, dated 11.01.2013, in favour of the petitioner. Now, the daughter of the petitioner has been in possession and enjoyment of the same. While so, on 16.03.2013, the second respondent illegally tried to evict the daughter of the petitioner, on the ground that on 01.02.2013, he had unilaterally cancelled the said settlement deed dated 11.01.2013. Therefore, the petitioner made a

representation to the first respondent on 11.02.2013, but, in vain. Hence, the petitioner is before this Court.

2.2. In the counter affidavit filed by the first respondent, it is, inter alia, contended that the first respondent has no authority to look into the veracity of the documents produced for registration and there is no bar for registering the deeds of cancellation of settlement and therefore, the first respondent has rightly registered the deed of cancellation of settlement of the second respondent as there is no provision under the Registration Act, to reject or refuse any such documents and prayed for the dismissal of this writ petition.

2.3. Denying the claim of the petitioner, the second respondent filed the counter affidavit stating that the alleged settlement deed dated 11.01.2013 had been executed by the second respondent under coercion and since the same is not valid in the eye of law, he has executed the deed of cancellation of the settlement dated 01.02.2013 and if the petitioner is having any grievance, she has to work out the same before the competent civil Court and hence, prayed for the dismissal of this writ petition.

3. Mr. S. Deenadhayalan, learned Counsel for the petitioner made the following submissions:

3.1. The deed of cancellation of the settlement executed by the second respondent is invalid in law as it has been unilaterally executed without notice to the petitioner.

3.2. Once the settlement deed has been executed, the transferor has no right at all to cancel the same by way of cancellation deed.

3.3. The first respondent failed to consider the fact that the settlement deed executed by the second respondent ought to have nullified only by the competent civil Court.

3.4. Placing reliance on the decision of this Court in B.K. Rangachari and Others Vs. L.V. Mohan he contended that the settlement deed cannot be cancelled unless either one of the elements of fraud, misrepresentation, undue influence or coercion is present and such revocation is also possible only through a civil Court.

3.5. Hence, he prayed for quashing the impugned unilateral deed of cancellation of settlement dated 01.02.2013 in Document No. 137/2013.

4. Whereas Mr. K. Guru, learned Additional Government Pleader appearing for the first respondent, reiterated the averments in the counter affidavit and submitted that the first respondent ought not to have rejected the documents filed for registration before him and hence, he cannot be found fault with and the petitioner has to work out her remedy before the competent civil forum and therefore, prayed for the dismissal of this writ petition.

5. Per contra, Mr. D.R. Murugesan, learned Counsel for the second respondent, placing reliance on the counter affidavit, contended that since the above said

settlement deed dated 11.01.2013 has got executed by coercion, the second respondent is entitled to get the same cancelled by way of a deed of cancellation and accordingly, the deed of cancellation of settlement dated 01.02.2013 has been executed by him and registered with the first respondent and if at all, the petitioner is having any grievance, it is for her to work out her remedy, if any, only before the competent civil Court and the present writ petition is not maintainable in law and therefore, prayed for the dismissal of the writ petition. In support of his contention, he relied on the decision of the Full Bench of this Court in *Latif Estate Line India Ltd. Vs. Mrs. Hadeeja Ammal, The Inspector General of Registration and The Sub Registrar Ambattur*, .

6. I have considered the rival submissions and perused the materials available on record.

7. The point for consideration is as to whether the second respondent can unilaterally cancel the settlement deed dated 11.01.2013 executed by him in favour of the petitioner?

8. A careful scrutiny of the materials available on record would reveal the following facts:

8.1. The second respondent had executed a settlement deed dated 11.01.2013, in favour of the petitioner, in respect of the above said property.

8.2. The daughter of the petitioner was put in possession of the said property by the petitioner.

8.3. Alleging that the said settlement deed dated 11.01.2013 had been executed by the second respondent under coercion, he executed the deed of cancellation of settlement dated 01.02.2013.

8.4. Aggrieved by the same, the petitioner is before this Court.

9. At this juncture, it is just and proper to refer to the decision of the Full Bench of this Court in *Latif Estate Line India Ltd. v. Hadeeja Ammal (supra)*, wherein the similar issue has been elaborately considered and it is held as follows:

"52. Now the question that falls for consideration is as to whether once a sale is made absolute by transfer of ownership of the property from the vendor to the purchaser, such transfer can be annulled or cancelled by the vendor by executing a deed of cancellation. This question came up for consideration before the four Judges of the Privy Council (VISCOUNT HALDANE, LORD PHILLIMORE, SIR JOHN EDGE and SIR ROBERT STOUT) in *Munshi Ehtisham Ali and Another vs. Jamna Prasad and Others* AIR 1922 56 (Privy Council) . The fact of that case was that one Ehsan Ali Khan, being in possession of a bazaar called Ehsaganj mortgaged it to one Sheo Prasad by a mortgage deed dated 9th November, 1873 and further encumbered it with charges in favour of the mortgagee. In the year 1882, the said Ehsan Ali sold the property, subject to the mortgage and charges to the appellants predecessors in title. Dispute arose with regard to the devolution of

interest, and said Ehsan Ali cancelled the deed and retained his interest and that he, in fact, dealt with it subsequently by further charges in favour of the mortgagee and by professing to sell it over again to Wasi-uz-Zaman. While deciding the issue, His Lordship LORD PHILLIMORE, speaking for the Bench, observed and held as under: (page 58)

"While making these comments, their Lordships reserve their opinion as to the value of a defence founded upon such a transaction as the defendants set up. Certainly in law, no title would pass under it, for immovable property of this value can only be transferred by a registered deed, and when a deed of sale has been once executed and registered, it can only be avoided by a subsequent registered transfer. Whether in some form of suit (not this one) between some parties any equitable relief could be got out of such a transaction, it is unnecessary to pronounce, for in their Lordships opinion it was not proved.

As to the alleged subsequent dealings by Ehsan Ali Khan with the property, they could not, if regarded as declarations in his own favour, be received in evidence on behalf of those claiming under him, any more than they could be received if he were himself the defendant. They could not be regarded as acts of ownership so as to prove adverse possession, because he never was in possession, the possession remaining in the mortgagee."

53. A similar question came up for consideration before the Orissa High Court in the case of Munshi Ehtisham Ali and Another vs. Jamna Prasad and Others AIR 1922 56 (Privy Council) , as to the effect of cancellation of sale deed by the vendor on the allegation that consideration amount was not paid. While considering the question the Bench observed:

"The question of intention could only arise if no consideration passed in the context of this back ground and the surrounding circumstances the subsequent deed of cancellation is irrelevant. Once by the registered sale deed Ex. 1 title had passed to the vendees, the subsequent deed of cancellation Ex. A certainly could not nullify the effect of the already completed sale deed Ex. 1."

54. There is no provision in the Transfer of Property Act or in the Registration Act, which deals with the cancellation of deed of sale. The reason according to us is that the execution of a deed of cancellation by the vendor does not create, assign, limit or extinguish any right, title or interest in the immovable property and the same has no effect in the eye of law. A provision relating to the cancellation of a document is provided in Section 31 of the Specific Relief Act, 1963 (Old Section 39). Section 31 reads as under:

"31. When cancellation may be ordered:-

(1) Any person against whom a written instrument is void or voidable, and who has reasonable apprehension that such instrument, if left outstanding, may cause him serious injury, may sue to have it adjudged void or voidable, and the Court may, in its discretion, so adjudge it and order it to be delivered up and

cancelled.

(2) If the instrument has been registered under the Indian Registration Act, 1908 (16 of 1908), the Court shall also send a copy of its decree to the officer in whose office the instrument has been so registered; and such officer shall note on the copy of the instrument contained in his books the fact of its cancellation."

55. From the reading of the aforesaid provision, it is manifest that three conditions are requisite for the exercise of jurisdiction to cancel an instrument i.e.,

(1) An instrument is avoidable against the plaintiff;

(2) The plaintiff may reasonably apprehend serious injury by the instrument being left or outstanding; and

(3) In the circumstances of the case, the Court considers it proper to grant this relief of preventive justice.

56. A Full Bench of the Madras High Court in the case of *Munshi Ehtisham Ali and Another vs. Jamna Prasad and Others* AIR 1922 56 (Privy Council) and held:

"12. The principle is that such document though not necessary to be set aside may, if left outstanding, be a source of potential mischief. The jurisdiction under Section 39 is, therefore, a protective or a preventive one. It is not confined to a case of fraud, mistake, undue influence, etc. and as it has been stated it was to prevent a document to remain as a menace and danger to the party against whom under different circumstances it might have operated. A party against whom a claim under a document might be made is not bound to wait till the document is used against him. If that were so he might be in a disadvantageous position if the impugned document is sought to be used after the evidence attending its execution has disappeared. Section 39 embodies the principle by which he is allowed to anticipate the danger and institute a suit to cancel the document and to deliver it up to him. The principle of the relief is the same as in *quia timet* actions."

57. There is no dispute that a third party can claim title to the property against the purchaser who purchased the property for valuable consideration and came into possession of the same. But it is the Civil Court of competent jurisdiction to give such declaration in favour of the third party or a stranger.

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 instant 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.

60. Having regard to the conclusions arrived at as aforesaid, the questions referred are answered accordingly. The appeals are referred back to the concerned Court for deciding the case on merits."

10. In the light of the dictum laid down by the Full Bench of this Court, I am of the considered view that the deed of cancellation of settlement dated 01.02.2013, which has been alleged to have unilaterally executed by the second respondent, does not create, assign, limit or extinguish any right, title or interest in the property and is of no effect and accordingly, it does not create any encumbrance in the property already transferred and therefore, it could not be accepted for registration. However, in the case on hand, the first respondent has registered the said cancellation deed, on the ground that there is no provisions in the Registration Act to reject or refuse to register any document. Even then, it has no force in law, in view of the above said decision of the Full Bench of this Court. Therefore, this writ petition stands disposed of, holding that the impugned unilateral cancellation of settlement deed, dated 01.02.2013, in Document No. 137/2013, registered with the first respondent, is bad in law. However, it is open to the second respondent to work out his remedy before the competent civil Court regarding the cancellation of the settlement deed dated 11.01.2013 and till such a decree is passed by the civil Court, the second respondent shall not press into service the alleged deed of cancellation of settlement dated 01.02.2013, as

it has no force in law. Consequently, the connected miscellaneous petition is closed. No costs.