

**(2010) 09 KL CK 0216**

**In the High Court Of Kerala**

**Case No : Writ Petition (C) . No. 34367 of 2009 (M)**

Pavakkal Noble John

APPELLANT

Vs

Kerala State, Inspector General of Registration, Sub Registrar  
and Thekkedath Joseph

RESPONDENT

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**Date of Decision : 03-09-2010**

**Acts Referred:**

Arbitration and Conciliation Act, 1996 — Section 34(2)  
Contract Act, 1872 — Section 23, 62  
Evidence Act, 1872 — Section 92  
Foreign Awards (Recognition and Enforcement) Act, 1961 — Section 7(1)  
Payment of Gratuity Act, 1972 — Section 4A  
Registration Act, 1908 — Section 17, 18, 19, 20, 21(1)  
Registration Rules, 1908 — Rule 191, 41, 67  
Transfer of Property Act, 1882 — Section 126, 22A, 35, 4, 54

**Citation : (2010) 3 ILR (Ker) 979**

**Hon'ble Judges : S. Siri Jagan, J**

**Bench : Single Bench**

**Advocate : K.V. Pavithran, for the Appellant; Grashious Kuriakose, for the Respondent**

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## **Judgement**

S. Siri Jagan, J.—In India, particularly Kerala, land scams are in the increase. Bogus pattas, sale deeds executed by persons other than the actual owners of the property, grabbing of government property etc. have been coming to light frequently during the last few years. It has been proved to be extremely difficult to contain this menace. The imbroglio of Munnar lands, which continues to vex the executive indefinitely, is the classic example on point. Legislatures of many States, including the State of Kerala, have brought in amendments to the Registration Act to counter this menace by insisting on photographs and thumb impressions of both the sellers and purchasers in the sale deeds presented for registration. It is in this backdrop that courts are experiencing another malpractice in the real estate sector, in the form of sellers getting deeds of cancellation of the sales registered on some pretext or other, some of them years

after the execution of the sale deeds, creating a serious situation for bona fide purchasers having to inhabit the corridors of civil courts for years to get such illegal cancellation deeds, got registered taking advantage of the loopholes in the Registration Acts and Rules, annulled by due process of law, which prima facie would go to show that even when the registering authority knows that the former vendor has no authority to execute the same, they are compelled to register the same. Going by the cases coming up before the High Court itself, not to mention those before the lower courts, cases of registration of such cancellation deeds and requests for change of mutation of land records on the basis of such illegal cancellation deeds, are on the increase, forcing courts to take a second look at the legal position as to whether registering officers should refuse to register such deeds of cancellation of sale deeds. At least two High Courts have considered this very question and have come up with differing opinions on this question and in one of them, different judges of the same bench of a High Court considering this vexing question, have come up with differing opinions. The very same question has come up for decision of this Court in these two cases. Needless to say, the question is of considerable public importance also, which prompted me to get the assistance of an amicus curiae in resolving the issue posed before me, despite the fact that competent counsel are appearing on both sides, so that I can get an unbiased view as well.

2. Before going into the questions involved, I shall briefly note the facts of the two cases before me as presented in the writ petitions. In W.P.(C). No. 34367/09, the 4th respondent, who is none other than the uncle of the petitioner, executed and got registered Ext. P1 sale deed dated 9-1-1996 assigning the properties described in the schedule to the said deed in favour of the petitioner. After more than 13 years of execution of the sale deed, the 4th respondent executed and got registered Ext. P3 cancellation deed dated 1-8-2009, cancelling Ext. P1 sale deed, on the ground that the petitioner has not paid the balance sale consideration agreed upon, although in Ext P1 sale deed he had acknowledged receipt of the full sale consideration mentioned therein, that too after suffering an injunction order in O.S. No. 84/2009 filed before the Munsiff's Court, Kuthuparamba, by the petitioner, against interfering with the peaceful enjoyment of the property by the petitioner. The petitioner is challenging the registration of Ext. P1 deed of cancellation of sale deed on the ground that the 3rd respondent-registering officer ought not to have registered the same under law. In W.P.(C). No. 37150/09, the 3rd respondent executed and got registered Ext P1 sale deed on 28-10- 2008 and got Ext P2 cancellation deed dated 24-11-2009 registered, on the grounds that the petitioner has not paid the sale consideration and the property has not been given possession of, to the petitioner, although in Ext. P1 sale deed it has been specifically admitted by the 3rd respondent to the contrary. The action of the 2nd respondent- registering officer in registering the cancellation deed is assailed on the ground that, by registering Ext.P2 cancellation deed the registering officer is practically reversing or removing Ext.P1 sale deed, for which he has no power, since he has become

functus officio on registration of Ext. P1 sale deed.

3. Elaborate arguments have been advanced by counsel on both sides and the amicus curiae. I have considered the same in detail. As I have already indicated, the question to be answered in these writ petitions is as to whether the registering officer, under the Registration Act, 1908, has powers to and is duty bound to refuse to register a deed of cancellation cancelling a sale deed. I shall straight away proceed to consider the issues involved without narrating the arguments of counsel separately.

4. The Registration Act, 1908, does not contain any specific provision laying down the circumstances under which the sub- registrar can refuse to register a document presented for registration before him. But the fact that he has power to refuse to register a document presented for registration before him is clear from Section 71 of the Act, which reads thus:

71. Reasons for refusal to register to be recorded.-- (1) Every Sub-Registrar refusing to register a document, except on the ground that the property to which it relates is not situate within his sub-district, shall make an order of refusal and record his reasons for such order in his Book No. 2, and endorse the words "registration refused" on the document; and, on application made by any person executing or claiming under the document, shall without payment and unnecessary delay, give him a copy of the reasons so recorded.

(2) No registering officer shall accept for registration a document so endorsed unless and until, under the provisions hereinafter contained, the document is directed to be registered.

But Chapter XXIII, particularly Rule 191 therein, of the Registration Rules (Kerala) framed by the Inspector General of Registration u/s 69(2) of the Registration Act, 1908, and published in the Kerala Gazette on 27-12-1958, does give some indication as to for what reasons the sub-registrar can refuse registration of documents presented for registration, which Rule reads thus:

191. The reasons for refusal will usually come under one or more of the heads mentioned below; which should invariably be quoted as authority for refusal.

#### Section 19

I. That the document is written in a language which the Registering Officer does not understand and which is not commonly used in the district, and that it is unaccompanied by a true translation and a true copy.

#### Section 20

II. That it contains unattested interlineations, blanks, erasures, or alterations which in the opinion of the Registering Officer require to be attested.

#### Section 21(1-3) and Section 22

III. That the description of the property is insufficient to identify it.

#### Section 21(4)

IV. That the document is unaccompanied by a copy or copies of any map or plan which it contains.

#### Rule 41

V. That the date of execution is not stated in the document or that the correct date is not ascertainable.

Sections 23, 24, 25, 26, 72, 75 and 77

VI. That it is presented after the prescribed time.

Sections 32, 33, 40 and 43

VII. That it is presented by a person who has no right to present it.

#### Section 32A

VIIA. That the document is not affixed with the Passport size photographs and impression/impressions of the left thumb or any of the fingers in the absence of left thumb as prescribed in Rule 30A(i) and (ii).

#### Section 34

VIII. That the executing parties or their representatives, assigns, or agents have failed to appear within the prescribed time.

Note: "Prescribed time", shall mean the time allowed for presentation under Sections 23, 24, 25 and 26 and not the delay of four months in appearance which may be condoned under the proviso to Section 34, unless the presentant or the executing party concerned applies for extension of the period on proper grounds or takes action u/s 36.

Sections 34 and 43

IX. That the Registering Officer is not satisfied as to the identity of a person appearing before him who alleges that he has executed the document.

Sections 34 and 40

X. That the Registering Officer is not satisfied as to the right of a person appearing as a representative, assign or agent so to appear.

#### Section 35

XI. That execution is denied by any person purporting to be an executing party or by his agent.

Note: When a Registering Officer is satisfied that an executant is purposely keeping out of the way with a view to evade registration of a document or has gone to a distant place and is not likely to return to admit execution within the prescribed time, registration may be refused, the non-appearance being treated

as tantamount to denial of execution.

#### Section 35

XII. That the person purporting to have executed the document is a minor, an idiot or a lunatic.

Note: When the executant of a document who is examined under a commission u/s 38 of the Act is reported by the Commissioner to be a minor, an idiot or a lunatic, registration may be refused, and it is not necessary that the Registering Officer should personally examine the executant to satisfy himself as to the existence of the disqualification.

#### Section 35

XIII. That execution is denied by the representative or assign of a deceased person by whom the documents purports to have been executed.

Note: When some of the representatives of a deceased executant admit and others deny execution, the registration of the document shall be refused in toto, the persons interested being let to apply to the Registrar for an enquiry into the fact of execution.

#### Sections 35 and 41

XIV. That the alleged death of a person by whom the document purports to have been executed has not been proved.

#### Section 41

XV. That the Registering Officer is not satisfied as to the fact of execution in the case of a will or of an authority to adopt presented after the death of the testator or donor.

#### Sections 25, 34 and 80

XVI. That the prescribed fee or fine has not been paid.

XVII. That the full additions of all persons executing and of all persons claiming under the document are not given.

XVIII. A Kanam demise or a renewal thereof shall be refused registrations if it does not contain the following particulars:

- (i) The name if any, the description and the extent of each item of holding;
- (ii) The Government tax payable on each item;
- (iii) The renewal fee if any paid. If no renewal fee is paid the fact should be stated; and
- (iv) The settlement pattam, the settlement patta, michavaram, the Jenmivaram and the Jenmikaram in respect of the land or each of the several parcels of land

comprised in the holding.

#### Rule 67

XIX. That the executing parties do not get the status of married couple as per the document styled as marriage agreement.

In my opinion the reasons mentioned therein, for which the registering authority can refuse to register a document presented before him for registration, are not exhaustive, since the Rule itself says that the reasons for refusal shall usually come under one or more of the heads mentioned therein, which would indicate that there can be other valid reasons for refusal not enumerated therein as well. But Rule 67 of the Registration Rules (Kerala) provides thus:

67. It forms no part of a Registering Officer's duty to enquire into the validity of a document except documents styled as marriage agreement brought to him for registration or to attend any written or verbal protest against the registration of a document based on the ground that the executing party had no right to execute the document; but he is bound to consider objections raised on any of the grounds stated below:

(a) That the parties appearing or about to appear before him are not the persons they profess to be;

(b) That the document is forged;

(c) That the person appearing as a representative, assign or agent, has no right to appear in that capacity.

(d) That the executing party is not really dead, as alleged by the party applying for registration; or

(e) That the executing party is minor or an idiot or a lunatic.

5. Therefore the question to be considered is as to whether the sub-registrar can refuse registration on the ground that the party who executes the document has no legal right to execute the document and whether the sub-registrar can examine the validity of the document presented for registration. Chapter XIB of the Rules prescribes the enquiry to be conducted by the sub-registrar before registering a document, which would give some indication as to the type of enquiry he can conduct before registering a document, which has been framed u/s 35, which reads thus:

35. Procedure on admission and denial of execution respectively: (1)(a) If all the persons executing the document appear personally before the Registering Officer and are personally known to him, or if he be otherwise satisfied that they are the persons they represent themselves to be, and if they all admit the execution of the document, or

(b) if in the case of any person appearing by a representative, assign or agent, such representative, assign or agent admits the execution, or

(c) if the person executing the document is dead, and his representative or assign appears before the Registering Officer and admits the execution, the Registering Officer shall register the document as directed in Sections 58 to 61, inclusive.

(2) The Registering Officer may, in order to satisfy himself that the persons appearing before him are the persons they represent themselves to be, or for any other purpose contemplated by this Act, examine any one present in his office.

(3)(a) if any person by whom the document purports to be executed denies its execution, or

(b) if any such person appears to the Registering Officer to be a minor, an idiot or a lunatic, or

(c) if any person by whom the document purports to be executed is dead, and his representative or assign denies its execution, the Registering Officer shall refuse to register the document as to

the person so denying, appearing or dead: Provided that, where such officer is a Registrar, he shall follow the procedure prescribed in Part XII:

Provided further that the State Government may by notification in the Official Gazette declare that any Sub-Registrar named in the notification shall, in respect of documents the execution of which is denied, be deemed to be a Registrar for the purposes of this sub-section and of Part XII.

6. These provisions would go to show that the registering Officer can enquire as to whether the person executing the document is the person who represents himself to be. In this connection Section 32 of the Act relating to persons who can present a document for registration is also relevant, which reads thus:

32. Persons to present documents for registration: Except in the cases mentioned in Sections 31, 88 and 89, every document to be registered under this Act, whether such registration be compulsory or optional, shall be presented at the proper registration office,

(a) By some person executing or claiming under the same, or, in the case of a copy of a decree or order, claiming under the decree or order, or

(b) by the representative or assign of such a person, or

(c) by the agent of such a person, representative or assign, duly authorized by power-of-attorney executed and authenticated in manner hereinafter mentioned.

Since what we are dealing with is the question of transfer of property, and persons competent to execute documents in respect of immovable property, Section 7 of the Transfer of Property Act, 1882, defining persons competent to transfer property is also very relevant, which reads thus:

7. Persons competent to transfer.-- Every person competent to contract and entitled to transferable property, or authorised to dispose of transferable property not his own, is competent to transfer such property either wholly or in part, and either absolutely or conditionally, in the circumstances, to the extent and in the manner, allowed and prescribed by any law for the time being in force.

Section 8 of the Transfer of Property deals with the question as to when transfer of property takes effect, which reads as follows:

8. Operation of transfer.-- Unless a different intention is expressed or necessarily implied, a transfer of property passes forthwith to the transferee all the interest which the transferor is then capable of passing in the property and in the legal incidents thereof.

Such incidents include, where the property is land, the easements annexed thereto, the rents and profits thereof accruing after the transfer, and all things attached to the earth;

and, where the property is machinery attached to the earth, the movable parts thereof;

and, where the property is a house, the easements annexed thereto, the rent thereof accruing after the transfer, and the locks, keys, bars, doors, windows, and all other things provided for permanent use therewith;

and, where the property is a debt or other actionable claim, the securities therefore (except where they are also for other debts or claims not transferred to the transferee), but not arrears of interest accrued before the transfer;

and, where the property is money or other property yielding income, the interest or income thereof accruing after the transfer takes effect.

7. I shall now proceed to consider the issue in the light of the above legal provisions applicable. At the outset, I may briefly note the object of the system of registration of documents relating to property. Somewhat recently, the Supreme Court had occasion to consider the same in *State of Himachal Pradesh and Others Vs. Shivalik Agro Poly Products and Others*, . In paragraphs 5 to 7 of that decision the Supreme Court has observed thus:

5. By the very nature of things recognition of rights or title over immovable property and transactions therein give rise to manifold problems. Movable property, depending upon its size or dimension, can be kept in absolute control in possession of its owner and a third party may not be in a position even to know where the same has been kept. But this is not so for an immovable property which lies in the open, attached to the earth at a particular place and the owner may be residing at a faraway place. The owner may give the property on lease or licence to some one else who may get physical possession thereof and enjoy the usufruct thereof. In order to get over this difficulty, a system of registration of title to immovable property has been evolved which is followed in many

countries. In United States the legal position has been described as under in *Corpus juris Secundum*, Vol. 76, p. 525:

Systems looking toward the registration of titles to land, as distinguished from the practice under Recording Acts generally of recording or registering the evidence of such title, are in effect by virtue of statute in several of the United States, and the courts are bound by such provisions rather than by any doctrine of the common law which is in contravention thereof. These systems are quite generally known as "Torrens Systems" and the statutes providing therefore as "Torrens Acts" from the name of the author of the Australian Act of 1857, the underlying principle of which they follow. These systems are limited in their application to titles to land.

The prominent object of such legislation is the establishment of a method whereby the title to a particular tract or parcel of real estate will always be ascertainable by reference to a register of conclusive veracity, maintained by the designated public official. In other words, the purpose of these laws is to simplify the transfer of real estate, and to render titles thereto safe and indefeasible through the registration of such titles, the bringing together in one place of all of the facts relative to the title to each particular tract which is registered, and the use of certificates which shall conclusively show at all times the state of such title and the person in whom it is vested. The Torrens system serves a broader purpose than merely to notify the record owner of instruments affecting the title; it is notice to all the world of the condition of the title.

6. The position in the United Kingdom has been described in Halsbury's Laws of England, Vol. 26, paras 701 and 705 as under:

701. Legislation referable to centrally maintained register.

The legislation relating to registration of the title is directed to the manner in which the law and practice of conveyancing are to be adapted to the use of a centrally maintained register of title to land. As the use of the register has been extended, so the successive statutes mark the historical development of a system of conveyancing, commonly known as registered conveyancing, which approached maturity as part of the real property legislation of 1925.

The result of that legislation, as respects registered land, is to produce on first registration as State-insured record of entitlement to legal estates in land, open to public inspection, which is to be kept up to date in respect of subsequent transactions in accordance with the conveyancing technique for which the legislation provides.

Indirect reference to the earlier legislation is found at the commencement of the Land Registration Act, 1925 in the provision that requires the Chief Land Register to continue to keep a register of title to freehold and leasehold land.

705. The Land Registry Act, 1862.- The Land Registry Act, 1862 marked the first attempt to introduce registration of title as distinct from registration of deeds by

memorial. Registration was on a voluntary basis and subject to conditions, which included conditions (1) that a marketable title should be shown; (2) that the boundaries of the land should be officially determined and defined as against adjoining owners; and (3) that partial interests should be disclosed and registered. The Act continues to apply to estates registered under it as if the Land Registration Act, 1925 had not been passed, until such time as those estates are registered pursuant to the Act of 1925. The intention that the registration of such estates is to be transferred to the modern register is confirmed by power given to the Lord Chancellor to provide by order that all titles registered under the Land Registry Act, 1862 should be registered under the Land Registration Act, 1925 without cost to the parties interested.

7. The law relating to transfer of immovable property in Indian is contained in the Transfer of Property Act, 1882. Section 54 of this Act defines "sale" and it provides that transfer of ownership in the case of intangible immovable property of the value of one hundred rupees and upwards can be made only by a registered instrument. Section 107 provides that a lease of immovable property from year to year, or for any term exceeding one year or reserving a yearly rent, can be made only by a registered instrument. Similarly, Section 123 provides that a gift of immovable property must be effected by a registered instrument. Section 17 of the Registration Act gives a long list of instruments for which registration is compulsory and Clause (b) of Sub-section (1) provides that non-testamentary instruments which purport or operate to create, declare, assign, limit or extinguish, whether in present or in future, any right, title or interest, whether vested or contingent, of the value of one hundred rupees and upwards, to or in immovable property must be registered. These statutory provisions indicate the importance of registration of documents. In fact, it will be impossible to have any transaction relating to immovable property in any manner like transfer, gift, giving on lease or creating a mortgage, etc. without a system of registration of documents...."

(Underlining supplied)

Therefore we have to consider the issue in the light of the object of the legislation as explained in the above decision, which is to establish a method whereby the title to a particular tract or parcel of land will always be ascertainable by reference to the register maintained in the sub-registrar's office, which should be of conclusive veracity, which may not be achieved if the sub registrar is to register all and sundry documents presented by whom whatsoever.

8. The question as to whether title to a property passes to the purchaser on registration of the sale deed, even if no amount has been paid towards sale consideration to the vendor, has been considered by the Supreme Court in *Kaliaperumal Vs. Rajagopal and Another*, , holding thus:

14. We have heard the learned Counsel for the parties at length and considered

the evidence - oral and documentary, forming part of the record.

15. The question posed for our consideration is whether title to the disputed properties passed to appellant when the sale deed dated 26-6-1983 was registered on 26-10-1983, though admittedly no amount was paid towards consideration to the respondents.

16. Sale is defined as being a transfer of ownership for a price. In a sale there is an absolute transfer of all rights in the properties sold. No rights are left in the transferor. The price is fixed by the contract antecedent to the conveyance. Price is the essence of a contract of sale. There is only one mode of transfer by sale in regard to immovable property of the value of Rs. 100 or more and that is by a registered instrument.

17. It is now well settled that payment of entire price is not a condition precedent for completion of the sale by passing of title, as Section 54 of the Transfer of Property Act, 1882 ("the Act", for short) defines "sale" as "a transfer of ownership in exchange for a price paid or promised or part-paid and part-promised". If the intention of parties was that title should pass on execution and registration, title would pass to the purchaser even if the sale price or part thereof is not paid. In the event of non-payment of price (or balance price as the case may be) thereafter, the remedy of the vendor is only to sue for the balance price. He cannot avoid the sale. He is, however, entitled to a charge upon the property for the unpaid part of the sale price where the ownership of the property has passed to the buyer before payment of the entire price, u/s 55(4) (b) of the Act.

18. Normally, ownership and title to the property will pass to the purchaser on registration of the sale deed with effect from the date of execution of the sale deed. But this is not an invariable rule, as the true test of passing of property is the intention of parties. Though registration is prima facie proof of an intention to transfer the property, it is not proof of operative transfer if payment of consideration (price) is a condition precedent for passing of the property.

19. The answer to the question whether the parties intended that transfer of the ownership should be merely by execution and registration of the deed or whether they intended the transfer of the property to take place, only after receipt of the entire consideration, would depend on the intention of the parties. Such intention is primarily to be gathered and determined from the recitals of the sale deed. When the recitals are insufficient or ambiguous the surrounding circumstances and conduct of parties can be looked into for ascertaining the intention, subject to the limitations placed by Section 92 of the Evidence Act.

9. I can straightaway say that since the object of the Registration Act is to establish a method whereby the title to a particular tract or parcel of land will always be ascertainable by reference to the register maintained by the sub registrar's office, which should be of conclusive veracity, and the vendor cannot avoid the sale even if any part of the sale consideration has not been paid, if the

intention of the parties gatherable from the sale deed is that title should pass, registration of a cancellation deed cancelling the sale deed unilaterally by the vendor, would certainly defeat that object.

10. I shall now deal with the duty of the sub-registrar in the matter of registration of a cancellation deed unilaterally executed by the vendor in the light of the above legal position. u/s 7 of the Transfer of Property Act, 1882, for a person to become competent to transfer property, two conditions have to be satisfied viz. (1) he has to be competent to contract and (2) he must be entitled to transferable property or he must be authorised to dispose of transferable property not his own. Section 32 of the Registration Act, 1908, details the persons who can present documents for registration, who shall be either the person executing the document or his representative or assign or the agent of such a person duly authorised by power of attorney. The provisions of Rule 191 have to be appreciated in the light of the above provisions. Sub clause XII of Rule 191 lays down that the registering officer can refuse registration for the reason that the person purporting to have executed the document is a minor, an idiot or a lunatic. This reason relates to the competency of the person to contract, which is the 1st condition laid down in Section 7 of the Transfer of Property Act. Sub clause X of Rule 191 lays down that the registering officer can refuse registration for the reason that he is not satisfied as to the right of the person appearing as a representative, assign or agent so to appear. This reason relates to Sub-sections (b) and (c) of Section 32 of the Registration Act and the latter part of condition No. 2 in Section 7 of Transfer of Property Act. Therefore essentially, as far as transfer of immovable property is concerned, the Registration Act and Rules are framed in terms of the Transfer of Property Act itself. Therefore I am of opinion that want of capacity to transfer property as stipulated in Section 7 of the Transfer of Property Act, should also be a reason for which the sub-registrar can refuse registration of a document relating to transfer of property. In fact that is exactly what has been provided for by sub clause VII of Rule 191, making it competent for the sub-registrar to refuse registration for the reason that the document is presented by a person who has no right to present it. As far as transfer of property is concerned u/s 7 of the Transfer of Property Act, 1882 only a person who is entitled to transferable property is competent to transfer property. u/s 32 of the Registration Act, 1908, the document shall be presented by the person executing the document, if he is presenting the document himself. Therefore, 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. Take for example a case where a person presents for registration a sale deed executed by him selling the property comprised of the High Court or any government property for that matter; or an agreement between two persons whereby one agrees to kill a third person for consideration. Is the registering officer bound to register the same? If that is the position of law, then a cancellation deed cancelling any document by any person who has no relation to the property also will have to be registered if the reasons mentioned in Rule 191 are not available. That cannot be the object of the abovesaid provisions. But that does not mean that the sub-registrar can make a roving enquiry to decide the validity of the document or the right of the executants to execute the document. 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. Therefore, I am of the opinion that 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 as elucidated above.

11. A contrary interpretation would be opposed to public policy also. The meaning to be assigned to the phrase "public policy" and the power of the courts to determine as to the factors of public policy which may form the basis for interference with a contract or award has been subject matter of several decisions of the Supreme Court in the context of Section 23 of the Indian Contract Act and Section 34(2)(b)(ii) of the Arbitration and Conciliation Act. In *Murlidhar Aggarwal and Another Vs. State of Uttar Pradesh and Others*, , while

dealing with the concept of `public policy" the Supreme Court observed thus:

31. Public policy does not remain static in any given community. It may vary from generation to generation and even in the same generation. Public policy would be almost useless if it were to remain in fixed moulds for all time.

32. .... The difficulty of discovering what public policy is at any given moment certainly does not absolve the Judges from the duty of doing so. In conducting an enquiry, as already stated, Judges are not hidebound by precedent. The Judges must look beyond the narrow field of past precedents, though this still leaves open the question, in which direction they must cast their gaze. The Judges are to base their decisions on the opinions of men of the world, as distinguished from opinions based on legal learning. In other words, the Judges will have to look beyond the jurisprudence and that in so doing, they must consult not their own personal standards or predilections but those of the dominant opinion at a given moment, or what has been termed customary morality. The Judges must consider the social consequences of the rule propounded, especially in the light of the factual evidence available as to its probable results.... The point is rather that this power must be lodged somewhere and under our Constitution and laws, it has been lodged in the Judges and if they have to fulfil their function as Judges, it could hardly be lodged elsewhere.

In *Central Inland Water Transport Corporation Limited and Another Vs. Brojo Nath Ganguly and Another*, , the Supreme Court held thus:

92. The Indian Contract Act does not define the expression "public policy" or "opposed to public policy. From the very nature of things, the expressions "public policy", "opposed to public policy" or "contrary to public policy" are incapable of precise definition. Public policy, however, is not the policy of a particular Government. It connotes some matter which concerns the public good and the public interest. The concept of what is for the public good or in the public interest or what would be injurious or harmful to the public good or the public interest has varied from time to time. As new concepts take the place of old, transactions, which were once considered against public policy are now being upheld by the courts and similarly where there has been a well-recognized head of public policy, the courts have not shirked from extending it to new transactions and changed circumstances and have at times not even flinched from inventing a new head of public policy. There are two schools of thought - "the narrow view" school and "the broad view" school. According to the former, courts cannot create new heads of public policy whereas the latter countenances judicial law-making in this area. The adherents of "the narrow view" school would not invalidate a contract on the ground of public policy unless that particular ground had been well established by authorities. Hardly ever has the voice of the timorous spoken more clearly and loudly than in these words of Lord Davey in *Jenson v. Driefontein Consolidated Gold Mines Ltd.* 1902 AC 484 "public policy is always an unsafe and treacherous ground for legal decision." That was in the year 1902. Seventy-eight years earlier, Burrough, J., in *Richardson v. Mellish*,

(1824) 2 Bing 229 described public policy as "a very unruly horse, and when once you get astride it you never know where it will carry you". The master of the Rolls, Lord Denning, however, was not a man to shy away from unmanageable horses and in words which conjure up before our eyes the picture of the young Alexander the Great taming Bucephalous, he said in *Enderby Town Football Club Ltd. v. Football Assn. Ltd.* (1971 Ch 591): "With a good man in the saddle, the unruly horse can be kept in control. It can jump over obstacles". Had the timorous always held the field, not only the doctrine of public policy but even the common law or the principles of equity would never have evolved. Sir William Holdsworth in his "History of English Law", Vol. III, p. 55, has said:

In fact, a body of law like the common law, which has grown up gradually with the growth of the nation, necessarily acquires some fixed principles, and if it is to maintain these principles it must be able, on the ground of public policy or some other like ground, to suppress practices which, under ever new disguises, seek to weaken or negate them.

It is thus clear that the principles governing public policy must be and are capable, on proper occasion, of expansion or modification. Practices which were considered perfectly normal at one time have today become obnoxious and oppressive to public conscience. If there is no head of public policy which covers a case, then the court must in consonance with public conscience and in keeping with public good and public interest declare such practice to be opposed to public policy. Above all, in deciding any case which may not be covered by authority our courts have before them the beacon light of the preamble to the Constitution. Lacking precedent, the court can always be guided by that light and the principles underlying the fundamental rights and the directive principles enshrined in our Constitution.

In *Oil and Natural Gas Corporation Ltd. Vs. SAW Pipes Ltd.*, , in which the above two decisions were also referred to, the Supreme Court held thus:

16. The next clause which requires interpretation is Clause (ii) of Sub-section (2) (b) of Section 34 which inter alia provides that the court may set aside the arbitral award if it is in conflict with the "public policy of India". The phrase "public policy of India" is not defined under the Act. Hence, the said term is required to be given meaning in context and also considering the purpose of the section and scheme of the Act. It has been repeatedly stated by various authorities that the expression "public policy" does not admit of precise definition and may vary from generation to generation and from time to time. Hence, the concept "public policy" is considered to be vague, susceptible to narrow or wider meaning depending upon the context in which it is used. Lacking precedent, the court has to give its meaning in the light and principles underlying the Arbitration Act, Contract Act and constitutional provisions.

In this connection it is useful to refer to the decision of the Supreme Court in *State of Rajasthan and Others Vs. Basant Nahata*, , wherein the jurisdiction and

desirability of the courts interpreting statutory provisions and contract in the anvil of "public policy" has been elaborately dealt with, by referring to commentaries of Indian and English authors as also all the previous decisions of the Supreme Court on the subject. In paragraphs 37, 38 and 39, the Supreme Court held thus:

"37. The words "Public policy" or "opposed to public policy", inter alia, find reference in Section 23 of the Indian Contract Act. Section 7(1)(b)(ii) of Foreign Awards (Recognition and Enforcement) Act, 1961, Section 3(1) of U.P. (Temporary Control of Rent and Evictions) Act, 1947 and Section 34(2)(b)(ii) of Arbitration and Conciliation Act, 1996.

38. By reason of the said provisions the judiciary has been conferred with power to determine as to the factors of public policy which may form the basis for interference with a contract or award.

39. It may not be necessary for us to deal with extensively the case laws dealing with the relevant provisions of the said statutes but it would not, in our opinion, be correct to contend that public policy is capable of being given a precise definition. What is "opposed to public policy" would be a matter depending upon the nature of the transaction. The pleadings of the parties and the materials brought on record would be relevant so as to enable the court to judge the concept as to what is for public good or in the public interest or what would be injurious or harmful to the public good or the public interest at the relevant point of time as contra- distinguished from the policy of a particular government. A law dealing with the rights of a citizen is required to be clear and unambiguous. Doctrine of public policy is contained in a branch of common law, it is governed by precedents.

12. In view of these precedents, I am of opinion that it is only appropriate for this Court to interpret the not so clear and latently inconsistent provisions of the Registration Act and Rules, in tune with public policy.

13. It is no secret that land mafias are on the prowl in the country, especially in the State of Kerala. Litigation to set aside such cancellation deeds are increasing not only in the civil courts but also the High Court. As is clear from the decision of the Madras High Court in G.D. Subramaniam v. The Sub-Registrar Konur, 2009 (1) CTC 209 : 2009 CIJ 243 Madras, the situation in the State of Tamilnadu is also not different. In that decision it is said thus in paragraph 9:

9. Complaints, in plenty, flood the police stations in the State of Tamil Nadu very often, in recent times, alleging that, unscrupulous sellers and land grabbers, indulge in nullifying the valid sale made by means of registered sale deeds, by executing cancellation deeds unilaterally and getting the same registered in an ingenious way. The modus operandi is, this Court is informed, that unscrupulous elements like land grabbers approach the former owners of properties, practice a kind of deception by paying paltry amounts, induce them to execute cancellation deeds without the knowledge and consent of the purchasers and then to execute

fresh sale deeds in their favour. It is, indeed, a fraud. Based on such sale deeds, these mighty people squat upon the properties thereby depriving the real owners, who are generally meek, from enjoying the properties thereby leaving them in the lurch. It is also common knowledge that the doors of subordinate Courts are knocked at with number of Civil Suits where the real owners have to fight for justice to get their title declared as against these unscrupulous elements. Going by the past experience, the Civil Suits, in normal course, take years to conclude. In the meanwhile, it also happens that some more encumbrance is made thereby creating further cloud in the title so as to make the issues more complex and complicated.

In the Full Bench decision of the Andhra Pradesh High Court in Yanala Malleshwari and Others Vs. Ananthula Sayamma and Others, , a similar situation has been dealt with. The State of Rajasthan tried a different line by introducing a new Section 22A in the Act, which was declared as unconstitutional by the Supreme Court in Basant Nahata's case (supra). This would give an indication that this malady is increasing in other parts of the country as well, which warrants a purposive interpretation of the Registration Act and Rules in consonance with public policy to contain the same.

14. The very object of the Registration Act, as I have already explained, is to establish a method whereby the title to a particular tract or parcel of land will always be ascertainable by reference to the register maintained by the sub registrar's office, which should be of conclusive veracity. That object would be defeated if cancellation deeds cancelling sale deeds are allowed to be registered automatically. It would lead to chaos in the matter of ascertaining the title of properties by inspecting the register relating to properties maintained in the sub-registrar's office. Intending purchasers of land and Banks, other financial institutions and others who would like to advance money on the security of immovable properties would find it extremely difficult to ascertain title of the seller/mortgagor in respect of the property offered for sale/as security. Registered sale deed duly executed by a party in favour of another and the register in which the same is shown as registered have legal sanctity and the public largely relies on the entries in the register to verify the title of a particular person to a particular property. The Transfer of Property Act and the Registration Act are complementary laws and the provisions of the former should not be allowed to be subverted by resort to loopholes in the latter. If done, that would be a breakdown of the legal machinery, which should be avoided at all costs, if people are to have faith in the legal system of the country, which should be part of the public policy of India. If a vendor of a property is allowed to register a cancellation deed after validly executing a sale deed, it will be chaos, and chaos only, in the realm of real estate, driving, not only innocent purchasers, but also bona fide creditors who have accepted the property as security for money advanced on the strength of the mortgage of the property, to too expensive and time consuming litigation, which is against all norms of public policy.

15. In that regard there is another aspect of public policy as well. Sale is essentially an executed contract, by which title to immovable property has been transferred to another, which is bilateral. Such a contract cannot be unilaterally cancelled by one of the parties to the contract, unless such a right has been reserved in the contract itself. There is no specific provision in the Transfer of Property Act for cancellation of a sale. Section 4 of the Transfer of Property Act stipulates that the provisions of the said Act which relate to contracts shall be taken as part of the Indian Contract Act. Novation, recession and alteration of a contract are governed by Section 62 of the Indian Contract Act. In *Citi Bank N.A. Vs. Standard Chartered Bank and Others*, , the Supreme Court has held that "novation, recession or alteration of a contract u/s 62 of the Contract Act can only be done with the agreement of both parties to the contract. Both the parties have to agree to set aside the original contract with a new contract or for recession or alteration." Therefore, a sale deed which is a contract between two parties for sale of a property, cannot be unilaterally cancelled by one of the parties executing a cancellation deed, which if done would be against Section 62 of the Indian Contract Act and therefore illegal. Therefore, once a sale deed is validly executed, the same cannot be annulled, except by a decree of a court of law. By executing the cancellation deed, the vendor is arrogating to himself, the power of the court to annul the sale deed already executed by him. No person can be permitted to assume himself the powers exclusively vested with the courts, which is what a vendor does, by cancelling a sale deed validly executed by him. That would certainly be opposed to public policy. Therefore by registering a cancellation deed of a sale deed, the sub-registrar is allowing the vendor to perpetrate an illegality against public policy, which has to be prevented at any cost, if rule of law is to survive in this country. For this reason also registration of cancellation deed of a sale deed is against public policy and therefore an interpretation of the Registration Act and Rules, which would help to prevent such illegality, has to be necessarily adopted by courts.

16. The view that cancellation of a sale deed can be only bi- lateral, is also clear from the newly introduced Section 32A of the Registration Act, which reads thus:

32A. Compulsory affixing of photograph, etc.-- Every person presenting any document at the proper registration-office u/s 32 shall affix his passport size photograph and fingerprints to the document:

Provided that where such document relates to the transfer of ownership of immovable property, the passport size photograph and fingerprints of each buyer and seller of such property mentioned in the document shall also be affixed to the document.

If for transfer of ownership of immovable property photographs and fingerprints of each buyer and seller of the property are mandatory, by the same coin, cancellation deed of a sale deed being essentially a re-transfer of the immovable property back to the vendor should also necessarily contain the photograph of both the parties to the sale deed, without which the cancellation deed cannot be

validly registered. Of course an argument is raised to the effect that the said Section is applicable only when a person executes a sale deed for transfer of immovable property. But the words used therein are "where such document relates to transfer of ownership of immovable property", which is wide enough to include all documents relating to transfer of immovable property and not confined to sale deeds for transferring immovable property. A cancellation deed cancelling a sale deed is certainly a document relating to transfer of immovable property and would come squarely within the said proviso. Section 32A has been incorporated in the Registration Act to prevent such misuse of the provisions of the Act and Rules. Non-compliance with Section 32A is certainly a very valid reason for the sub-registrar to refuse registration of a cancellation deed relating to transfer of immovable property, as is clear from clause VIIA of Rule 191. The sub-registrar is therefore duty bound to insist upon the photograph and thumb impression of both parties to be included in the cancellation deed as well, as mandated by the proviso to Section 32A of the Registration Act for registration of a cancellation deed of a sale deed and if the cancellation deed does not contain the photograph and thumb impression of both parties, he is statutorily bound to refuse registration of that document. The thumb impression of a person cannot be obtained in a document without his consent and his photograph cannot be validly affixed in a document without his consent. Therefore a cancellation deed of a sale deed can be registered only with the consent of both the original seller and the buyer and not unilaterally by the seller alone. For this reason also the registration of a cancellation deed unilaterally cancelling a sale deed by the seller, without the consent of the purchaser, is to be refused by the sub-registrar.

17. I am not unaware of the dangers of recognizing such a power in the sub-registrar in the present day scenario in the State of Kerala. But in view of the fact that against a wrong refusal to register, an aggrieved party has an easy remedy by way of appeal u/s 72 of the Registration Act is sufficient safeguard against such abuse of power. In any event looking at the larger public policy involved it is a small price to avoid a greater illegality.

18. As I have stated in the beginning, two High Courts have taken differing views on the same question. Now, I shall refer to those decisions. There were differing views on this question by different judges of the Andhra Pradesh High Court on this question. Therefore the matter was referred to a Full Bench of the said High Court, who considered the matter in Yalana Malleswari's case (supra). The Full Bench, by majority held the view that the registering officer cannot refuse to register a cancellation deed cancelling a sale deed and relegated the parties to a civil suit. The third learned judge of the Full Bench differed to hold that a person who has executed a sale deed and got it registered cannot subsequently execute a document unilaterally cancelling the earlier sale deed and that by registering the so called cancellation of sale deed the sub-registrar is, in effect, cancelling the registration made earlier and once a registration is made, the sub-registrar has no power under the Registration Act to cancel such a registration, as he became a *functus officio*. In G.D. Subramaniam's case (supra), a learned single

judge of the Madras High Court held that a registering officer is legally obliged to refuse to register a deed of cancellation of sale unilaterally executed without the knowledge and consent of the other parties to the sale deed and without complying with Section 32A of the Registration Act and while holding so, chose to agree with the dissenting judgment, refusing to follow the majority view, in Yalana Malleswari's case (supra). A division Bench of the Madras High Court, in E.R. Kalaivan v. Inspector General of Registration, Chennai and Anr. AIR 2010 Mad 18 (DB) approved the view taken by the learned single judge of that High Court in G.D. Subramaniam's case (supra). It is fruitful to know the reasons the Madras High Court has given in G.D. Subramaniam's case (supra) to differ from the majority decision of the Andhra Pradesh High Court in Yalana Malleswari's case (supra) and to agree with the minority view. Paragraphs 20 to 23 contain the reasoning, which read thus:

20. Now, turning to the judgment of the Full Bench of the Andhra Pradesh High Court in Yanala Malleshwari and others, speaking for majority, His Lordship Justice V.V.S. Rao, after having elaborately dealt with the identical questions, has ultimately held in para 66 as follows:

Therefore, when the provisions of the Registration Act and Registration Rules elaborately deal with the circumstances and situations when the registering officer has to accept and register the documents and /or as to when registering officer has to reject the documents for registration, it is not possible to hold as a general rule that whenever a cancellation deed is submitted, the registering officer is bound to reject the acceptance and registration of the same. Such interpretation would render Section 126 of TP Act (which enables the donor of a gift to cancel/revoke the same) ineffective. Second, there could be unimaginable number of circumstances when the executant himself on his own volition comes before the registering officer and desires to cancel the earlier document. As already pointed out supra, u/s 23A of the Registration Act, the registering officer can re-register a document totally ignoring the earlier registration. Further more, under Schedule 1-A to the Indian Stamp Act as amended by the Stamp (A.P. Amendment) Act, 1922, cancellation deed is one of the legal document recognized in law and a transaction for transfer of immovable property is no exception.

21. With respect, I am unable to subscribe myself to the said view taken by the majority for the reasons which follow. Though in para 54 of the judgment, a reference has been made to Section 32A of the Indian Registration Act, which was recently introduced, the learned Judge has not dealt with the same elaborately. Nobody can have any quarrel over the legal position that a deed of cancellation of a sale of immovable property of value Rs. 100/- and upwards, is a document which needs compulsory registration. But the learned Judge has taken the view that to revoke a sale or to cancel the same, the consent or knowledge of the purchaser is not at all required. In my considered opinion, as I have already stated, a sale being a bilateral contract, more particularly in view of

Section 32A of the Indian Registration Act, if to be cancelled, it should be done bilaterally by both the parties to the sale. The learned Judge has expressed the apprehension that if the law is so interpreted so as to hold that the Registering officer has power to refuse to register a cancellation deed, then, it would render Section 126 of the Transfer of Property Act, which enables the donor of a gift to cancel it or revoke the same, ineffective. With respect, I am of the view, that such apprehension has no basis. Section 126 of the Transfer of Property Act is a special provision dealing with the power of the donor to revoke a gift deed in certain circumstances. Such kind of revocation does not require the consent of the beneficiary of the gift. Basically, such a gift is not a contract in terms of the definition of contract as found in the Indian Contract Act, since gift is a transfer made voluntarily without consideration, whereas, a sale of an immovable property is a contract entered into between two parties where consideration is a *since-qua-non*. Therefore, revocation of a gift deed cannot be equated to cancellation of a sale deed. Both operate on different spheres. A reference has also been made in the judgment to Section 23A of the Registration Act. In my considered opinion, Section 23A which speaks of re-registration of certain documents has nothing to do with cancellation of a validly executed document. It is not to say that invariably in all cases, the registering officer should refuse to register a cancellation deed. We cannot generalise all deeds of cancellation as illegal or void so as to say that such documents cannot be registered at all. All I would say is that such cancellation deeds which are executed bilaterally by both the parties to the earlier document can be registered by the registering officer, provided, the other requirements of the Indian Registration Act are satisfied. But those cancellation deeds executed unilaterally by one party to the earlier transaction, without the consent of the other party and without complying with the requirements of Section 23A of the Indian Registration Act, alone are to be rejected by the Registering Officer.

22. In the minority judgment of His Lordship Justice Bilal Nazki, in para 120, the learned Judge has held as follows:

Lastly, it was contended by the respondents that under no provision of law the Sub-Registrar is required to register a document after an enquiry as to the ownership of the property with respect to which a document is sought to be registered. It may be true that there is no such provision in the Registration Act, but if strictly interpreted, then the Registration Act would not empower the registering authority to register any document unless it falls within Section 17 or 18 of the Registration Act. Section 17 mentions those documents which are compulsorily registrable and Section 18 mentions those documents, of which, the registration is optional, but, the whole scheme of the Registration Act shows that it is incumbent upon the Registrar not to register documents that are unlawful. Obviously if a person has no right in the property and his interests in the property had extinguished, if he tries to execute any document for the same property, the document would be illegal...." "....It is only on mere reading of the document that Sub-Registrar would come to a conclusion that the document,

which was sought to be registered, was an illegal document and as such could not be registered. Therefore, the argument of the learned Counsel for respondents that the Sub- Registrar has no authority to make enquiries with regard to the title of the parties who executes the documents, would have to be accepted with exceptions. That document has no title over the property, the Sub-Registrar is not bound to register such a document. The Scheme of the Registration Act shows that documents which create interest or extinguish interest are either compulsorily registrable or are to be registered at the option of the executor. Besides this, what is sought to be revoked by this cancellation deed, is the earlier registered sale deed.

(Emphasis supplied)

23. In *Badugu Venkata Durga Rao and another Vs. Surneni Lakshmi*, , a learned Single Judge of the Andhra Pradesh High Court has also taken the view that a person who has executed a sale deed and got it registered cannot subsequently execute a document unilaterally cancelling the earlier sale deed. This view has been accepted by His Lordship Bilal Nazki in the minority judgment".

I respectfully agree with the reasoning given by the learned single judge of the Madras High Court as quoted above as also the dissenting judgment in *Yalana Malleswari's* case (Supra) and disagree with those in the majority decision of the Andhra Pradesh High Court in *Yalana Malleswari's* case (supra).

19. It is useful to note what happened in Andhra Pradesh after *Yalana Malleswari's* case (supra), which is also noted in paragraph 26 of *G.D. Subramaniam's* case (supra) as follows:

26. After the Full Bench judgment of the Andhra Pradesh High Court in *Yanala Malleshwari and Ors. v. Ananthula Sayamma and Ors.* case, the Andhra Pradesh Government introduced Rule 26(k) of the Andhra Pradesh Registration Rules by means of an amendment dated 29.11.2006, which reads as follows: (i) The Registering Officer shall ensure at the time of presentation for registration of cancellation deeds of previously registered deed of conveyance on sale before him that such cancellation deeds are executed by all executant and claimant parties to the previously registered conveyance on sale and that such cancellation deed is accompanied by a declaration showing mutual consent or orders of a competent Civil or High Court of State or Central Government annulling the transaction contained the previously registered deed of conveyance on sale; provided that the registering officer shall dispense with the execution of cancellation deeds by executant and claimant parties to the previously registered deeds of conveyances on sale before him if the cancellation deed is executed by a Civil Judge or a Government Officer competent to execute Government orders declaring the properties contained in the previously registered conveyance on sale to be Government or Assigned or Endowment lands or properties not registrable by any provision of law. (ii) Save in the manner provided for above, no cancellation deed of a previously registered deed of conveyance on sale before

him shall be accepted for presentation for registration.

The said Rule 26(k) was challenged before the Andhra Pradesh High Court in Kaitha Narasimha v. The State Government of A.P., rep. by its Principal Secretary W.P. No. 3744/2007 by contending that the same is ultra vires of the provisions of the Registration Act, 1908 and is contrary to the judgment of the Full Bench in Yanala Malleshwari and Ors. v. Ananthula Sayamma and Ors. The Division Bench of the Andhra Pradesh High Court, by order dated 13.3.2007, while upholding the said Rule has held as follows; "In our opinion, the impugned rule does not in any manner violate the ratio of the majority judgment of the Full Bench. Rather, as mentioned above, it is a statutory embodiment of one of the rules of natural justice and is intended to curtail unnecessary litigation emanating from the ex parte registration of cancellation deeds." As indicted in the above judgment, the principles of natural justice are also to be adhered to by the Registering officer while dealing with a deed of cancellation of sale. If a unilateral cancellation deed is allowed to be registered, without the knowledge and consent of the other party to the earlier contract, as held by the Division Bench of the Andhra Pradesh High Court, such registration would cause violence to the principles of natural justice and lead to unnecessary litigations emanating therefrom.

(Underlining supplied)

20. The fact that the State of Rajasthan also experiences similar difficulties is clear from the decision of the Supreme Court in Basant Nahata's case (supra). That State attempted a solution for this difficult situation by introducing Section 22A in the Registration Act, which read as follows:

22A- Documents registration of which is opposed to public policy - (1) The State Government may by notification in the Official gazette, declare that the registration of any document or class of document is opposed to public policy.

(2) Notwithstanding anything contained in this Act, the registering officer shall refuse to register any document to which a notification issued under Sub-section (1) is applicable.

That section was declared as unconstitutional by the Supreme Court of India in Basant Nahata's case (supra) on the ground that the word 'public policy' has not been properly explained in the Act and the provisions do not lay down any guidelines to make it constitutional. The State of Tamilnadu also followed suit, which was also struck down as unconstitutional by a Division Bench of the Madras High Court in W.P. Nos. 757 and 758 of 2007, following the Supreme Court judgment in Basant Nahata's case (supra), which has also been taken note of in paragraph 30 of G.D. Subramaniam's case (supra). In G.D. Subramaniam's case (supra) the learned judge suggested to the State of Tamilnadu as follows:

After the above developments, the State of Tamil Nadu, obviously, has not considered the situation prevailing in the State necessitating introduction of an appropriate provision in the Act or in the Rules itself so as to prevent registration

of documents which are opposed to public policy. As we have noticed, the Andhra Pradesh Government has duly introduced Rule 26(k) of the Andhra Pradesh Registration Rules making it mandatory for the Registering Officer, not to register a deed of cancellation of a sale deed, if it is not executed mutually by the parties to the earlier sale deed. If it is the intention of the Government of Tamil Nadu not to allow registration of certain kinds of deeds such as deeds of cancellation of sale, executed unilaterally, even now, it is left open to the Government of Tamil Nadu to bring an appropriate amendment to the Registration Act or to the Rules as has been done in Andhra Pradesh in tune with the law declared by the Hon'ble Supreme Court in *State of Rajasthan v. Basanth Nahata* by making it mandatory for the Registering officers to refuse to register certain documents which are opposed to public policy by succinctly defining the documents in the statute itself without delegating the power to define the same to the Executive. This court is hopeful, that the Government will take serious note of the situation prevailing in the State and fall in line with Andhra Pradesh Rules.

21. I may also refer to a decision of a learned single judge of this Court namely, *Sulabha v. Suseela*, ILR 2009 Ker 165, which was brought to my notice by the learned amicus curiae. That was a case where the direction issued by the Upa Lok Ayukta to the Inspector General of Registration to issue appropriate clarifications to all his subordinate officials to desist from registering documents which may have any legal validity or enforceability was under challenge seeking a direction to the sub-registrar to declare that the petitioner and her husband are entitled to get the document, executed by them registered under the Registration Act. Of course the learned single judge held that the registering officer is not competent to say that a document which has no enforceability or legal validity need not be allowed to be registered. The decision related to a divorce agreement executed by a husband and wife,, registration of which does not affect public policy, and the decision has not examined the question in the perspective in which it has been considered in this decision, but has been rendered wholly on the basis of Rules 67 and 191 of the Registration Rules (Kerala), assuming that the sub- registrar has powers to refuse registration only for the reasons enumerated in Rule 191, without noticing the words "the refusal would usually come under" occurring in Rule 191. Since that decision relates to registration of a divorce agreement between a husband and wife which has no public policy angle, and the same has not examined the question in the perspective in which I have dealt with it in the light of similar experiences in two other states, that decision must be taken to be an authority for what it actually decided, which is that divorce agreements, even though may not be enforceable in law, cannot be refused to be registered. Regarding the other point, the said judgment can be held to be rendered per incurium since the same is contrary to the legal principles involved as elucidated above and the learned judge was ill-informed about the other legal provisions relevant to decide the issue.

22. The conclusions emerging from the above discussion may be summed up as follows:

(i) The sub-registrar is legally obliged to reject and refuse to register a deed of cancellation of a sale unilaterally executed without the knowledge and consent of the other parties to the sale deed and without complying with Section 32A of the Registration Act, 1908.

(ii) All sub-registrars of the State shall see that a deed of cancellation of sale is registered only if executed with mutual consent of all parties to the sale, complying with the provisions of the Act and Rules including Section 32A of the Registration Act.

23. In the result, these two writ petitions are allowed and the registration of the deed of cancellation dated 1-8-2009 registered as document No. 2830/2009 of Uliyil Sub Registrar's Office produced as Ext. P3 in W.P. (C) No. 34367/2009 and the registration of the deed of cancellation dated 24-11-2009 registered as document No. 2099/2009 of Anchalumood Sub Registrar's Office produced as Ext. P2 in W.P. (C) No. 37150/2009 are hereby quashed. The respective sub-registrar shall cancel, strike off and remove the said deeds from the registers maintained by them in respect of the respective properties and the same shall not be included in the encumbrance certificates to be issued in respect of those properties. For completing the formalities, the 4th respondent in W.P. (C) No. 34367/2009 and the 3rd respondent in W.P. (C) No. 37150/2009 shall produce the cancellation deeds executed by them before the respective sub-registrar for cancelling the registration within two weeks from receipt of a communication from the sub-registrar directing production, which the sub-registrar shall issue within two weeks. However, the sub registrar shall not wait for such production for making appropriate changes in his register as directed above.

Before parting with the case, I suggest that the Government of Kerala would do well to introduce appropriate amendment to either the Act or the Rules, in line with Rule 26(k) of the Andhra Pradesh Registration Rules referred to above, (see paragraph 19 supra) to give a statutory framework to the findings in this judgment. To enable the Government to consider the same, the Registry shall forward a copy of this judgment to the Secretary, Registration Department and the Inspector General of Registration, of the Government of Kerala. I sincerely hope that my above suggestion will not meet with the same fate, namely, discard to the waste bin, as my suggestion in Retnavalli Vs. Ambalapadu Service Co-operative Bank Ltd., wherein also a suggestion was made to the Government in respect of notification of commencement of Section 4A of the Payment of Gratuity Act, 1972, in the State of Kerala, which would have hugely benefitted the entire workforce in Kerala covered by the Payment of Gratuity Act, without any corresponding financial burden on either the employers or the Government. In the meanwhile, the Inspector General of registration shall circulate a copy of this judgment with appropriate directions in accordance with this judgment, to all sub- registrars of the State who shall implement the directions contained herein.

It would be gross ingratitude on my part, unless I place on record my appreciation for the able assistance rendered by the amicus curiae, Advocate Sri.

T.R. Ravi, to the court, in these two writ petitions. He responded to the request of the court seeking his assistance, readily, without reservation and gave his best in finding out and placing before the court precedents and arguments for and against, to enable me to arrive at a just conclusion. I am certain that without his assistance, this judgment would not have been in this form and would have been far from satisfactory. I place on record the appreciation of this Court for his unselfish efforts in that regard. But I hasten to add that this is not intended to belittle the contribution of the advocates appearing in these two writ petitions, who also assisted me to the best of their ability.