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AMUDHAVALI & ORS.

v.

P. RUKUMANI & ORS.

(Civil Appeal No. 7464 of 2021)

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DECEMBER 07, 2021

[R. SUBHASH REDDY AND HRISHIKESH ROY, JJ.]

- Deeds and Documents: Sale Deed – Cancellation Deed – Registration – Respondent nos.1 to 4 who were original owners of the land executed a registered power of attorney in favour of respondent no.7 – Claim of appellants was that they purchased the land admeasuring Acs.3.46 cents from respondent Nos.1 to 4, by way of registered sale deed dated 09.03.2005, executed by their Power of Attorney, i.e. respondent no.7 – Subsequently, respondent nos.1 to 4 prepared cancellation deed on 09.03.2005 and got it registered on 20.09.2007 – After registration of such deed, respondent nos.1 to 4 also filed a civil suit to declare sale deed dated 09.03.2005 executed in favour of the appellants, as illegal, void and non est – Subsequent to registration of cancellation deed, an extent of 0.25 cents of land was transferred by registered sale deed dated 27.02.2009, in favour of respondent no.8 – Questioning the cancellation deed and alleging interference with possession, the appellants filed writ petition before the High Court – Single Judge of High Court allowed the writ petition mainly on the ground that once the sale deed is executed, the land stood transferred to the appellants and unless there is a consent of the appellants, no cancellation deed could be registered – Division Bench of High Court allowed the appeal by Respondent nos.1 to 5 holding that civil suit filed by respondent nos.1 to 4 in O.S. No.142 of 2008 for declaration and cancellation of sale deed dated 09.03.2005 is already pending consideration and rights of the parties will be adjudicated in the pending suit – Hence instant appeal – Held: It is a settled legal position that registration of document is always subject to adjudication of rights of the parties by the competent civil court – Had the appellants not entered their appearance by filing the written statement, it would have been a different situation – Further, subsequent to registration of cancellation deed, a portion*

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of land was transferred to respondent no.8 to an extent of 0.25 cents – In view of the fact that the suit in O.S. No.142 of 2008 is pending on the same subject, interference with the impugned order and examination of the validity of cancellation deed not called for – Rights of the parties with regard to the land in question shall be governed by the judgment in pending suit in O.S. No.142 of 2008 – The civil suit to be decided on its own merits and the parties are directed to maintain status quo.

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Disposing of the appeal, the Court

HELD: 1. In the case on hand it is not in dispute, that after registering the cancellation deed, respondent nos.1 to 4 have filed a civil suit which is pending in O.S.No.142 of 2008, seeking declaration that sale deed dated 09.03.2005 executed in favour of the appellants is null and void. In the said suit the appellants have already filed written statement. The learned Single Judge of the High Court also observed that the subsequent cancellation deed is always subject to adjudication of rights of the parties by the competent civil court. As much as the appellants have already filed a written statement in the civil suit in O.S. No.142 of 2008, and contesting the same, this Court is not inclined to examine the validity and effect of such cancellation deed, at this stage, by interfering with the impugned order of the High Court. [Para 14][601-E-G]

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2. It is settled legal position that registration of document is always subject to adjudication of rights of the parties by the competent civil court. Had the appellants not entered their appearance by filing the written statement, it would have been a different situation – Further, subsequent to registration of cancellation deed, a portion of land is transferred to respondent no.8, to an extent of 0.25 cents. [Para 15][601-G-H; 602-A]

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3. Having regard to the fact that the suit in O.S. No.142 of 2008 on the file of IIIrd Additional Subordinate Court, Coimbatore is pending on the same subject, this Court is not inclined to interfere with the impugned order and examine the validity of cancellation deed. The rights of the parties will be subject to adjudication in Civil Suit in O.S. No.142 of 2008. [Para 16] [602-B]

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- A *Satya Pal Anand v. State of Madhya Pradesh (2016) 10 SCC 767 : [2016] 12 SCR 26; Thota Ganga Laxmi & Anr. v. Government of Andhra Pradesh & Ors. (2010) 15 SCC 207 – referred to.*

Case Law Reference

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|---|-------------------|-------------|---------|
| B | [2016] 12 SCR 26 | referred to | Para 10 |
| | (2010) 15 SCC 207 | referred to | Para 10 |
- CIVIL APPELLATE JURISDICTION : Civil Appeal No.7464 of 2021.
- C From the Judgment and Order dated 17.07.2019 of the High Court of Judicature at Madras in W.A. No.229 of 2018.
 K. V. Viswanathan, Sr. Adv., Senthil Jagadeesan, Ms. Sonakshi Malhan, Ms. Mrinal Kanwar, Sajal Jain, Advs. for the Appellants.
- D V. Chitambresh, Mrs. Anitha Shenoy, Sr. Advs., Roy Abraham, Ms. Reena Roy, Himinder Lal, C. K. Sasi, Karuppaiah Meyyappan, Raghunatha Sethupathy B., Ms. Kanika Kalaiyarasan, Ms. Aarti Krupa, Abhishek Kalaiyarasan, Ms. Pariksha, Wahengbam Immanuel Meitei, R. C. Kaushik, Advs. for the Respondents.
- E The Judgment of the Court was delivered by
R. SUBHASH REDDY, J.
1. Leave granted.
2. This civil appeal is filed, aggrieved by the judgment and order dated 17.07.2019 passed in Writ Appeal No.229 of 2018 by the High
- F Court of Judicature at Madras. By the aforesaid order, the intra-court appeal preferred by respondent Nos.1 to 5 herein was allowed by setting aside the order of the learned single Judge passed in W.P. No.6329 of 2009.
3. The respondent nos.1 to 4 herein who were original owners of
- G the land covered by S.F. No.246/1 of Kalapatti Village, Gandhipuram Sub-Registration District of Coimbatore, have executed a registered power of attorney in favour of respondent no.7. The appellants claim that, they have purchased the said land admeasuring Acs.3.46 cents from the respondent Nos.1 to 4, vide registered sale deed dated
- H 09.03.2005, executed by their Power of Attorney, i.e. respondent no.7.

Subsequently, the respondent nos.1 to 4 prepared the Cancellation Deed on 09.03.2005 and got it registered on 20.09.2007. After registration of such deed, respondent nos.1 to 4 also filed a civil suit to declare the sale deed dated 09.03.2005 executed in favour of the appellants, as illegal, void and *non est*. Subsequent to registration of cancellation deed, an extent of 0.25 cents of land was transferred by registered sale deed dated 27.02.2009, in favour of respondent no.8.

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4. Questioning the cancellation deed and alleging interference with possession, the appellants herein have filed Writ Petition No.6329 of 2009 before the High Court. Mainly it was the case of the appellants that once the sale is effected by way of a registered sale deed, respondent nos.1 to 4 could not have cancelled the sale deed unilaterally and get it registered.

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5. Respondent nos.1 to 4 have filed counter affidavit in the writ petition before the High Court. It was their case that writ petition, as filed, was not maintainable due to delay and laches as the same was filed in the month of March 2009, whereas the cancellation deed was registered on 20.09.2007. It was also their case that after cancellation, they have issued notice to the appellants and inspite of the same no immediate steps were taken and the appellants are already contesting the suit i.e. O.S. No.142 of 2008, which is pending on the file of IIIrd Additional Subordinate Court, Coimbatore, in which written statement is already filed.

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6. Learned Single Judge has allowed the writ petition by order dated 07.09.2017 mainly on the ground that once the sale deed is executed, the land stood transferred to the appellants and unless there is a consent of the appellants, no cancellation deed could be registered. Aggrieved by the order of the learned Single Judge, the respondent nos.1 to 5 have preferred intra-court appeal in Writ Appeal No.229 of 2018, and same is allowed by impugned judgment, by setting aside the order of the learned Single Judge.

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7. In the impugned judgment, the High Court has held that civil suit filed by the respondent nos.1 to 4 in O.S. No.142 of 2008 for declaration and cancellation of the sale deed dated 09.03.2005 is already pending consideration and rights of the parties will be adjudicated in the pending suit. The Division Bench of the High Court was of the view that in view of factual disputes, Learned Single Judge could not have entertained petition under Article 226 of the Constitution of India.

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- A 8. Heard Sri K.V. Viswanathan, learned senior counsel for the appellants; Sri V. Chitambresh, learned senior counsel appearing for respondent Nos.1 to 4; Sri C.K. Sasi, learned counsel for the State; and Smt. Anitha Shenoy, learned senior counsel appearing for respondent No.8.
- B 9. Having heard the learned counsel for the parties we have perused the impugned judgment and other material placed on record.
10. Mainly it is contended by learned senior counsel Sri K.V. Viswanathan that the High Court has relied on the judgment of this Court in the case of **Satya Pal Anand v. State of Madhya Pradesh**¹ and
- C allowed the appeal, but same is distinguishable on facts of the present case. It is further submitted that once the property is transferred by registered sale deed, unilateral cancellation of such deed is void, *non est* and is opposed to public policy. It is submitted that registration of such a deed is not recognised under the scheme of the Registration Act, 1908 and if such unilateral cancellation deeds are allowed to be registered, it will cause grave prejudice and injustice to bona fide purchasers. Learned counsel relied on the judgment of this Court in the case of **Thota Ganga Laxmi & Anr. v. Government of Andhra Pradesh & Ors.**², in support of his case. By referring to complaint filed against the respondent nos.1 to 4, it is submitted that there was no delay and laches on the part of the appellants in approaching the High Court.
11. On the other hand, learned counsel Sri Chitambresh, appearing for respondent nos.1 to 4 has submitted that subject matter of this appeal is squarely covered and is to be dismissed, in view of the judgment of this Court in the case of **Satya Pal Anand**¹. Referring to paragraph
- F No.38 of the judgment in the case of **Satya Pal Anand**¹, learned senior counsel has submitted that absence of the party to the extinguishment deed cannot be said to be a fraudulent action *per se*. Referring to the judgment in the case of **Thota Ganga Laxmi**², it is submitted that same cannot be applied to the facts of the case and said judgment is rendered in view of specific rule which was applicable to State of Andhra Pradesh.
- G It is submitted, after cancellation, when the suit is filed by respondent nos.1 to 4 the appellants have already filed their written statement and contesting the matter, and prayed for dismissal of the appeal.

¹(2016) 10 SCC 767

²(2010) 15 SCC 207

12. Learned counsel appearing for respondent no.8 has submitted that respondent no.8 is a subsequent bona fide purchaser, to an extent of 0.25 cents of the disputed land. It is submitted that as he is a bona fide purchaser he cannot be deprived of the said land for no fault of him.

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13. From a perusal of the impugned order passed by the High Court, it is clear that the said judgment is rendered mainly relying on the judgment of this Court in the case of **Satya Pal Anand¹**. The aforesaid case relates to allotment of a site by a co-operative society and on the ground that the condition of allotment is violated by not constructing house within the time frame, and the original allottee has breached the condition, co-operative society has cancelled the allotment and subsequently executed an extinguishment deed. In the aforesaid judgment, it is held that the original allottee has also entered into compromise with subsequent purchasers of the land and notwithstanding the same, he has raised dispute under Section 64 of the Madhya Pradesh Cooperative Societies Act, 1960. When the dispute was pending on the very same cause of action, writ petition was filed. When the original purchaser has approached the Sub-registrar for cancellation of a cancellation deed, the registering authority by a speaking order has rejected the same on two grounds, i.e., firstly, dispute was pending between the parties in the Civil Court; and secondly on the ground that it had no jurisdiction to cancel the registration of a registered document.

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14. In the case on hand it is not in dispute, that after registering the cancellation deed, respondent nos.1 to 4 have filed a civil suit which is pending in O.S.No.142 of 2008, seeking declaration that sale deed dated 09.03.2005 executed in favour of the appellants is null and void. In the said suit the appellants have already filed written statement. The learned Single Judge of the High Court also observed that the subsequent cancellation deed is always subject to adjudication of rights of the parties by the competent civil court. As much as the appellants have already filed a written statement in the civil suit in O.S. No.142 of 2008, and contesting the same, we are not inclined to examine the validity and effect of such cancellation deed, at this stage, by interfering with the impugned order of the High Court.

15. It is settled legal position that registration of document is always subject to adjudication of rights of the parties by the competent civil court. Had the appellants not entered their appearance by filing a written statement, it would have been a different situation. It is also to be noted

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- A that subsequent to registration of cancellation deed, a portion of the land is transferred to respondent no.8, to an extent of 0.25 cents.

16. Having regard to the fact that the suit in O.S. No.142 of 2008 on the file of IIIrd Additional Subordinate Court, Coimbatore is pending on the same subject, we are not inclined to interfere with the impugned

- B order and examine the validity of cancellation deed. As we are of the view that the rights of the parties will be subject to adjudication in Civil Suit in O.S. No.142 of 2008, it is not necessary to delve in detail to various contentions advanced by the learned counsels on both sides.

17. We dispose of this civil appeal by observing that rights of the

- C parties with regard to the land in question will be governed by the judgment in pending suit in O.S. No.142 of 2008 on the file of the IIIrd Additional Subordinate Court, Coimbatore. The civil suit shall be decided on its own merits. The parties are directed to maintain status quo with regard to possession existing as on today till the disposal of the suit. The Suit in O.S.No.142 of 2008 is to be disposed of as expeditiously as possible, preferably within a period of one year. The civil appeal is disposed of with directions as indicated above. No order as to costs.

Devika Gujral

Appeal disposed of.