

Arun Aggarwal And Others vs State Of Haryana And Others on 4 December, 2013

Author: Rameshwar Singh Malik

Bench: Rameshwar Singh Malik

CWP NO.13850 of 2013

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HIGH COURT FOR THE STATES OF PUNJAB & HARYANA AT
CHANDIGARH

CWP NO.13850 of 2013
Date of decision:25.10.2013

Arun Aggarwal and others

...Petitioner(s)

Versus

State of Haryana and others

...Respondent(s)

CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

1. To be referred to the Reporters or not ?
2. Whether the judgment should be reported in the Digest ?

Present: Mr.C.B.Goel, Advocate,
for the petitioners.

RAMESHWAR SINGH MALIK, J. (Oral)

Twin important questions of law that fall for consideration of this Court are: (i) whether the Registering Officer under the Registration Act, 1908 ('the Act' for short) has got the jurisdiction to cancel the sale- deed and (ii) whether an aggrieved party can seek a writ in the nature of mandamus directing the Registering Officer under the Act to cancel the sale-deed.

Facts first.

Petitioners claim themselves to be the descendants of one Paras Nath, as per the pedigree table (Annexure P-1). It is further case of the petitioners that in view of the jamabandi for the year

2004-05 (Annexure P-

2), they were joint owners in possession of agricultural land mentioned in the jamabandi. On the basis of alleged bogus and fabricated power of attorney (Annexure P-3), sale-deed dated 27.9.2010 (Annexure P-4) came to be registered qua the above-said land of the petitioners. Having come to CWP NO.13850 of 2013 2 2013.12.11 15:05 know about the above-said sale-deed and on the strength of documents Annexures P-5 to P-7, petitioner No.1 got registered FIR No.204 dated 26.11.2010 under Sections 419, 420, 467, 468, 471, 120-B IPC at Police Station Bawani Khera, District Bhiwani vide Annexure P-8 against respondent No.5, who sought regular bail, which was declined by this Court vide order dated 18.11.2011 (Annexure P-9).

Simultaneously, petitioners approached Registrar-cum-Deputy Commissioner, Bhiwani vide application Annexure P-10 as well as the Commissioner, Hisar Division, Hisar-respondent No.2 seeking cancellation of the sale-deed bearing No.870 dated 27.9.2010. Commissioner, Hisar Division, vide his communication dated 30.10.2012 (Annexure P-12), directed Sub-Registrar, Bawani Khera not to register any sale-deed pertaining to the land mentioned in the representation by the petitioners. However, Collector Bhiwani-respondent No.3 passed the impugned order dated 12.6.2012 (Annexure P-11) observing that there was no provision in the Act under which the Registrar can cancel the registered documents. Feeling aggrieved against the order dated 12.6.2012 (Annexure P-11) passed by Collector, Bhiwani, petitioners have approached this Court by way of instant writ petition seeking a writ in the nature of certiorari for quashing the impugned order. Petitioners are also seeking a writ in the nature of mandamus directing the respondents to cancel the sale-deed bearing No. 870 dated 27.9.2010 (Annexure P-4).

Learned counsel for the petitioners submits that respondent No.5, in connivance with other respondents, has defrauded the petitioners by getting the sale-deed registered on the basis of bogus power of attorney. He further submits that in view of the provisions of Sections 17 and 53 of CWP NO.13850 of 2013 3 2013.12.11 15:05 the Transfer of Property Act, 1882 ('the T.P. Act' for short) and also in view of the provisions contained in Sections 13 to 19 of the Indian Contract Act, 1872 as well as Sections 31 and 34 of the Specific Relief Act, 1963, the sale-deed in question was void ab initio being the result of fraud played by respondent No.5. He next contended that the Registering Officer would have the inherent powers to cancel the sale-deed. Since the Collector- respondent No.3 failed to appreciate the true factual as well as legal position, the impugned order was liable to be set aside. He places heavy reliance on Section 68 of the Act to contend that the Registrar was competent to issue appropriate directions to the Sub-Registrar to cancel the sale-deed. To buttress his arguments, learned counsel for the petitioners relies upon a Full Bench judgment of Andhra Pradesh High Court in Yanala Malleshwari and others v. Ananthula Sayamma and others, 2007(1) CCC 527. Finally, he prays for setting aside the impugned order by allowing the present writ petition.

Having heard the learned counsel for the petitioners at considerable length, after careful perusal of the record of the case and giving thoughtful consideration to the arguments advanced, this Court is of the considered opinion that the present one is not a fit case warranting any interference at the hands of this Court while exercising its writ jurisdiction under Articles 226/227 of the Constitution

of India. To say so, reasons are more than one, which are being recorded hereinafter.

The star argument raised by the learned counsel for the petitioners was since based on Section 68 of the Act, it would be appropriate to reproduce the same and it reads as under:-

"68. Power of Registration to superintend and control CWP NO.13850 of 2013 4 2013.12.11 15:05 Sub- Registrars.- (1) Every Sub -Registrar shall perform the duties of his office under the superintendence and control of the Registrar in whose district the office of such Sub-Registrar is situate.

(2) Every Registrar shall have authority to issue (Whether on complaint or otherwise) any order consistent with this Act which he considers necessary in respect of any act or commission of any Sub-Registrar subordinate to him or in respect of the rectification of any error regarding the book or the office in which any document has been registered."

Learned counsel for the petitioners neither relied upon nor referred to any other provisions of the Act which may confer jurisdiction on the Registering Officer to cancel the sale-deed. A bare reading of the unambiguous provisions of Section 68 of the Act, reproduced above, would make it crystal clear that there was no scope to draw even an interference that the Registering Officer would have any jurisdiction to cancel the sale- deed. Section 68 of the Act also does not empower the Registrar to issue any order or direction to the Sub-Registrar to cancel the sale-deed. Any other interpretation of Section 68 of the Act including the one suggested by learned counsel for the petitioners would be contrary to the scheme and object of the Act. Having said that, this Court feels no hesitation to conclude that the Registering Officer has got no jurisdiction under Section 68 of the Act to cancel the sale-deed.

The next contention raised by the learned counsel for the petitioners revolves around Sections 31 and 34 of the Specific Relief Act and the same read as under:-

CWP NO.13850 of 2013 5 2013.12.11 15:05 "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.

34. Discretion of court as to declaration of status or right.-Any person entitled to any legal character, or to any right as to any property, may institute a suit against any person denying, or interested to deny, his title to such character or right, and the court may in its discretion make therein a declaration that he is so entitled, and the plaintiff need not in such suit ask for any further relief:

Provided that no court shall make any such declaration where the plaintiff, being able to seek further relief than a mere declaration of title, omits to do so.

Explanation.-A trustee of property is a "person interested to deny" a title adverse to the title of some one who is not in existence, and for whom, if in existence, he would be a trustee." A combined reading of Sections 31 and 34 of the Specific CWP NO.13850 of 2013 6 2013.12.11 15:05 Relief Act, reproduced above, would leave no manner of doubt that petitioners were left with no other option except to approach the civil court seeking the declaration that the disputed sale-deed was void or voidable. No doubt, the petitioners would be entitled to invoke the jurisdiction of learned civil court of competent jurisdiction for getting declared the sale-deed as void, having got registered on the basis of alleged fraud. Thus, the above- said provisions of Specific Relief Act also do not advance the cause of the petitioners and the argument raised by the learned counsel for the petitioners is repelled, accordingly.

The next argument raised of the learned counsel for the petitioners is based on Sections 17 and 53 of the T.P. Act. Section 17 deals with direction for accumulation of income derived from disputed property, whereas Section 53 deals with fraudulent transfer. Section 17 of the T.P. Act has no application in the present case. Even Section 53 of the T.P. Act does not help the petitioners because the petitioners will have to prove the allegation of fraud by leading cogent evidence before the learned civil court in their suit for declaration. The learned court of competent jurisdiction would decide on the basis of evidence led by the parties. The issue of fraud cannot be decided by this Court in the writ proceedings for the simple reason that it will require both the parties to lead their respective evidence which can be led only before the civil court in the suit for declaration to be filed by the petitioners, if any. Thus, the argument raised by the learned counsel for the petitioners has been found to be fallacious, in this regard as well.

Similarly, the argument raised by the learned counsel for the petitioners on the basis of Sections 13 to 19 of the Indian Contract Act, CWP NO.13850 of 2013 7 2013.12.11 15:05 1872 has been found to be without any merit. Section 13 defines consent, whereas Section 14 defines free consent. Section 15 defines coercion and Section 16 defines undue influence. Section 17 defines fraud and Section 18 defines misrepresentation, whereas Section 19 deals with voidability of agreements without free consent.

A combined reading of all these Sections of the Indian Contract Act, will make it clear that if the petitioners allege it to be a case of coercion, undue influence, fraud, misrepresentation or voidability of agreements without free consent then the petitioners will have to prove all or any of the allegation covered under the above-said Sections of the Indian Contract Act, again only by way of leading cogent evidence before the learned court of competent jurisdiction. Neither the writ proceedings are the appropriate proceedings nor this Court is the appropriate Forum for proving any of the

above-said allegations levelled on behalf of the petitioners. Thus, the argument raised by the learned counsel for the petitioners on the basis of above-said Sections of Indian Contract Act also falls flat and cannot be accepted.

So far as the judgment in Yanala Malleshwari's case (supra) is concerned, this Court is unable to subscribe to the view taken because of the judgment of the Hon'ble Supreme Court as well as Full Bench judgment of Madras High Court, besides the Division Bench and Single Bench judgments of different High Courts which are later in point of time. The judgments are Thota Ganga Laxmi v. Government of Andhra Pradesh, 2011 (4) R.C.R. (Civil) 78, M/s Latif Estate Line India Ltd. v. Mrs. Hadeeja Ammal, 2011 AIR (Madras) 66, Subeda Nayak v. Government of Orissa, 2008 AIR 771 (Orissa) rendered by the Division Bench of CWP NO.13850 of 2013 8 2013.12.11 15:05 Orissa High Court, Binny Mill Labour Welfare House Building Cooperative Society Ltd. v. D.R. Mruthyunjaya Aradhya, 2008 ILR (Karnataka) 2245, Haji Mohammad Ahmed v. State of Andhra Pradesh, 2012 (2) ALT 57, besides a judgment of this Court in Jodh Singh v. Registrar (Deputy Commissioner), Ambala, 1999 (1) RCR (Civil) 441.

The Hon'ble Supreme Court in Thota Ganga Laxmi's case (supra), after referring to the above-said Full Bench judgment of Andhra Pradesh High Court relied upon by the learned counsel for the petitioners, observed as under:-

"5. In our opinion, there was no need for the appellants to approach the Civil Court as the said cancellation deed dated 4.8.2005 as well as registration of the same was wholly void and nonest and can be ignored altogether. For illustration, if 'A' transfers a piece of land to 'B' by a registered sale deed, then, if it is not disputed that 'A' had the title to the land, that title passes to 'B' on the registration of the sale deed (retrospectively from the date of the execution of the same) and 'B' then becomes the owner of the land. If 'A' wants to subsequently get that sale deed cancelled, he has to file a civil suit for cancellation or else he can request 'B' to sell the land back to 'A' but by no stretch of imagination, can a cancellation deed be executed or registered. This is unheard of in law.

6. In this connection, we may also refer to Rule 26(i)(k) relating to Andhra Pradesh under Section 69 of the Registration Act, which states :-

"The registering officer shall ensure at the time of CWP NO.13850 of 2013 9 2013.12.11 15:05 preparation for registration of cancellation deeds of previously registered deed of conveyances on sale before him that such cancellation deeds are executed by all the executant and claimant parties to the previously registered conveyance on sale and that such cancellation deed is accompanied by a declaration showing natural consent or orders of a competent Civil or High Court or State or Central Government annulling the transaction contained in 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 registerable by any provision of law."

7. A reading of the above rule also supports the observations we have made above. It is only when a sale deed is cancelled by a competent Court that the cancellation deed can be registered and that too after notice to the concerned parties. In this case, neither is there any declaration by a competent court nor was there any notice to the parties. Hence, this Rule also makes it CWP NO.13850 of 2013 10 2013.12.11 15:05 clear that both the cancellation deed as well as registration thereof were wholly void and nonest and meaningless transactions."

The Full Bench judgment of Madras High Court in M/s Latif Estate Line India Ltd's case (supra) dealt with the issue at great length referring to different judgments of the Hon'ble Supreme Court, Privy Council and different High Courts including the Full Bench judgment of Andhra Pradesh High Court in Yanala Malleshwari's case (supra), deciding that a cancellation deed, if any, has to be the result of only bilateral act of both the parties to the sale-deed. The Full Bench observed as under:-

"41.....Having regard to the above provisions, in our opinion, a registered sale deed, if sought to be cancelled, registration of such deed must be at the instance of both the parties viz., bilaterally and not unilaterally. Section 34-A of the Act, whereby the Registering Authority is to enquire whether or not such document was executed by the persons by whom it purports to have been executed. A sale is essentially an executed contract between two parties on mutually agreed conditions. Question is as to whether such contract can be unilaterally rescinded, particularly, in a case of sale deed. In this context, we may refer to Section 62 of the Indian Contract Act, 1872 which provides that contract which need not be performed. By that provision, any novation, rescission and alteration of a contract can be made only bilaterally. A deed of cancellation will amount to rescission of contract and if the CWP NO.13850 of 2013 11 2013.12.11 15:05 integrity of this document issue in question is viewed from the application of Section 62 of Indian Contract Act, any rescission must be only bilaterally. See City Bank N.A. v. Standard Chartered Bank and Others, AIR 2003 SC 4630 : (2004) 1 SCC 12."

Specifically disagreeing with the view taken by the Full Bench of Andhra Pradesh in Yanala Malleshwari's case (supra), it was observed as under:-

44. The Bench further disagreed with the view taken by the Full Bench of the Andhra Pradesh High Court in Yanala Malleshwari and others v. Ananthula Sayamma and others, 2007(5) R.C.R.(Civil) 609 : AIR 2007 Andhra Pradesh 57 (FB) : (2007)1 CTC 97 and held as under :

"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 32-A of the Indian Registration Act, which was recently introduced, the learned Judge had 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 CWP NO.13850 of 2013 12 2013.12.11 15:05 in view of Section 32-A 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 *quid pro quo*. 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 23-A of the Registration Act. In my considered opinion, Section 23-A which speaks of re- registration of certain documents, has CWP NO.13850 of 2013 13 2013.12.11 15:05 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 generalize 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 32-A of the Indian Registration Act, alone are to be rejected by the Registering Officer."

While concluding and clinching the issue against the petitioner herein, the Full Bench in *M/s Latif Estate Line India Ltd's case* (supra) laid down the law as under:-

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 CWP NO.13850 of 2013 14 2013.12.11 15:05 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 CWP NO.13850 of 2013 15 2013.12.11 15:05 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.

The Division Bench of Orissa High Court in Subeda Nayak's case (supra) held as under:-

"5. Therefore, in view of the above, it was not within the jurisdiction the District Sub-Registrar to make an endorsement regarding cancellation of the sale deed, as in our opinion, once a sale deed was executed transferring of the right, title and interest from the property by the executant, he no more remains capable of dealing with such property after transfer is made.

6. Therefore, if a document for cancellation of the sale deed is executed, the same cannot have any force over the sale deed already executed. There are the District Sub-Registrar should not have made an endorsement on the original sale deed or on its copy, which is maintained in His office. Therefore, we allow this Writ Petition and quash the endorsement made by the District Sub-Registrar on the copy of the sale

deed and he is CWP NO.13850 of 2013 16 2013.12.11 15:05 integrity of this document directed to delete the endorsement from the records of the sale deed maintained in his office.

7. We hereby make it clear that we have not considered the execution of the deed of cancellation of sale deed and it is always open for the Petitioner to approach the appropriate forum for getting the cancellation of that document."

In D.R.Mruthyunjaya Aradhya's case (supra), Karnataka High Court interpreting different provisions of the Specific Relief Act, the Indian Contract Act as well as the Registration Act held as under:-

36. When the owner of a property sells/conveys the property to the purchaser under a written document and get the same registered, the right and the title to the said property is transferred from the owner to the purchaser on registration of the said documents. After such registration the owner of the property ceases to have any interest and all his rights in the property gets extinguished. He would not have any right to meddle with the property thereafter. If such a person were to execute one more sale deed and get it, registered in respect of the said property the said sale deed has no value in the eye of law. The reason being on the date of the second sale deed, he is not the owner of the property. Therefore, the purchaser would not get title to the property as the vendor could convey only that title which he has in the property on the date of execution and registration of the sale deed. Similarly, if after execution and registration of the sale deed, the owner wants to get back the property, it has to be done by cancelling the sale deed on CWP NO.13850 of 2013 17 2013.12.11 15:05 any of the grounds which are available to him under the provisions of the Indian Contract Act. Unilaterally he cannot execute what is styled as a deed of cancellation, because on the date of execution and registration of the deed of cancellation, the said person has no right or interest in that property.

Normally what can be done by a Court can be done by the parties to an instrument by mutual consent. Even otherwise if the parties to a document agree to cancel it by mutual consent for some reason and restore status quo ante, it is possible to execute such a deed. An agreement of sale, lease or mortgage or partition may be cancelled with the consent of the parties thereto. Because in the case of agreement of sale, lease, mortgage or partition, each of the parties to the said document even after the execution and registration of the said deed retains interest in the property and, therefore, it is permissible for them to execute one more document to annul or cancel the earlier deed. However, it would not apply to a case of deed of sale executed and registered. In the case of a sale deed executed and registered the owner completely loses his right over the property and the purchaser becomes the absolute owner. It cannot be nullified by executing a deed of cancellation because by execution and registration of a sale deed, the properties are being vested in the purchaser and the title cannot be divested by mere execution of a deed of cancellation. Therefore, even by consent or agreement between the purchaser and the vendor, the CWP NO.13850 of 2013 18 2013.12.11 15:05 said sale deed cannot be annulled. If the purchaser wants to give back the property,

it has to be by another deed of conveyance. If the deed is vitiated by fraud or other grounds mentioned in the Contract Act, there is no possibility of parties agreeing by mutual consent to cancel the deed. It is only the Court which can cancel the deed duly executed, under the circumstances mentioned in Section 31 and other provisions of the Specific Relief Act, 1963. Therefore, the power to cancel a deed vests with a Court and it cannot be exercised by the vendor of a property. In this context it is necessary to see Section 31 of the Specific Relief Act, which 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."

37. A reading of the aforesaid provision makes it clear CWP NO.13850 of 2013 19 2013.12.11 15:05 that both void and voidable instruments can be cancelled by the Court. The cause of action for such an action is an apprehension, if such an instrument is left outstanding may cause serious injury to the person against whom the written instrument is void or voidable. Such a person has the discretion to approach a competent Civil Court for adjudging the said instrument to be delivered up and cancelled. Even though in law a void instrument is unenforceable, has no value in the eye of law, void ab initio, the very physical existence of such a document may cause a cloud on the title of the party or cause injury or one can play mischief. Therefore, the law provides for cancellation of such instruments which are also non est, but which are in existence as a fact physically to get over the effect of such instrument. Once such an instrument is registered, the said registration has the effect of informing and giving notice to the World at large that such a document has been executed. Registration of a document is a notice to all the subsequent purchasers or encumbrances of the same property. The doctrine of constructive notice is attracted. Therefore, the effect of registration of an instrument not only affects the rights of the parties to the instrument but also affects parties who may claim under them. Therefore, once such an instrument is ordered to be delivered up and cancelled an CWP NO.13850 of 2013 20 2013.12.11 15:05 obligation is cast upon the Court to send a copy of its decree to the officer in whose office the instrument was registered, so that such an officer shall note on the copy of the instrument contained in his books the fact of its cancellation. Once such an entry is made in the books of the Sub-Registrar about the cancellation of the registered instrument, it also acts as a notice of cancellation to the whole World and it is also a constructive notice of cancellation of the said instrument.

In Jodh Singh's case (supra) this Court discussed the law on the subject and finally observed as under:-

"13.....A bare perusal of Section 35 of the Act would show that the powers of the Sub Registrar in registering a document presented to him for registration are absolute. Sub-Registrar for the purpose of satisfying himself with regard to identity of the persons appearing before him or any other such purpose contemplated by the Act, is empowered to examine any person in his office and it is only where the person by whom document purported to be executed, denies its execution or if any such person appears to be minor, an idiot or a lunatic, he shall refuse to register the said document. The power conferred under Section 68 of the Act on the Registrar to exercise superintendence and control over the Sub Registrar is administrative. A Division Bench of the Lahore High Court in Hussain Ali Shah v. Sardar Ali Shah and others, AIR 1933 CWP NO.13850 of 2013 21 2013.12.11 15:05 Lahore 786, held that Section 68(2) of the Act does not confer upon the Registrar the power of cancelling the registration of a document, the execution of which is not denied and which has already been registered by Sub Registrar. In Nyadarsingh v. Chensingh, AIR 1955 Madhya Bharat 205, the Division Bench relied on the judgment of Lahore High Court, and held that Section 68 only empowers the Registrar to issue directions to the Sub Registrars in respect of their ministerial functions and duties. The section does not confer on the Registrar the power of cancelling registration of a document, the execution of which is not denied and which has been registered by the Sub Registrar."

Following the law laid down by the Hon'ble Supreme Court in Thota Ganga Laxmi's case (supra), Andhra Pradesh High Court in Haji Mohammed Ahmed' case (supra), held as under:-

"The Supreme Court, in Thota Ganga Laxmi v. Govt. of A.P. Judgment in Civil Appeal No. 791 of 2007, held that if any sale deed is required to be cancelled, the only remedy is by way of a civil suit for cancellation, but no cancellation deed can be unilaterally executed or registered. The Supreme Court, after referring to Rule 26(i)(k) of the Registration Rules, held that it is only when the earlier sale deed is cancelled by a competent court can a cancellation deed be registered that too after notice to the concerned parties; and unilateral cancellation of the sale deed, as well as registration thereof, were wholly void, non est CWP NO.13850 of 2013 22 2013.12.11 15:05 and meaningless transactions. The observations of the Supreme Court, aforementioned, made in the context of sale deeds would equally apply to unilateral cancellation of gift deeds also. Unilateral cancellation of the gift deed in the present case must therefore be, and is, declared to be void. It is made clear that this order will not preclude the respondent from invoking the jurisdiction of the competent civil court for cancellation of the subject gift deed."

Reverting back to the facts of the present case and respectfully following the law laid down by the Hon'ble Supreme Court and other different High Courts, referred to here-in-above, it is unhesitatingly held that the Collector committed no error of law while refusing to cancel the sale deed and the impugned order deserves to be upheld.

After discussing the factual background of the case in brief, Collector came to a judicious conclusion while passing the impugned order and the operative part thereof reads as under:-

"Today file has been presented before me. From the counsel of the application it was known about the application that under which rule/act you have submitted this application before this Court. The counsel for the applicant could not produce any rule/act in this regard. There is no provision in the Indian Registration Act, 1908 under which the Registrar can cancel the registered document. As such the application of the applicant is filed."

So far as the apprehension of the petitioners that pursuant to the sale-deed in question further sales may take place was concerned, their CWP NO.13850 of 2013 23 2013.12.11 15:05 grievance has been redressed protecting their right by the order dated 30.10.2012 (Annexure P-12) passed by Commissioner Hisar Division issuing appropriate directions.

During the course of hearing, learned counsel for the petitioners could not point out any jurisdictional error or patent illegality apparent on the record of the case while passing the impugned order by the Collector. Further, no prejudice has been shown to have been caused to the petitioners by passing the impugned order by the Collector. In fact, the Collector had no other option except to pass the impugned order because he had got no jurisdiction to order the cancellation of sale-deed under the Act. Thus, the impugned order deserves to be upheld.

In view of the foregoing discussion, the answer to the first question posted at the outset, is and has to be against the petitioners holding that the Registering Officer has not been conferred any jurisdiction under the Act to cancel a sale-deed. Even the Registrar, while exercising his powers under Section 68 of the Act, has got no jurisdiction to issue any order or direction to the Sub-Registrar directing him to cancel the sale-deed.

Once the Registering Officer has not been conferred any jurisdiction under the Act to cancel the sale-deed, this Court would be transgressing its jurisdiction while issuing a writ of mandamus at the instance of the petitioners directing the Registering Officer or the Collector to cancel the sale-deed. Thus, the second question posted hereinabove is answered accordingly.

No other argument was raised.

Considering the peculiar facts and circumstances of the case noted above, coupled with the reasons aforementioned, this Court is of the CWP NO.13850 of 2013 24 2013.12.11 15:05 considered view that the instant writ petition is misconceived, bereft of merit and without any substance. Thus, it must fail. No case for interference has been made out.

Resultantly, the present writ petition stands dismissed, however, with no order as to costs.

25.10.2013

(RAMESHWAR SINGH MALIK)

mks

JUDGE