

M/S.Latif Estate Line India Ltd vs Mrs. Hadeeja Ammal on 11 February, 2011

Equivalent citations: AIR 2011 MADRAS 66, 2011 AIR CC 1533 (MAD), 2011 (2) AIR KANT HCR 550, (2011) 3 CIVILCOURTC 276, (2011) 1 MAD LW 673, (2011) 2 RECCIVR 531, (2011) 2 LANDLR 266, (2011) 1 CURCC 395, (2011) 4 CIVLJ 570, (2011) 2 CAL HN 450, (2011) 2 MAD LJ 569, (2011) 3 KER LT 70, (2011) 100 ALLINDCAS 672 (MAD), (2011) 2 JCR 1 (MAD)

Bench: M.Y.Eqbal, P.Jyothimani, T.S.Sivagnanam

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 11.02.2011

CORAM

THE HONOURABLE MR. M.Y.EQBAL, CHIEF JUSTICE
THE HONOURABLE MR. JUSTICE P.JYOTHIMANI
AND
THE HONOURABLE MR. JUSTICE T.S.SIVAGNANAM

W.A. NOS. 592 & 938 OF 2009

W.A. NO. 592 OF 2009

M/s.Latif Estate Line India Ltd.
rep. by its Managing Director
Mr. Habib Abdul Latif
No.14, Temple Road
Secretariat Colony
Kilpauk, Chennai 10.

.. Appellants

- Vs -

1. Mrs. Hadeeja Ammal

2. The Inspector General of Registration
Santhome, Chennai 4.

3. The Sub Registrar
Ambattur, Chennai.

.. Respondents

W.A. NO.938 OF 2009

1. Habib Abdul Latif
2. Mohideen Abdul Latif

.. Appellants

- Vs -

1. Syeda Aamina Raheem
rep. by her Power of Attorney
Agent, V.Veeramani, Chennai.

2. The Sub Registrar
Registration Department.

.. Respondents

W.A. No.592 of 2009 filed against the order made by learned single Judge in W.P. No.2729
W.A. No.938 of 2009 filed against the order made by learned single Judge in W.P.
For Appellants : Mr. V.Raghavachari

For Respondents

: Mr. J.Raja Kalifulla, Govt. Pleader
Ms. Chitra Sampath Amicus Curiae

JUDGMENT

THE HON BLE CHIEF JUSTICE These two appeals have been filed against the order passed in W.P.Nos.17555 of 2008 and 27291 of 2008.

2. In W.P.No. 17555 of 2008, the facts of the case are that the writ petitioner (respondents 2 and 3) claims to be the owner of Plot No.223, measuring 2500 sq.ft. comprised in survey Nos.98/5, 98/2A/2 and 98/2B/3, Kakkalur Village, Tiruvallur Taluk and District. The said property allegedly purchased by the writ petitioner by means of registered sale deed dated 13th Nov., 1996, from the 2nd respondent/appellant. She claims that the entire sale consideration was paid and she was also put in possession. However, the 2nd respondent/appellant unilaterally executed the cancellation deed on 27th Aug., 2007, which was registered by the 1st respondent, being Document No.16826/07. The 2nd respondent/appellant denied the allegation and stated that the writ petitioner was not in possession of the property and the appellant continued to be in possession of the same. It was also contended that the sale consideration was not paid. Learned single Judge, following the judgment and order rendered in W.P. No.8567/08 held as under :-

i) Challenging registration of a unilaterally executed cancellation of a sale deed, a writ petition is maintainable under Article 226 of the Constitution of India.

ii) A cancellation of a sale deed executed by mutual consent by all parties to the sale deed, if presented for registration, Registering Officer is bound to register the same if the other provisions like Section 32-A of the Registration Act are complied with.

iii) The Registering Officer is obliged legally to reject and to refuse to register a unilaterally executed deed of cancellation of a sale deed without the knowledge and consent of other parties to the sale deed.

On the basis of the aforesaid conclusion, learned single Judge held that the cancellation deed was executed unilaterally by the 2nd respondent/appellant without the knowledge and consent of the writ petitioner and without complying the requirements of Section 32-A of the Registration Act. Hence, the writ petition was allowed and the registration of cancellation deed was quashed.

3. Similarly, W.A. No.592 of 2009 arose out of the order passed in W.P.No. 27291 of 2008. The facts of the case are that the writ petitioner/respondent claimed to be the owner of Plot No.24 measuring 3010 sq. ft. of Survey No.132/1B1 and 131/A present survey No.132/1A1 of Thirumullaivoyal Saidapet Taluk, Chengai MGR District, which was purchased by means of registered sale deed, dated 13th Dec., 1997, from the 3rd respondent/appellant. She claimed that the entire sale consideration was paid and she was put in possession of the same. However, the 3rd respondent/appellant unilaterally executed a cancellation deed on 29th Aug., 2007 and the same was registered by the 2nd respondent as Document No.10079/07. The writ petitioner, therefore, sought quashing of the said cancellation deed. The case of the respondent/appellant was that the writ petitioner was never put in possession of the property after the execution of the sale deed. Rather, because of the non-payment of consideration, the appellant executed the cancellation deed nullifying the earlier sale deed. Learned single Judge, following the decision in W.P. No.8567/08 came to the same conclusion as noted above in W.A. No.938/09. The judgment and order has been challenged by the appellant on the same grounds as made out in the aforesaid appeal, W.A. No.938/09.

4. A Division Bench of this Court while hearing the appeals found that the learned single Judge relied on the earlier decision passed in W.P.No.8567 of 2008 where the learned Single Judge held that the cancellation of sale deed executed by mutual consent by all the parties to the sale deed, if presented for registration, the Registering Officer is bound to register the same, if other provisions of Section 32-A of the Registration Act have been complied with.

5. Doubting the correctness of the judgment rendered in W.P.No.8567 of 2008, as also the Division Bench judgment in W.A.No.194/2009, these appeals have been referred to a Full Bench for deciding the correctness of these judgments, and also for deciding the following questions formulated by the Bench.

(i) Whether cancellation of a registration of a registered sale deed of an immovable property having valuation of more than one hundred rupees can be registered either under Sections 17 or 18 or any other provision of the Registration Act?

(ii) Whether for such cancellation of a registered sale deed, signature of person claiming under the document for sale of property is required to sign the document, if no such stipulation is made under the Act? and

(iii) Whether the decisions of the single Judge dated 10.2.2009 made in W.P.No.8567 of 2008 and the Division Bench dated 1.4.2009 made in W.A.No.194 of 2009 amount to amending the provisions of the Registration Act and the Rules framed thereunder, by inserting a clause for extinguishing right, title or interest of a person on an immovable property of value more than Rs.100/- in a manner not prescribed under the Rules.?

6. Before proceeding further, we would like to discuss the facts and circumstances under which the Division Bench passed the order in W.A.No.194/2009 arose out of W.P.No.19528/2007. It appears that W.P.No.19528/2007 was filed by the petitioner in that case for quashing the order dated 18.4.2007 passed by the Sub-Registrar, Periamet, Chennai, by which the petitioners were directed to get the signatures of the respondents also in the deed of cancellation, and unless that is done, the deed of cancellation shall not be registered. The said order of the Sub-Registrar was challenged by filing the aforementioned writ petition. The learned single Judge was persuaded to accept the view of the writ petitioner and allowed the writ petition directing the Sub-Registrar to register the deed of cancellation unilaterally signed and presented by the writ petitioner. In appeal filed by the respondent-appellant (W.A.No.194/2009), the Division Bench of this Court took a view that the Sub-Registrar followed the correct provision of law and directed the writ petitioner to get the signatures of the other parties also in the deed of cancellation. Hence, the Division Bench set aside the judgment passed by the learned single Judge.

7. For better appreciation, paragraphs 5 & 6 of the order of the Division Bench is reproduced herein below: -

. Learned counsel appearing for respondents 1 and 2 tried to defend the impugned order by submitting that the parties have filed rival suits and the matter can be look into in the civil proceedings. We are not prepared to accept this submission of the learned counsel for respondents 1 and 2. The civil suits filed by the rival parties will be decided on their own merits. Here, we are concerned only with the procedure to be adopted at the time of registering a document. The Sub-Registrar had followed the provisions of law correctly and the learned single Judge had no reason to interfere with that order. In these circumstances, we quash the order passed by the learned single Judge, dismiss the writ petition filed by respondents 1 and 2 and allow the present writ appeal. There shall be no order as to costs. Consequently, M.P.No.1 of 2009 is closed.

6. We have been informed that subsequent to the order passed by the learned single Judge, the Sub-Registrar has registered the Deed of Cancellation. In view of the order passed herein, the registration of the Deed of Cancellation will now stand cancelled. The appellant will tender a copy of this judgment within a week to the Sub-Registrar, whereupon he can pass appropriate orders canceling the registration of the Deed of Cancellation. But before passing such order, the Sub-Registrar will issue notice to respondents 1 and 2 and thereafter pass appropriate orders after hearing both sides.

8. In W.P.No.8567 of 2008, the facts of that case are that the writ petitioner purchased the property by means of a registered sale deed dated 14.7.2006 from the second respondent through the third respondent and was put in possession of the said property. Subsequently, the third respondent entered into a sale agreement with the fourth respondent, who is the brother of the third respondent agreeing to sell the very same property to the fourth respondent. Thereafter the third respondent without the knowledge and consent of the purchaser/writ petitioner executed a deed of cancellation nullifying the sale deed dated 14.7.2006. The writ petitioner's case was that by virtue of the sale deed executed by the third respondent, the petitioner acquired absolute right and title in the said property, and therefore, the unilateral cancellation of the sale deed by the third respondent is null and void and opposed to public policy. The learned single Judge formulated a question for decision i.e., Whether, registration of a deed of cancellation, unilaterally executed by the vendor to nullify the earlier sale validly made, is sustainable in law?. The learned single Judge after considering the relevant provisions of the Registration Act, and other clauses applicable thereto, allowed the writ petition and quashed the deed of cancellation by coming to the following conclusion:-

1. Out of the foregoing discussions, the emerging conclusions are summed up as follows: -

(i) Challenging registration of a unilaterally executed deed of cancellation of a sale, a writ petition is maintainable under Article 226 of the Constitution of India.

(ii) A deed of cancellation of a sale executed by mutual consent by all parties to the sale deed, if presented for registration, the registering officer is bound to register the same provided the other requirements like Section 32-A of the Registration Act have been complied with.

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

9. Mr.V.Raghavachari, learned counsel appearing for the appellants assailed the impugned order passed by the learned single Judge by contending that the argument of the writ petitioner that Section 17 would not enable the Sub-Registrar to register a document in the nature of deed of cancellation is apparently fallacious. According to the counsel, the Registration Act does not speak of a deed of Sale, Mortgage, Lease, Gift or Exchange, rather it only speaks of document which requires compulsory registration under Section 17 of the Registration Act. According to the learned counsel, Section 17 (b) of the Act mandates registration of a non-testamentary instrument which purports or operate to create, declare, assign, limit or extinguish. The Act does not categorise a particular document by the nature of right or interest created. On the other hand, it will fall within the term create such rights. Both creation of rights as well as its annulment warrants Registration of Instruments. Learned counsel contended that the Registration Act strikes at the instrument and not the transaction. According to the learned counsel, in a nutshell, it can be said that it is not within the realm of the registering department to analyze the rights of the parties and investigate into the

title or ascertain their interest while receiving and registering. The obligation of the Registrar is to register all documents that are presented before him for registration, but of course, subject to the process of enquiry contemplated under Section 34 of the Registration Act.

10. Learned counsel further contended that the Registering Officer shall ascertain by examining the person present and witnesses only on the issue of identification of the party presenting it and nothing more. The identification of parties is the prime concern of the Registering Officer and not the title. According to the learned counsel, the provision of Registration Act cannot be read into the Transfer of Property Act. Both of them are separate enactments. Merely because a document is registered there is no supposition that the executant is the owner of the property and he conveys a title.

11. Learned counsel further contended that registration of a document is also not an encumbrance over the property. Purchase of a property and its possession in the hands of the vendee certainly is no encumbrance for him. According to the learned counsel, it is still open to a third party to claim title to the property, though he is not a registered owner and still a stranger to the deed can assert ownership, if he is otherwise entitled. Learned counsel submitted that it is the Civil Court which has the final say on title. The rights of the parties are determined under the provisions of the Transfer of Property Act only. Consequently, the provisions of Transfer of Property Act cannot be telescoped into the provisions of the Registration Act so as to demand of the Registering Authority to register instrument from the title holders. The area of operation of the two enactments are distinct and separate.

12. Learned counsel contended that when a person has no title or when the title is defective or when the document is void or voidable for some legal reason, it is well within the realm of the executant to recall or avoid it. The fact that the document is registered ipso facto cannot create a right in favour of a purchaser, when it is defective for some legally valid reason or when the Sub-Registrar transgresses his authority and registers a document in respect to a property that falls outside his territorial limits. The argument of the learned counsel is that it is only the Civil Court in a regular suit which can adjudicate the title of the parties. The Registrar is not legally competent to deny registration of the instrument on surmises that the person presenting the document has no legal right. On the contrary, whatever document is given to the Sub-Registrar he is bound to register.

13. On the issue of cancellation of sale deed, learned counsel contended that it is not the case of the writ petitioner that such a document cannot be registered. The document can be registered, provided it was done in presence of the parties.

14. Learned counsel drew our attention to Section 22-A of the Act and contended that the object of Section 22-A is to enable the Government to declare that registration of any document or class of document being opposed to public policy. Section 22-A empowers the Registering Officer to refuse registration of the document on the grounds of public policy. Learned counsel referred to G.O.Ms.No.150 dated 22.9.2000.

15. Learned counsel invited our attention to a judgment of the Supreme Court in AIR 2005 SC 3401, wherein the powers of the State to legislate was the subject matter of challenge. He referred, in particular, to paragraphs 54 & 55 of the judgment.

16. In short the argument of the learned counsel is that the cancellation of sale deed encourages fraud and is against public policy, and that co-mingling of the provisions of two different enactments, namely the Transfer of Property Act and Registration Act is not desirable. The Registrar is a creature of Registration Act and his powers are circumscribed by the provisions of the Act. Attempting to confer more powers than what the law conferred on them is illegal and any such act is liable to be struck down as transgression of powers or hit by doctrine of ultra vires.

17. Next, learned counsel advanced his argument on the question of Section 4 of the Transfer of Property Act. According to the learned counsel, Section 4 of the Transfer of Property Act speaks of Section 54 and obligates the provisions to be read as supplemental to the Registration Act, 1908. Learned counsel contended that the question as to whether the provisions of Transfer of Property Act should be read into the Registration Act was considered by the Full Bench of the Patna High Court in AIR 1935 Patna 291.

18. Learned counsel further advanced his argument on the issue of Cancellation of Sale deed by contending that the Registration Act does not include registration of the sale deed specifically. Section 17 speaks of making registration compulsory in respect of instruments which purport or operate to create, declare, assign, limit or extinguish. According to the learned counsel, whatever be the nomenclature it is the obligation of the Registrar to ascertain the nature of right and title that is sought to be dealt with. Sale creates and cancellation extinguishes. Both fall under Section 17(b) and consequently, the Registrar has an obligation to receive the document notwithstanding the rights of the parties.

19. On the issue of applicability of Section 31 of the Specific Relief Act, learned counsel relied on a Full Bench decision of the Madras High Court reported in AIR 1960 Madras 1 and AIR 2000 AP 57. Learned counsel submitted that Section 31 is a discretionary remedy and any person can institute a suit and not necessarily a party to the instrument. If a document is considered to be void or voidable anyone who has a legal apprehension that such instrument, if left outstanding may cause serious injury, may sue to get the document adjudged as void or voidable. A reading of the provision makes it clear that a document need not necessarily be set aside. It may be removed, if the person considers it as a source of possible mischief.

20. On the issue of Public Policy and Registration Laws, learned counsel contended that the Government of Tamil Nadu issued a notification in G.O.Ms.No.150 dated 22.9.2000 under the powers conferred on it under Section 22-A of the Registration Act. According to the learned counsel, the section is based purely on public policy. This Court had struck down the provision as illegal in Dr.Belly's case reported in 2007 3 MLJ 1025. Accepting the verdict, the Government of Tamil Nadu issued G.O.Ms.No.139 dated 25.07.2007. For useful reference, the said G.O is quoted hereunder:-

Registration Act, 1908 - Notification issued under Section 22-A of the Act declaring registration of certain categories of documents as opposed to public policy- cancellation of the notification orders- issued.

In exercise of the powers conferred by sub-section(1) of Section 22-A of the Registration Act, 1908 (Central Act XXI of 1908) read with Section 15 of the Tamil Nadu General Clauses Act, 1891 (Tamil Nadu Act 1 of 1891) the Government of Tamil Nadu hereby revokes the Commercial Taxes department notification issued in G.O.Ms.150, Commercial Taxes Department dated 22.09.2000 and published as notification No.11 (2)/CT/1024(e)/2000 at pages 1 to 2 of part II-Section 2 of the Tamil Nadu Government Gazette, extra ordinary dated the 22nd September, 2000. According to the learned counsel, when this Court had expressed that public policy is a matter to be well defined in the statute and quashed the notification, it is not within the realm of the Court to declare through a judgment that cancellation of sale deed is opposed to public policy as had been done in the matter under appeal. Learned counsel submitted that the Government of Tamil Nadu had amended the law in Act 53 of 2008 but so far had failed to notify it.

21. Mrs.Chitra Sampath, learned counsel, who has been appointed to assist the Court, submitted that a sale deed is a document which transfers ownership in the property. The transfer is complete and effective upon the completion of registration of the sale deed. Once the vendor has divested himself of his ownership over the property then he retains no control or right over the said property and he cannot purport to create any document in regard to the same. This is a settled proposition of law. On the contrary, if a vendor executes a document named as Cancellation Deed claiming to cancel a validly executed and registered document, it has no existence in the eye of law. It is void and unenforceable in law. If that is the case, if such a document is presented to Sub-Registrar, whether is bound to register or reject is a crux issue to be answered.

22. Learned counsel submitted that the Registration Act confers no power with the Registrar to cancel a document which had validly been registered as per the Act. Learned counsel relied on two decisions namely, 1933 Lah 786 and AIR 1955 MB 205. The Registrar under the guise of registering the cancellation of the sale deed cannot perform any act which would defeat the provisions of the Act. An act which the Registrar cannot perform directly cannot be done indirectly. By the unilateral cancellation of sale deed the vendor seeks to annul a duly registered document executed by him and also to re-vest himself with the property already conveyed. Both the purposes are not valid in law, but opposed to public policy. So also if the cancellation deed is executed by both the vendor and the purchaser, it is nothing but a conveyance by the purchaser of his right in the immovable property to the vendor, amounting to a conveyance, though using the nomenclature as a cancellation deed. The intention of the parties to the document is to retransfer the immovable property back to the vendor and is clearly hit by Section 17 of the Act and the document has to be treated only as a conveyance and stamp duty paid and not a nominal value as a deed of cancellation.

23. Learned counsel submitted that with regard to cancellation of instruments and decrees, Section 31 of the Specific Relief Act, 1963 provides for the same. It enables any person who is affected by any

void or voidable document to sue for its cancellation. The provision clearly lays down that any registered document, instrument or decree can be avoided only by approaching a Civil Court and obtained a decree thereon. Learned counsel relied on a judgment reported in 2005 (6) SCC 705 and AIR 1964 SC 227 with regard to interpretation of a procedural or adjective law vis-à-vis the substantive law.

24. Learned counsel submitted that in regard to cancellation of instruments Art.59 of the Limitation Act, 1963 provides for a period of three years from the date of accrual of right to seek cancellation to a person who seeks to avoid the document. According to the learned counsel, any person, who has executed a document and registered it cannot be permitted to cancel it on his own or even bilaterally except in cases where such a right is vested in him under the substantive law, namely, leases, gifts, where the power of revocation is prescribed and permitted.

25. Learned counsel submitted that in the event this Court holds that Registrar has the authority to register even deeds of cancellation, then the provisions with regard to invoking the same needs to be examined.

26. A deed of cancellation of a sale deed either done unilaterally or bilaterally is one in relation to extinguishment of a right in the immovable property of a person and creation of right in the other. Learned counsel relied on a judgment reported in ILR XXXII Allahabad 171 wherein a question arose with regard to evasion of stamp duty on the deed of reconveyance. Learned counsel submitted that the Sub-Registrar is bound to ensure that any deed of cancellation presented to him is treated as a conveyance and hence all formalities that are attached to a sale deed are to be followed for completing the registration. This would mean that the executant of the document would be the purchaser and the proper stamps as regards conveyance is also to be paid on the document.

27. Learned counsel submitted that when a person, who is a party to the document sues for cancellation of a document, then the law of court fees prescribes that he pays a court fee on the value of the document. In that case, either one has to pay the stamps as required for a deed of sale or pay the court fees on the value of the document to avoid any registered deed of sale. On the contrary now the deed of cancellation is impressed with a minimum stamps and the registration is completed. This itself shows that the cancellation is not a deed in the eye of law at all. This deed cannot set aside a duly registered sale deed. Learned counsel submitted that by construing a cancellation of a sale deed as a reconveyance of the same property will be within the powers of the Registrar as he is bound by the provisions of Section 17.

28. Learned counsel submitted that it would be the interest of the landowners and the public if a deed of cancellation is treated as a re-conveyance by which it becomes necessary for both the parties to the document to sign and appear before the Registrar and complete the formalities of registration as that of sale deed. On the other hand, unilateral cancellation of sale deed would lead to anomalous situation and multiplicity of litigations. Learned counsel submitted that if this Court holds that a deed of cancellation can be made only bilaterally and in the case of a sale deed it would be a reconveyance of a property, then the powers of the Registry to receive the said document would also be settled and the legislation would be given a purposeful meaning.

29. Learned counsel submitted that the circular of the Inspector General of Registration issued in the year 2007 directing all the Registrars and Sub-Registrars to register cancellation of documents only if both the parties to the documents consent, was challenged before this Court and the said circular was upheld by this Court in the judgment reported in 2009 (6) CTC 1009 (DB). The judgment delivered by Nagamuthu, J., in 2009 1 CTC 707 holding that unilateral cancellation of sale deed was void and that the Registrar has no powers to register such a document was affirmed in appeal, as reported in 2009 4 CTC 627. The Special Leave Petition filed was also dismissed by order dated 18.12.2009.

30. Before deciding the question referred to the Full Bench, it would be relevant to discuss some of the provisions of the Registration Act. The Registration Act was enacted in 1908. The object and purpose of the said Act inter alia is to provide a method of public registration of document so as to give information to the people regarding legal rights and obligations arising or affecting a particular property and to perpetuate documents which may afterwards be of legal importance and also to prevent fraud. In other words, the object of registering the document is to give notice to the public at large that the document has been executed to prevent fraud and forgery and to secure a reliable and complete amount of all the transactions affecting the title to the property.

31. Sections 17 & 18 deals with the registration of documents. Section 17 of the Act enumerates documents, which are to be compulsorily registered. Section 18 deals with documents of which registration is optional. In a nut shell, Section 17 inter alia provided that all 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 requires compulsory registration. All other documents not enumerated under Section 17 and comes under Section 18 could be registered at the option of the parties.

32. Controversy arose only after the amendment was brought in by the State of Tamil Nadu in the Registration Act by inserting Section 22-A of the Act vide Registration (Tamil Nadu Amendment) Act, 1994. Section 22-A reads as under:-

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

33. Pursuant to the aforesaid provisions of the Act, a notification vide G.O.Ms.No.150, Commercial Taxes, dated 22.9.2000 was issued laying down guidelines relating to documents/class of documents as opposed to public policy. G.O.Ms.150 dated 22.9.2000 reads as follows: -

"In exercise of the powers conferred by sub section (1) of Section 22A of the Registration Act, 1908 (Central Act, XVI of 1908), the Governor of Tamil Nadu hereby declares the following documents as opposed to public policy, namely :

1. Any instrument relating to

i) conveyance of properties belonging to the Government or the local bodies such as the Chennai Metropolitan Development Authority or Corporations, or Municipalities, or Town Panchayats, or Panchayat Unions or Village Panchayats; or

ii) conveyance of properties belonging to any religious institutions including temples, mutts, or specific endowments managed by the Hereditary Trustees/Non hereditary trustees appointed to any religious institution under a Scheme settled or deemed to have been settled under the provisions of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 (Tamil Nadu Act 22 of 1959) and mutts and temples including specific endowments attached to such of those temples managed by mutts; or

iii) conveyance of properties assigned to or held by

a) The Tamil Nadu State Boodan Yagna Board established under Section 3 of the Tamil Nadu Bhoodan Yagna Act, 1958 (Tamil Nadu Act XV of 1958) or

b) The Tamil Nadu Wakf Board unless a sealed No Objection Certificate issued by the competent authority as provided under the relevant Act or the rules framed thereunder for this purpose and in the absence of any such provisions in any relevant Act or in the rules framed thereunder authority so authorised by the Government, to the effect that such registration is not in contravention of the provisions of the respective Act, is produced before the Registering Officer;

2. Conveyance of lands, converted as house sites without the approved layouts unless a No Objection Certificate issued by the authority concerned of such local bodies, namely, Corporations, or Municipalities or Town Panchayats, Panchayat Unions, or village Panchayats or Chennai Metropolitan Development Authority is produced before the Registering Officer;

3. Cancellation of sale deeds without the express consent of the parties to the documents."

34. A similar provision was inserted by the State of Rajasthan restricting registration of any document or class of document, which is opposed to public policy. The said provision amended by the State of Rajasthan was challenged in the Rajasthan High Court in the case of State of Rajasthan vs. Basant Nahata reported in 2005 (4) CTC 606. The Rajasthan High Court held that Section 22-A of the Act confers powers to the State Government to determine as regards the pleading of a

particular document being opposed to public policy. Consequently, the said amended provision was declared unconstitutional. The matter subsequently came to Supreme Court on appeal filed by the State of Rajasthan. The Supreme Court after elaborate discussion of the words public policy and opposed to public policy upheld the view of the Rajasthan High Court.

35. Amendment so inserted by the State of Tamil Nadu vide Section 22-A of the Tamil Nadu (Amendment) Act was also challenged before this Court in the case of Captain Dr.R.Bellie vs The Sub-Registrar reported in 2007 (3) CTC 513. The Division Bench of this Court following and relying upon the ratio decided by the Supreme Court in the case of State of Rajasthan vs. Basant Nahata (supra) quashed the said G.O.Ms.150, Commercial Taxes, dated 22.9.2000 holding that such an amendment is unconstitutional and ultra vires Articles 14 and 246 of the Constitution of India.

36. In the year 2007, the State of Tamil Nadu came with another notification vide G.O.Ms.139, Commercial Taxes and Registration Department, dated 25.7.2007 cancelling the earlier Government notification being G.O.Ms.No.150, Commercial Taxes Department, dated 22.9.2000. However, one circular was issued on 5.1.2007 by the Inspector General of Registration to the effect that document purported to be cancellation of sale deed should be signed by not only by the seller, but also by the purchaser or his power of attorney to appear before the Registering Authority and give consent with reference to cancellation of deed and then only the document should be registered.

37. For better appreciation the circular dated 5.10.2007 is quoted herein below: -

Office of Inspector General of Registration Chennai 600 028 No.39789/E1/2007
dated 5.10.2007 CIRCULAR Sub: Registration Procedure Cancellation of Sale Deed
Procedure to be determined for the Registration of Deeds Reg.

Ref: (1) Govt G.O.Ms.No.150, Commercial Tax Dept. dated 22.9.2000 (2) Govt G.O.Ms.No.139, Commercial Tax and Registration Dept. dated 25.7.2007 With reference to cancellation of registered sale deed, instructions were issued in Ref.No.1, which was cancelled in Ref.No.2. In these circumstances, the following directions, guidelines are issued while registering the said document.

Under Section 34-A of Registration Act, while presenting sale deed for registration, the purchaser should also sign the document with effect from 14.2.2001. In these circumstances, to cancel such a registered sale deed without the consent of the purchaser and only at the instance of seller and registering such cancellation deed is not the proper procedure. Therefore, in future, such document purporting to be the cancellation of sale deed should be signed by not only the seller but also by the purchaser or his power of attorney to appear before the Registering Authority and give consent with reference to cancellation of deed and then only the document should be registered.

The above procedure should be meticulously followed. It is informed any one who violate the above procedure, disciplinary proceedings will be taken against them Sd/ 5.10.2007 Inspector General of Registration

38. At this juncture, we would like to refer some of the provisions of the Registration Act. Section 32 of the Act provides that every document other than the document referred to in Sections 31, 88 and 89, shall be presented before the Registering Office for registration whether compulsory or optional by some person executing or claiming under the said document or by representative or assign of such person or by the agent of such person or representatives duly authorized by the power of attorney. Section 32-A of the Act was inserted in the Registration Act by Amendment Act 48/2001. By the said provision, affixing of passport size and finger prints have been made compulsory. Section 32-A of the Act reads as under:-

2A. Compulsory affixing of photograph, etc. Every person presenting any document at the proper registration-office under section 32 shall affix his passport size photograph and fingerprints to the document:

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

39. One more amendment brought in by the said Act is by inserting Section 34-A, which provides that person claiming under the document for sale of the property shall also have to sign the document.

"34-A. Person claiming under document for sale of property also to sign document.-Subject to the provisions of this Act, no document for sale of property shall be registered under this Act, unless the person claiming under the document has also signed such document".- Tamil Nadu Act 28 of 2000, S. 4.

40. From a reading of the aforesaid provision together with the amended provision, it is manifest that the purpose of amendment is to restrict or atleast minimize the forgery and fraud committed by the parties to the document, and to give legal sanctity once the document is registered according to the provisions of the Registration Act.

41. In the case of E.R.Kalaivan Vs. Inspector General of Registration, Chennai, (2009) 6 MLJ 1009 the question came up for consideration before the Division Bench of this Court is as to whether the Registrar, who is empowered to register the document under the Indian Registration Act, could register a document unilaterally executed by the vendor cancelling the earlier sale made. The Division Bench after elaborately discussing the provisions of Section 34-A and the G.O.Ms.No.150, Commercial Taxes Department dated 22.09.2000, subsequent G.O.Ms.No.139, Commercial Taxes and Registration(J1) Department dated 25.07.2007 and the ratio decided by the Supreme Court in the case of State of Rajasthan Vs. Basant Nahata, (2005) 12 SCC 77 observed as under:-

9. From the above judgements, all that we could read and understand is that in the absence of any guidelines defining what is public policy or documents which are as opposed to public policy , the Courts had to declare Section 22-A is null and

void. In our opinion, a reading of those judgments does not indicate that by the judgments it is also directed that a registration of a cancellation deed is permissible even in the absence of both the parties before the Registrar. The question as to whether such documents can be entertained should be considered in the light of the other provisions of the Act as well.

12. In this content, we may also refer to Section 32-A of the Indian Registration Act providing that all such deeds shall be signed by the vendor as well as the purchaser and the same shall also bear the finger prints and photographs. Section 34 of the Act also needs a reference, whereby the Registering Authority is mandated to hold an enquiry in respect of the validity of the document present for registration. 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 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. Vs. Standard Chartered Bank and Others, AIR 2003 SC 4630:(2004) 1 SCC 12.

19. That apart, on the facts of this case, our attention is not drawn to any of the specific provision under the Registration Act empowering the Registrar to entertain a document of cancellation for registration on the ground that the sale consideration was not paid and consequently, received by the vendor. Further, in our opinion, when the Registrar satisfied himself on the perusal of the document, wherein it is stated that the full sale consideration is received and on such satisfaction, entertain the document for registration, cannot thereafter be conferred with a power for cancellation of the deed on the ground that the full sale consideration was not paid and received by the vendor. Conferring such power on the Registrar would tantamount to conferring a power to decide the disputed questions. That apart, as already stated, in the absence of any provision specifically empowering the Registrar to entertain a document of cancellation for registration, without the signature of both the vendor and the purchaser, the deed cannot be entertained. For the said reason, we find no infirmity in the impugned circular issued by the Inspector General of

Registration.

42. A Division Bench of this Court again considered this issue in the case of A.S.Elangode Vs. A.Palanisamy and others, (2009) 4 CTC 627 in that case also a sale deed was executed and registered in 2002 and after 5 years a deed of cancellation of the earlier sale deed was presented by the first respondent/vendor for registration. The question arose in that case was as to whether the deed of conveyance registered in accordance with the provisions of Section 17 of the Registration Act could be unilaterally cancelled without the knowledge, consent or the signature of the purchaser. While deciding the issue the Division Bench followed its earlier decision in E.R.Kalaivan s case reported in (2009) 6 MLJ 1009 and held as under:-

. From the above judgments, all that we could read and understand is that in the absence of any guidelines defining what is public policy or documents which are as opposed to public policy , the Courts had to declare Section 22-A as null and void. In our opinion, a reading of those judgments does not indicate that by the judgments it is also directed that a registration of a cancellation deed is permissible even in the absence of both the parties before the Registrar. The question as to whether such documents can be entertained should be considered in the light of the other provisions of the Act as well.

..

9. Section 17 of the Act deals with documents where registration is compulsory and Section 18 deals with the documents where registration is optional. A reading of Section 17(b) shows that a deed of cancellation of sale falls within the purview of that Section, since such documents declares no right and title of immovable property. As the said document is compulsorily registrable, some restrictions must be applied for cancellation of such document as well.

10. In this context, we may also refer to Section 32-A of the Indian Registration Act providing that all such deeds shall be signed by the vendor as well as the purchaser and the same shall also bear the finger prints and photographs. Section 34 of the Act also needs a reference, whereby the Registering Authority is mandated to hold an enquiry in respect of the validity of the document presented for registration. 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 issue in question is viewed from the application of Section 62 of the Indian Contract Act, any rescission must be only bilaterally. See *City Bank N.A. Vs. Standard Chartered Bank and Others*, (2004) 2 CTC 374 (SC) : 2004 (1) SCC 12.

43. In the case of *G.D.Subramaniam Vs. The Sub-Registrar, Office of Konnur Sub-Registrar, Sidco Nagar, Chennai* 49 & Others, (2009) 1 CTC 709 a Single Bench of this Court (S.Nagamuthu, J.) formulated a question as to whether the registration of a deed of cancellation unilaterally executed by the vendor to nullify the earlier sale validly made is sustainable in law. Firstly, the Bench held that although Section 34 of the Registration Act does not specifically provide that the Registering Officer should hold an enquiry in respect of the validity of the document presented for registration. But, reading Rule 55 of the Registration Rules one can infer without any doubt that the Registering Officer either on enquiry or without an enquiry, should, besides other things, prima facie be satisfied that the document is neither illegal nor void and then to register the same, provided the other requirements are satisfied. If the document is ipso facto illegal or void, then, he is not obliged to register the same and instead he should refuse to register the said document. The Bench observed:- (para-17) 7. A plain reading of the above provision would disclose that all non-testamentary instruments declaring a right or title over immovable properties word Rs.100/- and upwards shall be registered. A deed of cancellation of a sale falls within the purview of such an instrument declaring right and title for an immovable property. If any such document canceling the sale is presented for registration, since, the same is compulsorily registrable under Section 17, the Registering Officer is obliged to register the same, provided the execution of the said document is validly made by mutual consent of the parties and the same is not illegal or void. To constitute a valid execution, it should be executed by all parties to the earlier sale. Needless to say that unless there is valid execution by competent persons, the Registering Officer has to necessarily refuse to register the document. Thus, in a situation where the document is either void or illegal or there is no valid execution, the Registering Officer is bound to refuse to register the same. De hors such a position, if the Registering Officer proceeds to register the said document, then the said registration would be without jurisdiction and not valid.

44. The Bench further disagreed with the view taken by the Full Bench of the Andhra Pradesh High Court in *Yanala Malleshwari and others Vs. Ananthula Sayamma and others*, (2007) 1 CTC 97 and held as under:- (para 21) 1. 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 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 *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 23-A of the Registration Act. In my considered opinion, Section 23-A 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 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.

45. Finally in paragraph 31 of the judgment, the learned Judge came to the following conclusion

1.Out of the foregoing discussions, the emerging conclusions are summed up as follows:

(i) Challenging registration of a unilaterally executed deed of cancellation of a sale, a Writ Petition is maintainable under Article 226 of the Constitution of India;

(ii) A deed of cancellation of a sale executed by mutual consent by all parties to the sale deed, if presented for registration, the Registering Officer is bound to register the same provided the other requirements like Section 32-A of the Registration Act have been complied with.

(iii) The Registering Officer is obliged legally to reject and to refuse to register a deed of cancellation of a sale unilaterally executed without the knowledge and consent of other parties to the sale deed and without complying with Section 31-A of the Registration Act.

46. In the case of Yanala Malleshwari & Ors. Vs Ananthula Sayamma & Ors. (AIR 2007 AP 57 (FB), the question referred to the Full Bench of Andhra Pradesh for consideration was :-

Whether a person can nullify the sale by executing and registering a cancellation deed? Whether a Registering Officer, like District Registrar and/or Sub-Registrar is bound to refuse registration when a cancellation deed is presented?

Some of the findings recorded by the Full Bench are as under :-

2. What would happen when the transfer is made by a person without any valid title? What would be the situation when a sale takes place by reason of the fraud played by the transferor and transferee, which drastically affects the person with absolute title and ownership? In situations such as these, does the law contemplate only remedy of seeking declaration or cancellation of the fraudulent transfer deed or does it enable the true owner to execute a deed nullifying the fraudulent transfer deed? When Sections 7 and 8 of TP Act contemplate that only person is competent to contract and entitled to transfer property can transfer, any other transfer (otherwise than as contemplated under Section 7 of the TP Act) must be treated as void. Likewise, if a transferee reserves power to himself to revoke the transfer, such transfer/sale is not rendered void (in view of Sections 10 and 11) but the transferor can even revoke the sale deed without going to any Court.

* * * * *

26. It is a misconception that in every situation, a person who suffers injury by reason of a document can file a suit for cancellation of such written statement. Two conditions must exist before one invokes Section 31 of Specific Relief Act. -These are: the written instrument is void or voidable against such person; and such person must have reasonable apprehension that such instrument if left outstanding may cause him serious injury. Insofar as Section 34 of the Specific Relief Act is concerned, it is no doubt true that a person entitled to any right as to any property can seek declaration that he is so entitled to such right. Here again, the person who claims the right to property can institute a declaration suit only when the defendant denies or interested to deny the title of the plaintiff. The difference between the two situations is glaring. In one case, cancellation of deed can be sought in a Court only by a person who executed document and who perceives that such document is void or voidable. In the other case, even if a person is not a party to the document, he can maintain a suit for declaration.

* * * * *

32. The law, therefore, may be taken as well settled that in all cases of void or voidable transactions, a suit for cancellation of a deed is not maintainable. In a case where immovable property is transferred by a person without authority to a third person, it is no answer to say that the true owner who has authority and entitlement to transfer can file a suit under Section 31 of the Specific Relief Act for the simple reason that such a suit is not maintainable. Further, in case of an instrument, which is void or voidable against executant, a suit would be maintainable for cancellation of such instrument and can be decreed only when it is adjudicated by the competent Court that such instrument is void or voidable and that if such instrument is left to exist, it would cause serious injury to the true owner.

* * * * *

47. In the case of Suraj Lamp & Industries (P) Ltd v. State of Harayana reported in 2009 (7) SCC 363, though the issue involved in that case is not relevant to the instant case, but while interpreting the different provisions of the Registration Act, the Supreme Court observed: - (pages 367-368) 5. The Registration Act, 1908 was enacted with the intention of providing orderliness, discipline and public notice in regard to transactions relating to immovable property and protection from fraud and forgery of documents of transfer. This is achieved by requiring compulsory registration of certain types of documents and providing for consequences of non-registration.

16. Section 17 of the Registration Act clearly provides that any document (other than testamentary instruments) which purports or operates 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 Rs.100 and upwards to or in immovable property.

17. Section 49 of the said Act provides that no document required by Section 17 to be registered shall, affect any immovable property comprised therein or received as evidence of any transaction affecting such property, unless it has been registered. Registration of a document gives notice to the world that such a document has been executed.

18. Registration provides safety and security to transactions relating to immovable property, even if the document is lost or destroyed. It gives publicity and public exposure to documents thereby preventing forgeries and frauds in regard to transactions and execution of documents. Registration provides information to people who may deal with a property, as to the nature and extent of the rights which persons may have, affecting that property. In other words, it enables people to find out whether any particular property with which they are concerned, has been subjected to any legal obligation or liability and who is or are the person(s) presently having right, title, and interest in the property. It gives solemnity of form and perpetuate documents which are of legal importance or relevance by recording them, where people may see the record and enquire and ascertain what the particulars are and as far as land is concerned what obligations exist with regard to them. It ensures that every person dealing with immovable property can rely with confidence upon the statements contained in the registers (maintained under the said Act) as a full and complete account of all transactions by which the title to the property may be affected and secure extracts/copies duly certified.

48. Section 54 of the Transfer of Property Act defined the word Sale , which means transfer of ownership by one person to another. In other words, sale is transfer of all rights, title and interest in the properties which are possessed by the transferor to another person namely., the purchaser. In case of transfer by way of sale, the transferor cannot retain any part of his interest or right in that property. Such transfer of ownership must be for a price paid or promised or part-paid and part-promised. Even if the whole price is not paid, but the document is executed and registered, the sale would be complete. The transfer is complete and effective upon the completion of the registration of the sale deed. Once the vendor is divested himself of his ownership of the property, then he retains no control or right over the said property.

49. A Bench of the Patna High Court in the case of Chander Singh and Others Vs. Jamuna Prasad Singh and Others, AIR 1958 Patna 193 on consideration of Section 54 of the Transfer of Property Act observed:-

Para 7: .. On a proper construction of this section it appears that a transfer of ownership takes place immediately on the sale. A registration is only a statutory mode of making the sale and it does not affect the creation of title by the sale. Section 47 of the Indian Registration Act provides that a registered document shall operate from the time from which it would have commenced to operate if no registration thereof had been required or made, and not from the time of its registration. It will be observed that Section 47 of the Indian Registration Act does not purport to create a new title, but only affirms the title which was created by the sale deed.

50. In a recent decision in the case of Kaliaperumal Vs. Rajagopal, (2009) 4 SCC 193 the Supreme Court while considering the provision of Section 54 of the T.P. Act held as under:-

7. 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 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, under Section 55(4)(b) of the Act.

51. However, there are circumstances to show that title was intended to pass only after the payment of full price. In such a situation, it will depend upon the intention of the parties as to whether they intended that transfer of 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 sale consideration. Considering such a situation the Supreme Court in Kaliaperumal Case (Supra) observed as under:-

8. 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.

52. Now the question that falls for consideration is as to whether once a sale is made absolute by transfer of ownership of the property from the vendor to the purchaser, such transfer can be annulled or cancelled by the vendor by executing a deed of cancellation. This question came up for consideration before the four Judges of the Privy Council (Viscount Haldane, Lord Phillimore, Sir John Edge and Sir Robert Stout) in *Md.Ihtishan Ali vs. Jamna Prasad* reported in AIR 1922 Privy Council 56. The fact of that case was that one Ehsan Ali Khan, being in possession of a bazaar called Ehsaganj mortgaged it to one Sheo Prasad by a mortgage deed dated 9th November, 1873 and further encumbered it with charges in favour of the mortgagee. In the year 1882, the said Ehsan Ali sold the property, subject to the mortgage and charges to the appellants predecessors in title. Dispute arose with regard to the devolution of interest, and said Ehsan Ali cancelled the deed and retained his interest and that he, in fact, dealt with it subsequently by further charges in favour of the mortgagee and by professing to sell it over again to Wasi-uz-Zaman. While deciding the issue, His Lordship Lord Phillimore, speaking for the Bench, observed and held as under:- (page 58)

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

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

53. A similar question came up for consideration before the Orissa High Court in the case of *Michhu Kuanr and Ors v. Raghu Jena and Ors.* reported in AIR 1961 Orissa 19, as to the effect of cancellation of sale deed by the vendor on the allegation that consideration amount was not paid. While considering the question the Bench observed:-

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

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

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

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

55. From the reading of the aforesaid provision, it is manifest that three conditions are requisite for the exercise of jurisdiction to cancel an instrument ie., (1) An instrument is avoidable against the plaintiff;

(2) The plaintiff may reasonably apprehend serious injury by the instrument being left or outstanding; and (3) In the circumstances of the case, the Court considers it proper to grant this relief of preventive justice.

56. A Full Bench of the Madras High Court in the case of Muppudathi Pillai Vs. Krishnaswami Pillai, AIR 1960 Madras 1 elaborately discussed the provision of Section 39 (New Section 31) and held:-

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

57. There is no dispute that a third party can claim title to the property against the purchaser who purchased the property for valuable consideration and came into possession of the same. But it is

the Civil Court of competent jurisdiction to give such declaration in favour of the third party or a stranger.

58. It can also not be overlooked or ignored that a unilateral cancellation of a sale deed by registered instrument at the instance of the vendor only encourages fraud and is against public policy. But there are circumstances where a deed of cancellation presented by both the vendor and the purchaser for registration has to be accepted by the Registrar if other mandatory requirements are complied with. Hence, the vendor by the unilateral execution of the cancellation deed cannot annul a registered document duly executed by him as such an act of the vendor is opposed to public policy.

59. After giving our anxious consideration on the questions raised in the instant case, we come to the following conclusion: -

(i) A deed of cancellation of a sale unilaterally executed by the transferor does not create, assign, limit or extinguish any right, title or interest in the property and is of no effect. Such a document does not create any encumbrance in the property already transferred. Hence such a deed of cancellation cannot be accepted for registration.

(ii) Once title to the property is vested in the transferee by the sale of the property, it cannot be divested unto the transferor by execution and registration of a deed of cancellation even with the consent of the parties. The proper course would be to re-convey the property by a deed of conveyance by the transferee in favour of the transferor.

(iii) Where a transfer is effected by way of sale with the condition that title will pass on payment of consideration, and such intention is clear from the recital in the deed, then such instrument or sale can be cancelled by a deed of cancellation with the consent of both the parties on the ground of non-payment of consideration. The reason is that in such a sale deed, admittedly, the title remained with the transferor.

(iv) In other cases, a complete and absolute sale can be cancelled at the instance of the transferor only by taking recourse to the Civil Court by obtaining a decree of cancellation of sale deed on the ground inter alia of fraud or any other valid reasons.

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

(M.Y.E., CJ.)

(P.J.M., J.)

(T.S.S., J.)
11.02.2011

Index : Yes / No

Internet : Yes / No

SM/PV/GLN

To

1. The Inspector General of Registration
Santhome, Chennai 4.
2. The Sub Registrar
Ambattur, Chennai.

THE HON BLE CHIEF JUSTICE
P.JYOTHIMANI, J.
AND
T.S.SIVAGNANAM, J.

SM/PV/GLN

PRE-DELIVERY JUDGMENT IN
W.A. NOS. 592 & 938 OF 2009

Pronounced on
11.02.2011