



2024:KER:67397

WP(C) NO. 1864 OF 2023

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IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE GOPINATH P.

THURSDAY, THE 5TH DAY OF SEPTEMBER 2024 / 14TH BHADRA, 1946

WP(C) NO. 1864 OF 2023

PETITIONER/S:

AMMINI, AGED 61 YEARS
W/O ALIYAS, THELAKKATTU @ THEKKATTU HOUSE,
MACHIPLAVU PO, ADIMALY, IDUKKI DISTRICT-, PIN - 685561

BY ADVS.
ARUN MATHEW VADAKKAN
PADAYATTEE YELDO

RESPONDENT/S:

- 1 THE STATE OF KERALA
REPRESENTED BY ITS SECRETARY,
DEPARTMENT OF REGISTRATIONS, GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURM, PIN - 695001
- 2 INSPECTOR GENERAL OF REGISTRATIONS,
OFFICE OF THE INSPECTOR GENERAL OF REGISTRATIONS,
EX.MAYOR R.BALAKRISHNAN NAIR ROAD, THIRUVANANTHAPURAM,
PIN - 695035
- 3 THE DISTRICT COLLECTOR,
COLLECTORATE, KUYILIMALA, PAINAVU PO,
IDUKKI DISTRICT,, PIN - 685603
- 4 THE DISTRICT REGISTRAR, IDUKKI,
OFFICE OF THE DISTRICT REGISTRAR, THODUPUZHA PO,
IDUKKI DISTRICT, PIN - 685584
- 5 THE SUB REGISTRAR, DEVIKULAM,
OFFICE OF THE SUB REGISTRAR, DEVIKULAM PO, IDUKKI
DISTRICT, PIN - 686613



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**6 ADDL.R6: SRI. PAULOSE,
AGED 81 YEARS, S/O. CHACKO, PADINJAREKKARA HOUSE,
MANNAMKANDAM VILLAGE, DEVIKULAM TALUK, IDUKKI
DISTRICT, PIN - 686 613. (IS IMPEADED AS PER ORDER
DATED 23.01.2023 IN IA 1/23 OF WP(C)).**

**(SUO MOTO DELETED AS PER JUDGMENT DATED 05.09.2024 IN
WP(C)NO.1864 OF 2023)**

**BY ADV ADVOCATE GENERAL OFFICE KERALA
SMT. THUSHARA JAMES, SR. GP**

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
05.09.2024, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**



JUDGMENT

The petitioner is stated to be the absolute owner and in possession of 17 Ares of land comprised in old Survey No.289/1-2 [Re.Sy.No.533/8] of Mannankandam Village, Devikulam Taluk, Idukki District. The property was purchased by the petitioner on 01.09.1987 through Ext.P1 registered sale deed. The property was, thereafter, mutated in the name of the petitioner. This is evidenced by Ext.P2 tax receipt and Ext.P3 *thandaper* register. Ext.P4 is the encumbrance certificate in respect of the property, which does not show any encumbrance. The petitioner also obtained a possession certificate from the Mannankandam Village Office on 03.09.2024, a copy of which is placed for my perusal by the learned counsel appearing for the petitioner. The petitioner has approached this Court being aggrieved by the fact that Ext.P5 sale deed executed by the petitioner in respect of the very same property is not being accepted for registration on account of the fact that the person, who sold the property to the petitioner by Ext.P1



had cancelled the sale. The petitioner has, thereafter, obtained a certified copy of the so-called cancellation deed and the same has been placed on record as Ext.P7. A perusal of Ext.P7 indicates that it is a unilateral cancellation by the person who sold the property to the petitioner through Ext.P1, in the year 1987.

2. The learned counsel appearing for the petitioner relies on the judgment of ***Satya Pal Anand v. State of M.P.; (2016) 10 SCC 767*** to contend that there cannot be a unilateral cancellation of the sale deed executed on 01.09.1987 without notice to the petitioner. It is submitted that no circumstances for unilateral cancellation of the sale deed are available in the facts of the present case and the petitioner is not even aware of the cancellation. It is submitted that the property has been in continuous possession and enjoyment of the petitioner from 01.09.1987 and still continues in possession of the petitioner as can be seen from the possession certificate dated 03.09.2024.

3. Heard the learned Senior Government Pleader also. The learned Senior Government Pleader also does not



dispute the legal position that there cannot be a unilateral cancellation of the sale deed.

4. After hearing the learned counsel for the petitioner and the learned Senior Government Pleader for some time, I had directed that the person who sold the property to the petitioner by Ext.P1 be made a party to the writ petition. The petitioner, accordingly, filed an impleading petition [I.A. No.1 of 2023] and the vendor in Ext.P1 was impleaded as the additional 6th respondent to the writ petition. Notice issued to the additional 6th respondent by special messenger has been returned with the endorsement '*additional 6th respondent is no more*'. Though under normal circumstances, the legal heirs of the additional 6th respondent ought to have been impleaded, I am of the opinion that such a course of action need not be adopted in the facts of this case as it is clear that only the impediment in registering the sale deed executed by the petitioner is stated to be unilateral cancellation executed by the additional 6th respondent, which for reasons to be indicated, cannot be sustained. Since no judgment can be issued with



a dead person on the array of parties, the additional 6th respondent is *suo motu* deleted from the array of parties.

5. The legal issue in this writ petition is squarely covered in favour of the petitioner. In ***Satya Pal Anand v. State of M.P., (2016) 10 SCC 767*** it was held:-

“36. If the document is required to be compulsorily registered, but while doing so some irregularity creeps in, that, by itself, cannot result in a fraudulent action of the State Authority. Non-presence of the other party to the extinguishment deed presented by the Society before the Registering Officer by no standard can be said to be a fraudulent action per se. The fact whether that was done deceitfully to cause loss and harm to the other party to the deed, is a question of fact which must be pleaded and proved by the party making such allegation. That fact cannot be presumed. Suffice it to observe that since the provisions in the 1908 Act enables the Registering Officer to register the documents presented for registration by one party and execution thereof to be admitted or denied by the other party thereafter, it is unfathomable as to how the registration of the document by following procedure specified in the 1908 Act can be said to be fraudulent. As aforementioned, some irregularity in the procedure committed during the registration process would not lead to a fraudulent execution and registration of the document, but a case of mere irregularity. In either case, the party aggrieved by such registration of document is free to challenge its validity before the civil court.”

This Court in ***Noble John v. State of Kerala; 2010 SCC***



OnLine Ker 2561 while considering a similar issue held:-

“31. In that regard there is another aspect of public policy as well. Sale is essentially an executed contract, by which title to immovable property has been transferred to another, which is bilateral. Such a contract cannot be unilaterally cancelled by one of the parties to the contract, unless such a right has been reserved in the contract itself. There is no specific provision in the Transfer of Property Act for cancellation of a sale. Section 4 of the Transfer of Property Act stipulates that the provisions of the said Act which relate to contracts shall be taken as part of the Indian Contract Act. Novation, recession and alteration of a contract are governed by S. 62 of the Indian Contract Act. In City Bank v. Standard Chartered Bank (2004) 1 SCC 12, the Supreme Court has held that “novation, recession or alteration of a contract under S. 62 of the Contract Act can only be done with the agreement of both parties to the contract. Both the parties have to agree to set aside the original contract with a new contract or for recession or alteration.” Therefore, a sale deed which is a contract between two parties for sale of a property, cannot be unilaterally cancelled by one of the parties executing a cancellation deed, which if done would be against S. 62 of the Indian Contract Act and therefore illegal. Therefore, once a sale deed is validly executed, the same cannot be annulled, except by a decree of a court of law. By executing the cancellation deed, the vendor is arrogating to himself, the power of the court to annul the sale deed already executed by him. No person can be permitted to assume himself the powers exclusively vested with the courts, which is what a vendor does, by cancelling a sale deed validly executed by him. That would certainly be opposed to public policy. Therefore by registering a cancellation deed of a sale deed, the Sub-Registrar is allowing the



vendor to perpetrate an illegality against public policy, which has to be prevented at any cost, if Rule of law is to survive in this country. For this reason also registration of cancellation deed of a sale deed is against public policy and therefore an interpretation of the Registration Act and Rules, which would help to prevent such illegality, has to be necessarily adopted by courts.

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

“32A. 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 document relates to the transfer of ownership of immovable property, the passport size photograph and fingerprints of each buyer and seller of such property mentioned in the document shall also be affixed to the document.”

33. *If for transfer of ownership of immovable property photographs and fingerprints of each buyer and seller of the property are mandatory, by the same coin, cancellation deed of a sale deed being essentially a re-transfer of the immovable property back to the vendor should also necessarily contain the photograph of both the parties to the sale deed, without which the cancellation deed cannot be validly registered. Of course an argument is raised to the effect that the said Section is applicable only when a person executes a sale deed for transfer of immovable property. But the words used therein are ‘where such document relates to transfer of ownership of immovable property’, which is wide*



enough to include all documents relating to transfer of immovable property and not confined to sale deeds for transferring immovable property. A cancellation deed cancelling a sale deed is certainly a document relating to transfer of immovable property and would come squarely within the said proviso. S. 32A has been incorporated in the Registration Act to prevent such misuse of the provisions of the Act and Rules. Non-compliance with S. 32A is certainly a very valid reason for the Sub-Registrar to refuse registration of a cancellation deed relating to transfer of immovable property, as is clear from clause VIIA of R. 191. The Sub-Registrar is therefore duty bound to insist upon the photograph and thumb impression of both parties to be included in the cancellation deed as well, as mandated by the proviso to S. 32A of the Registration Act for registration of a cancellation deed of a sale deed and if the cancellation deed does not contain the photograph and thumb impression of both parties, he is statutorily bound to refuse registration of that document. The thumb impression of a person cannot be obtained in a document without his consent and his photograph cannot be validly affixed in a document without his consent. Therefore a cancellation deed of a sale deed can be registered only with the consent of both the original seller and the buyer and not unilaterally by the seller alone. For this reason also the registration of a cancellation deed unilaterally cancelling a sale deed by the seller, without the consent of the purchaser, is to be refused by the Sub-Registrar.

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

(i) The Sub-Registrar is legally obliged to reject and refuse to register a deed of cancellation of a sale unilaterally executed without the knowledge and



consent of the other parties to the sale deed and without complying with S. 32A of the Registration Act, 1908.

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

Thus it is clear that there cannot be a unilateral cancellation of Ext.P.1 Sale Deed. Accordingly, on the *ratio* of the decisions referred to above, the writ petition is allowed by directing the 5th respondent to register the original of Ext.P5, in accordance with the law, uninfluenced in any manner by Ext.P7 and in compliance with all other legal formalities.

Writ petition is ordered accordingly.

Sd/-

GOPINATH P .

JUDGE

DK/ajt



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APPENDIX OF WP(C) 1864/2023

PETITIONER EXHIBITS

- | | |
|-------------------|---|
| Exhibit P1 | TRUE COPY OF THE SALE DEED DATED 01.09.1987
EXECUTED BETWEEN PETITIONER AND ONE PAULOSE |
| Exhibit P2 | TRUE COPY OF THE TAX RECEIPT DATED
20.04.2022 ISSUED BY VILLAGE OFFICE,
MANNAMKANDAM |
| Exhibit P3 | TRUE COPY OF THE THANDAPER ACCOUNT DATED
15.09.2022 ISSUED BY VILLAGE OFFICE,
MANNAMKANDAM |
| Exhibit P4 | TRUE COPY OF THE ENCUMBRANCE CERTIFICATE
DATED 14.09.2010 ISSUED BY SUB REGISTRAR,
DEVIKULAM |
| Exhibit P5 | TRUE COPY OF THE SALE DEED DATED 13.10.2022
EXECUTED BETWEEN PETITIONER AND ONE GIREESH
P.G |
| Exhibit P6 | TRUE COPY OF THE DETAILS OF THE STAMP DUTY
PAID AND REGISTRATION FEE PAID NUMBERED AS
DEPARTMENT REFERENCE NO.T 6473224 DATED
13.10.2022 |
| Exhibit P7 | TRUE COPY OF THE CANCELLATION DEED DATED
16.09.1987 NUMBERED AS DOCUMENT NO.1833/1987 |