

W.P.(MD).Nos.6889,8330,13297 of 2020,11674 of 2015
and W.A(MD)No.800 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Reserved on: 17.08.2022
Delivered on: 02.09.2022

CORAM:

THE HONOURABLE MR.JUSTICE S.S. SUNDAR
THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN
and
THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

W.P.(MD).Nos. 6889, 8330, 13297 of 2020, 11674 of 2015
and
W.A(MD)No.800 of 2022
and
C.M.P(MD).No.6797 of 2022

W.P(MD)No.6889 of 2020

Sasikala

.. Petitioner

Vs.

1.The Revenue Divisional Officer
cum Sub Collector,
Devakottai,
Sivagangai District.

2.Ram Maruthappan

..Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, for the issuance of Writ of Certiorari, calling for the records relating to the impugned order issued by the 1st respondent in Mu.Mu.A1/2219/2015 dated 28.08.2018 and quash the same.



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For Petitioner : Mr.M.Mahaboob Athiff
For R1 : Mr.M.Rajarajan
Government Advocate
For R2 : Mr.G.Prabha Rajadurai

W.P(MD)No.8330 of 2020

Prabadevi

.. Petitioner

Vs.

1. The District Registrar,
Office of District Registrar
(Department of Registration)
Madurai District.

2. The Sub Registrar,
Ezhumalai Sub Registration Office
Ezhumalai,
Madurai District.

3. Ramar

.. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, for the issuance of Writ of Mandamus, to declare the deed of cancellation dated 07.01.2009 executed by the 3rd respondent and registered on the file of the 2nd respondent as documents No.32 of 2009 as null and void and in consequence thereof direct the 2nd respondent to release the deed of partition dated 23.06.2020 registered as document no.975 of 2020 at once.

For Petitioner : Mr.B.Sekar
For R1&R2 : Mr.K.Sathiya Singh
Additional Government Pleader
For R3 : Mr.S.Vanchinathan



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W.P(MD)No.13297 of 2020

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Muniyandi

.. Petitioner

Vs.

1.The Inspector General of Registration,
100, Santham Road,
Chennai.

2.The District Registrar,
Ramanathapuram District.

3.The Sub Registrar,
Abiramam,
Ramanathapuram District.

4.The Revenue Divisional Officer,
Paramakudi Division,
Ramanathapuram District.

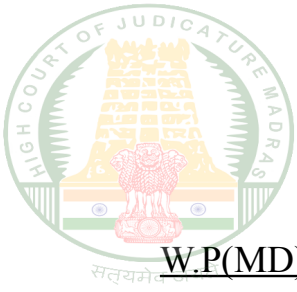
5.M.Senthur

.. Respondents

(R4 and R5 are impleaded vide Court Order dated 23.11.2020
in W.M.P(MD)No.13977/2020)

Prayer: Writ Petition filed under Article 226 of the Constitution of India, for the issuance of Writ of Mandamus, to direct the respondents to revoke the settlement deed in document No.941/2018 dated 05.12.2018 given by petitioner in favour of his son Senthur, by consider his representation dated 28.06.2020 within a time stipulated by this Court.

For Petitioner	: Mr.A.Uthayakumar
For R1toR4	: Mr.K.Sathiya Singh Additional Government Pleader
For R4	: No appearance



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W.P(MD)No.11674 of 2015

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R.Sasikala

.. Petitioner

Vs.

1.The Inspector General of Registration
No.100, Santhom High Road,
Pathinapakam,
Chennai-600 028.

2.The Sub Registrar,
O/o.The Registrar,
Thirupathur,
Sivagangai District.

3.R.M.Maruthappan

..Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, for the issuance of Writ of Certiorari, calling for the records relating to the registration of the cancellation of the settlement deed executed by the 3rd respondent dated 12.3.2015 registered as Document No.701/2015 on the file of the 2nd respondent and quash the same as illegal.

For Petitioner	: Mr.M.Mahaboob Athiff
For R1&R2	: Mr.Veera Kathiravan Additional Advocate General Assisted by Mr.K.Selvaganesan Additional Government Pleader
For R3	: Mr.G.MohanKumar

W.A(MD)No.800 of 2022

Azhagesan

.. Appellant

Vs.



W.P.(MD).Nos.6889,8330,13297 of 2020,11674 of 2015
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1. Minor A.V.Gopinath
Rep by his mother
A.Vellaiammal @ Selvi,
No.4, Rice Mill Street,
Ponnampatti,
Marungapuri Taluk,
Trichy District.

2. The Inspector General of Registration,
No.100, Santhom High Road,
Pattinampakkam,
Chennai-600 028.

3. The District Registrar(Administration)
Karaikudi,
Sivagangai District.

4. The Sub-Registrar,
Ponnamaravathy,
Pudukkottai District.

..Respondents

Prayer: Writ Appeal filed under Clause 15 of Letters Patents, for the issuance of Writ of Certiorari, filed against the order passed in W.P(MD)No.8072 of 2016 dated 24.11.2021 by this Court.

For Petitioner : Mr.P.Gunasekaran
For R1 : Mr.M.Saravanan
For R2 to R4 :Mr. Veera Kathiravan
Additional Advocate General
Assisted by Mr.K.Selvaganesan
Additional Government Pleader
Amicus Curiae :Mr.J.Bharathan,
(in all cases)



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COMMON ORDER

(Order of the Court was made by S.S.SUNDAR.J.,)

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Order of Reference:

While considering the scope of entertaining writ petition under Article 226 of Constitution on India against Registration of Unilateral cancellation deed, a Division Bench of this Court in the case of ***P.Rukumani and others vs Amudhavalli and others*** reported in ***2020 (1)CTC 241*** held that a writ petition challenging the deed of cancellation is a misconceived remedy and set aside the judgment of learned Single Judge allowing a writ petition seeking cancellation of the cancellation deed. The Division Bench relying upon the judgment of Hon'ble Supreme Court in the case of ***Satyapaul Anand vs State of Madhya Pradesh and ors.***, held that aggrieved party in such cases can approach only the civil court. Since the judgment of Division Bench in ***P.Rukumani's case*** is contrary to the full Bench in ***Latif Estate's case*** and the Division Bench has referred to judgment of Hon'ble Supreme Court in ***Satyapaul Anand's case***, Hon'ble Mr. Justice S.Vaidyanathan before whom the batch of writ petitions namely W.P(MD)Nos.11674 of 2015, 8330, 13297 of 2020 and 6889 of 2020 were argued, noticed the conflicting judgements and referred the matter to a larger Bench to decide the question “whether the Registrar has the power to accept the deed of cancellation to nullify the deed of conveyance made earlier, when the deed of conveyance has already been acted upon by the



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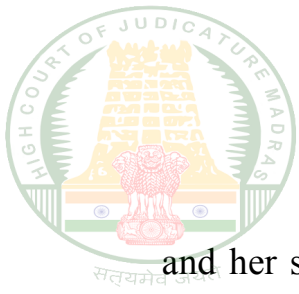
transferee.” This is how the matter is now placed before this Bench by order of Hon'ble the Chief Justice.

2.From the facts in the individual cases, it is seen that the writ petition namely, W.P(MD)No.6889 of 2020 does not come under the purview of reference. Though Hon'ble Mr.Justice S.Vaithyanathan, has posed several questions of law, while considering the individual cases, the issue that was referred to the larger bench is only about the Registration of Unilateral Cancellation deed to nullify the deed of conveyance made earlier. For the sake of convenience, we are inclined to narrate the brief facts in each case. After the matters were listed before the Full bench, the writ appeal in W.A(MD)No.800 of 2022 is also posted before this Bench, as the issue arise for consideration is within the scope of reference.

3.1 W.P(MD)No.11674 of 2015

This writ petition is filed for quashing the registration of cancellation of the settlement deed executed by the third respondent, dated 12.03.2015, registered as Document No.7001/2015 on the file of the second respondent.

The writ petitioner is the daughter of the third respondent. The father of the writ petitioner executed a settlement deed in favour of the writ petitioner



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and her sister by name Sathiya, in respect of an extent of 55 cents, out of the total extent of 3.38 acres owned by the third respondent in S.Nos.39/5, 39/6, 39/7 and 39/16 in Thiruvudaiyarpatti Village, Thiruppathur Taluk, Sivagangai District. The settlement deed dated 06.03.2015 was registered on the file of the second respondent as Document No.625 of 2015. As per the recitals, purely out of love and affection, the settlement deed was executed and there was no condition attached to the gift. It is stated that the petitioner was given joint patta along with her sister and that the settlement deed had been acted upon. However, the second respondent cancelled the settlement deed and the said cancellation deed was registered as Document No.701/2015. In the cancellation deed, it is recited that the settlement deed was not acted upon and that the settlor decided to cancel the settlement deed as the settlement deed is not necessary. To quash the registration of deed of cancellation, cancelling the Registered settlement deed earlier executed by the third respondent, the writ petition is filed.

3.2 W.P(MD)No.6889 of 2020

When the first writ petition filed by the petitioner in W.P(MD)No. 11674 of 2015 is pending, the Revenue Divisional Officer, Devakottai/first respondent in W.P(MD)No.6889 of 2020, issued notice to the writ petitioner to hold an enquiry on the petition filed by the petitioner's father viz.,



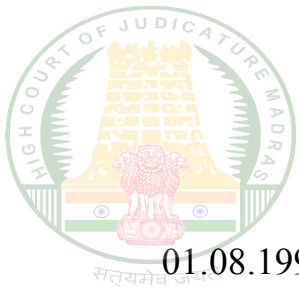
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Maruthappan. After holding an enquiry, the Revenue Divisional Officer, passed an order on 28.08.2018, directing the cancellation of settlement deed executed by the father of the writ petitioner in favour of the writ petitioner and her sister on 06.03.2015. The Revenue Divisional Officer, directed the cancellation of patta in favour of the writ petitioner and to restore the revenue records in the name of the second respondent in the writ petition, who is none other than the father of the writ petitioner. The impugned order was passed by the Revenue Divisional officer in exercise of his power under Section 23 of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007. Challenging the order, W.P(MD)No.6889 of 2020 is filed.

3.3 W.P(MD)No.8330 of 2020

This writ petition is filed for issuance of a Writ of Mandamus to declare the deed of cancellation dated 07.01.2009 executed by the third respondent in the writ petition and registered on the file of the second respondent as Document No.32 of 2009 as null and void and consequently to direct the second respondent to release the deed of partition, dated 23.06.2020 registered as Document No.975 of 2020.

The petitioner in the writ petition is a minor represented by her grandmother, who is the wife of the third respondent. It is the case of the writ petitioner that the third respondent executed a registered gift deed dated

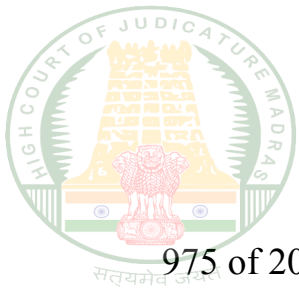


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01.08.1995 in favour of his two minor daughters viz., Ilavarasi and Malar @

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Thangamalar. The said document was registered as Document No.777 of 1995 before the second respondent/Sub Registrar. From the recitals of settlement deed, it is seen that the settlement deed is absolute and executed out of love and affection and the settlement deed is not subject to condition. Since the daughters of the third respondent were minors at the time of settlement deed, the wife of the third respondent viz., the mother of settlees was appointed as guardian for the properties settled. The settlement deed is, in respect of 1 acres 16 cents of the land and a residential building in Babinayakkanpatti Village, Peraiyur Taluk, Madurai District. The case of the writ petitioner is that the settlees are in possession and enjoyment of the property and patta was also issued in the name of minor daughters. Both the daughters of the third respondent were given a marriage. However, the elder daughter of settlor by name Ilavarasi died intestate leaving behind her husband by name Ramar and her daughter by name Prabha Devi, the minor writ petitioner. Stating that the settlement deed executed by the third respondent dated 01.08.1995 is irrevocable and that the writ petitioner came to know about the unilateral cancellation deed only, when the grandmother of the petitioner approached the second respondent/Sub Registrar concerned to release the document viz., a deed of partition, dated 23.06.2020 which was also registered as document No.



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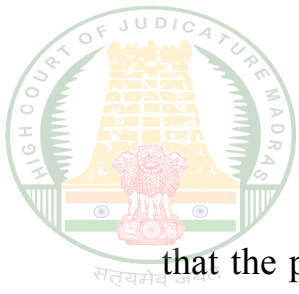
975 of 2020, the writ petition is filed.

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3.4 W.P(MD)No.13297 of 2020

This writ petition is filed for issuance of a writ of Mandamus to direct the respondents to revoke the settlement deed in document No.941/2018 dated 05.12.2018 executed by him in favour of his son Senthur, by considering his representation of the petitioner, dated 28.06.2020.

Seventy Years old writ petitioner states that he is living in a pathetic condition without any source of income. It is his case that the son approached him to execute a registered gift deed to construct a house and that he would take care of all his basic necessities at present as well in future. In short, the writ petitioner states that believing his son's sugarcoated words, he executed the settlement deed in respect of his only property with a hope that his son would take care of him. It is also alleged that the petitioner was driven out from the house by his son. Since his son has failed to provide a single meal to the petitioner and has beaten him on few occasions, the petitioner submitted a representation to the Inspector General of Registration and a copy marked to the District Registrar, to cancel the Registration of the settlement deed. The petitioner's request before the respondents was that the petitioner's son had obtained a settlement deed fraudulently. It is stated in the representation that his complaint before the police station was not enquired properly and contended



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that the possession of the property is with the writ petitioner. It is pertinent to mention that the person interested viz., the petitioner's son in whose favour the settlement deed was executed is not impleaded in the writ petition.

3.5 W.A(MD)No.800 of 2022

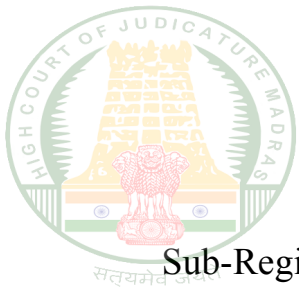
The writ appeal was listed earlier before the Division Bench consisting of one of the members of this Bench. After admitting the writ appeal, the Bench was of this view that the appeal can be heard along with the batch of cases posted before the Full Bench. At the request of the Division Bench, to list the matter before the Full Bench, after getting appropriate orders from the Hon'ble Administrative Judge, the above writ appeal is also posted, as directed by the Hon'ble Mr. Justice P.N.Prakash, the Hon'ble Administrative Judge, to club the appeal along with batch of cases.

The above writ appeal is filed by the fourth respondent in the writ petition in W.P(MD)No.8070 of 2016 challenging the order of learned Single Judge allowing the writ petition, by order dated 22.04.2021. The writ petition was filed, by a minor represented by his mother viz., A.Vellaiammal @ Selvi, for issuance of a writ of mandamus directing the respondents 1 to 3 to strike off the registration of document bearing No.734/2014 dated 14.03.2014 on the file of the third respondent viz., Sub Registrar, Ponnamaravathy, Pudukottai District. In the affidavit filed in support of the writ petition, the guardian of



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minor/writ petitioner stated that the appellant is her husband and that the writ petitioner is the son of the appellant. It is her case that by an irrevocable registered gift deed dated 17.08.2012, the appellant settled a residential house and landed property measuring 5807 sq.feet, in favour of his son viz., the writ petitioner and the said settlement deed was registered on the file of the third respondent as Document No.1834/2012. In the gift deed, the recitals are to the effect that the document is irrevocable and that the appellant has no right over the property. It is stated by the writ petitioner that the gift had been duly accepted and acted upon and original gift deed was also handed over to the mother, as guardian of the minor. However, the gift dated 17.08.2012 executed by the appellant was cancelled by a deed of cancellation dated 14.03.2014 and the same was also registered as Document No.734/2014. When notice was issued to appellant in the writ petition, it was returned with an endorsement "person not found". The learned Single Judge then proceeded to hear the writ petition on merits. Finding that the unilateral cancellation of settlement deed is not permissible in law, the learned Single Judge allowed the writ petition holding that such cancellation of registered instrument can be done only by a civil Court and that the registration of unilateral cancellation deed is null and void. After declaring the cancellation of settlement deed as null and void, the learned Single Judge affirmed the title of the writ petitioner and directed the



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Sub-Registrar to make necessary entries in the book. The appellant thereafter filed a review application in Rev.Aplw(MD)No.17 of 2022 and the same was also dismissed holding that the grievance of the appellant that he was not heard before passing the order in the writ petition, cannot be a ground on which a review would lie. As against the order of the learned Single Judge allowing the writ petition, the above writ appeal is filed. In the appeal, it is contended by the appellant that the writ petitioner's mother was joined as a Nurse in his hospital and the writ petitioner was born to her through her husband one Raja @ Athappan. It is his case that the writ petitioner's mother obtained his signature on coercion and she had registered the same as settlement deed by showing the writ petitioner as his son fraudulently. Since the writ petition was decided without hearing him, it is alleged that the order in the writ petition is vitiated as no notice was served. It is stated that the appellant is a well known Doctor running a hospital with 100 employees and the endorsement “no such person is found” is unacceptable.

4.On the first hearing, this Court appointed Mr.J.Barathan, (Enrol.No. 1173/1996, Chamber No.7, Madurai Bench, Cell No.9842135588) learned counsel practicing in this Court, to assist this Court as Amicus Curiae. We also permitted a few other counsels whose matters are not before this Full Bench,



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but are interested in view of pendency of other cases, in which the question referred to the Bench arises for consideration.

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5.Mr.Vallinayagam, learned Senior Counsel and Mr.Barathan, learned counsel has made elaborate submissions by referring to a few provisions of Transfer of Property Act, the Societies Registration Act, the Registration Act, Indian Penal Code and Tamil Nadu Patta Pass Book Act etc. Other counsels have also made their submissions on the merits of the individual cases. Mr.Mahaboob Athiff, learned counsel appearing for petitioner in W.P.(MD)No. 6889 of 2020 and W.P(MD)No.11674 of 2015 made submission placing reliance on a few decisions of High Court of Kerala distinguishing the judgment of Hon'ble Supreme Court in Satya Pal Anand's case. The learned counsels have made their submissions placing reliance on several precedents which we have discussed in this judgment.

6.The learned Additional Advocate General appearing for the Official respondents in all these matters submitted his arguments strictly in relation to the reference. However, he expressed his concern before this Court and requested not to expand the scope of reference. Considering the order of reference, this Court has to deal with related issues which are connected and



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inevitable. However, we are not inclined to decide any matter relating to the validity of any administrative instructions or circulars or notifications that are issued by the Government or the Inspector General of Registration to prevent fraudulent registration or issues relating thereto.

7.Mr.P.Ganapathi Subramanian, learned counsel appearing for the appellant in W.A(MD)No.8330 of 2020, relied upon the judgment of the Hon'ble Supreme Court in Satya Pal Anand case, in support of his arguments.

8.The learned counsel nominated as Amicus Curiae as well as Mr.M.Mahaboob Athiff, learned counsel appearing for the petitioner in two cases and Mr.Vallinayagam, learned Senior Counsel submitted that the judgment of the Hon'ble Supreme Court in *Satya Pal Anand's case* reported in **(2016) 10 SCC 767**, has been considered by various High Courts and Hon'ble Supreme Court in other cases and that the said judgment need not be considered as a precedent in the cases on hand, in view of the specific provisions under the Registration Act as amended by the State of Tamil Nadu and the Rule that was framed by the Inspector General of Registration as approved by the State Government.



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9. Since the reference is based on conflicting judgments, this Court is inclined to consider the precedents cited by the counsels. Very same issue was considered by a Full Bench of this Court earlier in the case of ***Latif Estate Line India Ltd.,-vs-Hadeeja Ammal*** and others reported in AIR 2011(Mad)66. Reference to the facts of this case is necessary for understanding the principles laid down by this Bench.

10. The writ petitioner therein purchased certain properties by a registered sale deed dated 13.11.1996 from the second respondent in the writ petition. However, seller unilaterally executed the cancellation of sale deed on 27.08.2007 and the same was registered by the Sub-Registrar as Document No. 16826 of 2007. Writ Petition was filed challenging the Registration of Unilateral cancellation of sale deed. Writ Petition was allowed by holding that Registration of a deed of cancellation, Unilaterally executed by the vendors to nullify the earlier sale validly made is not sustainable by referring to S.32A of Registration Act, The order is challenged in W.A.No.938 of 2009. Similar Appeal filed in W.A.No. 592 of 2009 arising out of identical facts was also referred to the Full Bench as the correctness of judgment of another Division Bench in W.A.No.194 of 2009 was doubted. The questions formulated by the Bench for reference are as follows:



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(i) Whether the cancellation of a registration of a registered sale deed of a immovable property having valuation of more than one hundred rupees can be registered either under Section 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 10.02.2009 made in W.P.No.8567 of 2008 and the Division Bench dated 1.04.2009 made in W.A.No. 194 of 2009 amount to amending the provisions of the Registration Act and the Rules framed there under,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?

Despite the position that Section 22 A as it is available today in the Registration Act, was not available in the book, the Hon'ble Full Bench considered the issues and held as follows:

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

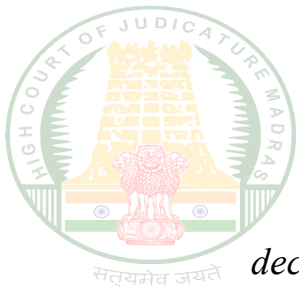


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four Judges of the Privy Council (Viscount Haldane, Lord Phillimore, Sir John Edge and Sir Robert Stout) in *Md. Ihtishan Ali v. Jamna Prasad* reported in MANU/PR/0081/1921 : AIR 1922 PC 56. The fact of that case was that one Ehsan Ali Khan, being 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 Appellant's 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



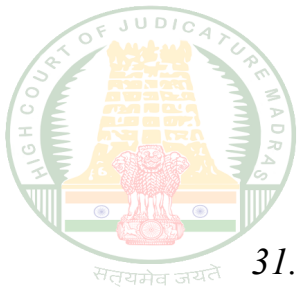
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declarations in his own favour, be received in evidence on behalf of those claiming under him, any more than they could be received if he were himself the Defendant. They could not be regarded as acts of ownership so as to prove adverse possession, 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 MANU/OR/0007/1961 : AIR 1961 Ori 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:



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31. When cancellation may be ordered:

(1) Any person against whom a written instrument is void or void able, and who has reasonable apprehension that such instrument, if left out standing, may cause him serious injury, may sue to have it adjudged void or void able, 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.

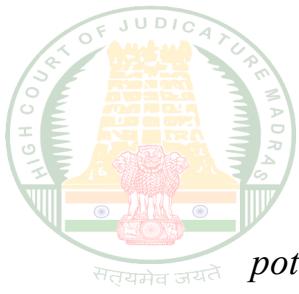
55. From the reading of the aforesaid provision, it is manifest that three conditions are requisite for the exercise of jurisdiction to cancel an instrument ie.,

(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 v. Krishnaswami Pillai* MANU/TN/0455/1959 : AIR 1960 Mad 1 elaborately discussed the provision of Section 39 (New Section 31) and held:

12. The principle is that such document though not necessary to be set aside may, if left outstanding, be a source of



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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 quieting 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



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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.

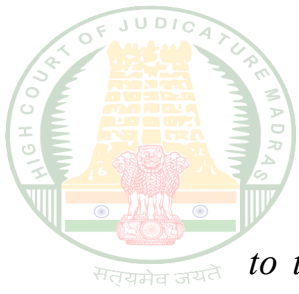
59. After giving our anxious consideration on the questions raised in the instant case, we come to the following conclusion:

(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



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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.

11.The question of maintainability of writ petition as against unilateral cancellation and registration of such cancellation deed was considered by Hon'ble Supreme Court and it was held that there was no need for the parties to approach the civil court as the cancellation deed was wholly void and non est in ***Thota Ganga Lakshmi Vs Government of Andhra Pradesh*** reported in ***(2010)15 SCC 207***. The relevant portion of the judgment reads as follows:

“...4.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 non est 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 the 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.



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5. 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 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 register able by any provision of law.

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



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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 clear that both the cancellation deed as well as registration thereof were wholly void and non est and meaningless transactions.

12.Mr. Baradan learned Counsel relied upon a judgment of a Division Bench of High Court of Kerala in the case of ***P.A.Hamsa Vs The District Registrar General and Ors dated 20.07.2011*** in ***W.A.No.990 of 2011***. It is to be noted that the view of Full Bench of this Court in Latif Estate's case was approved by the Division Bench after taking note of the fact that the view of the Full Bench of Andhra Pradesh High Court in ***Yanala Malleshwari Vs Anarithula Sayamma***, which was directly in conflict with the Full Bench of our High Court in Latif Estate's case was held to be no more good law by Hon'ble Supreme Court in Civil Appeal No.317 of 2007.

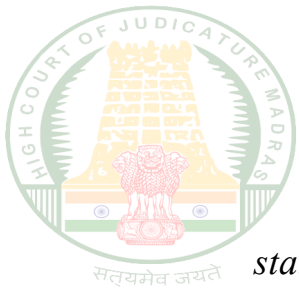
13.Recently, another Division Bench of High Court of Kerala considered identical issue in ***Santhosh Anotnio S.Netto vs Joshy Thomas and others***, reported in ***2020 SCC Online Ker 2001 : (2020) 3 KLJ 230***. Following the earlier judgment of Division Bench of High Court of Kerala in P.A.Hamsa's



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case, the judgment of Hon'ble Supreme Court in ***Thota Ganga Lakshmi and another vs Government of Andra Pradesh*** reported in ***(2010) 15 SCC 207*** and the judgment of Full Bench of this Court in the case of ***Latif Estate Life India Limited***, the Division Bench of High Court of Kerala led by Hon'ble Mr. Justice Manikumar.J, reiterated the same view while confirming the judgment of learned Single Judge of that Court allowing the Writ Petition to quash the registration of cancellation of sale deeds on the ground that the Writ Petitioner had not paid the sale consideration and possession of the property has not been given. It is pertinent to mention that the Division Bench of High Court of Kerala has also referred to the judgment of Hon'bls Supreme Court in Satya Pal Anand case reported in ***(2016) 10 SCC 767*** but distinguished the same in the following lines:

“12. Even though learned counsel for the appellant has invited our attention to the judgment of the Apex Court in Satyapal Anand v. State of Madhya Pradesh & Ors. MANU/SC/1359/2016 : (2016 (4) KLT SN 81 (C. No. 96) SC : (2016) 10 SCC 767) to canvass the proposition that, the Writ Petition cannot be entertained in the facts and circumstances of the case on hand, and the course open to the writ petitioner was to approach the civil court to adjudicate the issue, on an analysis of the issue considered by the Apex Court, we are of the view that, the said judgment has no application to the issue at hand, since the question considered thereunder was whether, the petitioner who has approached the



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statutory authority under S. 64 of the M.P. Co-operative Societies Act, 1960 and the authority under the Registration Act, was right in approaching the High Court under Article 226 after dismissal of the application by the Registrar under the Registration Act? It was answered in the fact scenario that the Writ Petition filed during the pendency of the adjudication of dispute under S. 64 of M.P. Co-operative Societies Act, 1960 is not a remedy rightly pursued by the petitioner. Therefore, in our view, the proposition of law laid down thereunder has some similarity to the issue of unilateral cancellation of a registered document, it has no application to the intrinsic fact and situation involved in this case.”

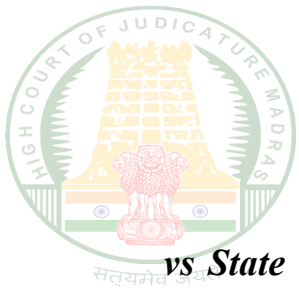
14. Very recently, the Hon'ble Supreme Court in the case of ***Veena Singh (Dead) through Lrs vs District Registrar / Additional Collector and another*** reported in (2022) 7 SCC 1, considered the scope of Section 35 and Sections 72 to 76 of Registration Act. Since the judgment of 3 Members Bench of Hon'ble Supreme Court in ***Satya Pal Anand*** case is also considered in this case by a Co-equal Bench, this Court deems it fit to refer the said judgment in the present context with reference to facts.

15. The appellant before the Hon'ble Supreme Court jointly owned a vacant land admeasuring 3793 sq.yd along with his daughter and son. Appellant's daughter and son executed a power of attorney deed on 17.04.2010



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in favour of the appellant which was stated to be cancelled on 27.09.2011. The appellant was alleged to have entered into two agreements with a developer, the second respondent before Hon'ble Supreme Court. The first is a development agreement in respect of 1000 sq.meters in the front portion and the second is an agreement to sell an area admeasuring 839.4sq.meter in the rear portion for a sale consideration of Rs.1.6 crores. A sale deed purported to have been executed by the appellant in favour of second respondent was presented for registration on 15.12.2011. The appellant raised objection for registering document alleging fraud against second respondent in getting her signature in an incomplete sale deed, dated 20.06.2011. By an order, dated 17.02.2012, the Sub Registrar declined to register the sale deed after recording the statement of appellant that the second respondent got her signature forcibly. The second respondent preferred an appeal under Section 72 of Registration Act before the District Registrar who set aside the Sub Registrar's decision and ordered the registration of the sale deed (which was duly registered on 16.04.2012). Meanwhile, a criminal complaint was lodged by appellant for offences punishable under Sections 420, 467, 468 and 471 of IPC which was closed as a civil dispute. In the said circumstances, appellant filed a Writ Petition challenging the order of District Registrar. The same was dismissed by Writ Court, following the judgment of Hon'ble Supreme Court in *Satya Pal Anand*



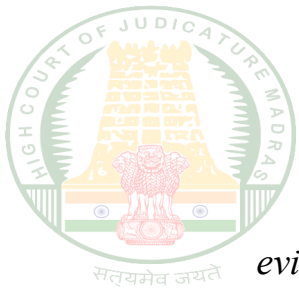
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vs State of Madya Pradesh and held that the Sub Registrar under Section 35

did not have the power to conduct an inquiry regarding execution of the sale deed. The appellant was granted leave to move the Civil Court for a declaration that the sale deed had been obtained by fraud. Considering the grounds raised by the appellant to cancel the registration and the scope and object of the provisions under Sections 72 to 76 of Registration Act, the Hon'ble Supreme Court has held as follows:

“Section 73 of the Registration Act envisages that an application may be submitted to the Registrar by a person in order to establish their rights to have a document registered, in a situation where the Sub-Registrar has refused to register the document on the ground that the person by whom it purports to have been executed has denied its execution. Section 74 then lays down the procedure which is to be followed by the Registrar, which contemplates an enquiry by the Registrar into whether the document has been executed and whether requirements of law for the time being in force have been complied with on the part of the Applicant or the person presenting the document for registration. When the twin requirements of clauses (a) and (b) of Section 74 are found by the Registrar to have been fulfilled, Sub-section (1) of Section 75 provides that the Registrar shall order the document be registered.

81.Sub-section (4) of Section 75 stipulates that for the purpose of the enquiry Under Section 74, the Registrar may summon and enforce the attendance of witnesses and compel them to give

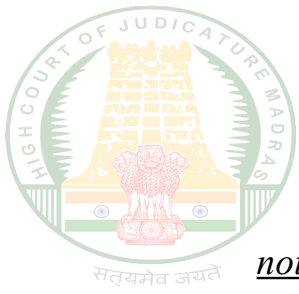


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evidence as if he is a civil court. The Registrar is also empowered to impose the obligation of paying the costs of the enquiry on a party, and such costs are to be recovered as if they have been charged in a suit under the Code of Civil Procedure. Thus, Sub-section (4) of Section 75 incorporates a deeming fiction from two perspectives - first, in empowering the Registrar to summon and enforce the attendance of witnesses and for compelling them to give evidence "as if he were a civil court"; and second, in awarding costs which become recoverable "as if they have been awarded in a suit" under the Code of Civil Procedure.

82.The process which is conducted by the Registrar for the purpose of an enquiry Under Section 74 cannot be equated to the powers of the civil court, though certain powers which are entrusted to a civil court are vested with the Registrar by the provisions of Section 75(4). A quasi-judicial function is entrusted to the Registrar for the purpose of conducting an enquiry Under Section 74. Where the Registrar refuses to register a document Under Sections 72 or 76, no appeal lies against such an order. Section 77, however, provides that when the Registrar refuses to order the document to be registered, any person claiming under such document or its representative, assign or agents may institute a suit before the civil court within the stipulated time for a decree directing that the document shall be registered. It is thus clear that the Registrar, when he conducts an enquiry Under Section 74, does not stand constituted as a civil court. The enquiry before the Registrar is summary in nature. The decision of the Registrar in ordering document to be registered, or for that matter in refusing to register a document, is.



not conclusive and is amenable to judicial review.

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83. Therefore, in a situation where an individual admits their signature on a document but denies its execution, the Sub-Registrar is bound to refuse registration in accordance with Sections 35(3)(a) of the Registration Act. Subsequently, if an application is filed Under Section 73, the Registrar is entrusted with the power of conducting an enquiry of a quasi-judicial nature Under Section 74. If the Registrar passes an order refusing registration Under Section 76, the party presenting the document for registration has the remedy of filing a civil suit Under Section 77 of the Registration Act, where a competent civil court will be able to adjudicate upon the question of fact conclusively.

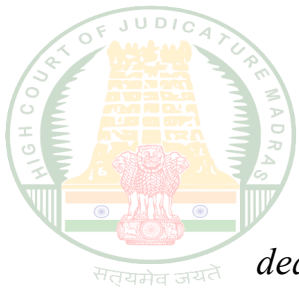
84. Finally, our attention has been drawn to Section 58(2) of the Registration Act, which stipulates as follows:

58. Particulars to be endorsed on documents admitted to registration.-- [...]

(2) If any person admitting the execution of a document refuses to endorse the same, the registering officer shall nevertheless register it, but shall at the same time endorse a note of such refusal.

85. It is submitted on behalf of the second Respondent that above provision must be read along with paragraph 241 of the UP Registration Manual, which provides:

241. Registering officers not concerned with validity of documents. Registering officers should bear in mind that they are in no way concerned with the validity of documents brought to them for registration, and that it would be wrong for them to refuse to register on any such grounds as the following: (1) that the executants was

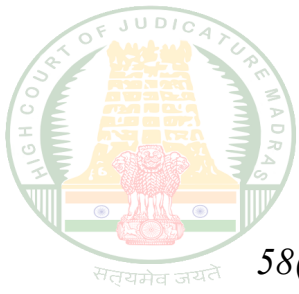


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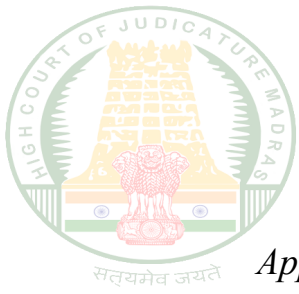
dealing with property not belonging to him; (2) that the instrument infringed the rights of third persons not parties to the transaction; (3) that the transaction was fraudulent or opposed to public policy; (4) that the executants had not agreed to certain conditions of the document; (5) that the executants was not acquainted with the conditions of the document; (6) that the executants declared that he had been deceived into executing; (7) that the executants is blind and cannot count. These and such like are matters for decision, if necessary, by competent courts of law, and registering officers, as such, have nothing to do with them. If the document be presented in a proper manner, by a competent person, at the proper office, within the time allowed by law, and if the registering officer be satisfied that the alleged executants is the person the represents himself to be, and if such person admits execution, the registering officer is bound to register the document without regard to its possible effects. But the registering officer shall make a note of such objections of the kinds mentioned in grounds (1) to (7) above, as may be brought to his notice in the endorsement required by Section 58.

Reliance has been placed on the above provisions of the UP Registration Manual to highlight that an individual's refusal predicated upon any of the above-mentioned seven grounds shall not impact its "execution" but shall only require an endorsement Under Section 58(2). We are inclined to disagree with this submission. For the reasons already mentioned in the judgment, we are inclined to accept the interpretation of the term "execution" to mean that a person has signed a document after having fully understood it and consented to its terms. Hence, since paragraph 241 and Section



58(2) only come into the picture when execution is admitted, they are not relevant at the present stage.

86. At this stage, it would be material to refer to a judgment of this Court in Satya Pal Anand (supra), where the three-judge Bench was constituted following a difference of opinion between two Judges. In that case, the mother of the Appellant had been allotted a plot of land by a registered deed by a cooperative society. After her death, the cooperative society executed a deed of extinguishment unilaterally cancelling the allotment of the plot and executed a registered deed in favour of the fifth Respondent. The Appellant objected to the transaction, following which a tripartite deed of compromise was reached with the society and the fifth Respondent. Notwithstanding this, the Appellant moved the Deputy Registrar of Cooperative Societies. During the pendency of the dispute, the society permitted the transfer of the plot to the sixth and seventh Respondents. The Appellant then moved an application before the Sub-Registrar for cancelling the registration of the deed of extinguishment and the two subsequent deeds, but this application was rejected by the Sub-Registrar, inter alia, on the ground that he had no jurisdiction to cancel the registration of a registered document. The Appellant then moved the Inspector General of Registration Under Section 69 of the Registration Act, who rejected the application. The writ petition filed by the Appellant before the High Court Under Article 226, seeking a declaration of the nullity of the deed of extinguishment and the two subsequent deeds, was also dismissed by the High Court. In this backdrop, Justice A.M. Khanwilkar, speaking for the three-judge Bench, observed that the



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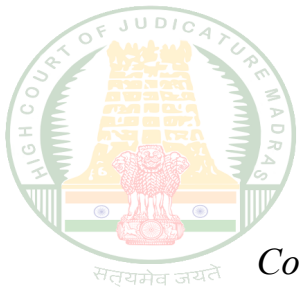
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Appellant had entered into a deed of compromise and accepted valuable consideration, in spite of which he had instituted a dispute under the Madhya Pradesh Cooperative Societies Act, 1960. Further, pending the dispute, an application was filed by the Appellant before the Sub-Registrar seeking the same relief of cancellation of the registration of the deed of extinguishment and the subsequent deeds in favour of the third party.

87. In view of these circumstances, this Court held that the High Court was justified in declining to entertain a writ petition at the instance of the Appellant:

“25. It is a well-established position that the remedy of writ Under Article 226 of the Constitution of India is extraordinary and discretionary. In exercise of writ jurisdiction, the High Court cannot be oblivious to the conduct of the party invoking that remedy. The fact that the party may have several remedies for the same cause of action, he must elect his remedy and cannot be permitted to indulge in multiplicity of actions. The exercise of discretion to issue a writ is a matter of granting equitable relief. It is a remedy in equity. In the present case, the High Court declined to interfere at the instance of the Appellant having noticed the above clinching facts. No fault can be found with the approach of the High Court in refusing to exercise its writ jurisdiction because of the conduct of the Appellant in pursuing multiple proceedings for the same relief and also because the Appellant had an alternative and efficacious statutory remedy to which he has already resorted to... ,”

88. Having held that the writ petition before the High



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Court was not maintainable for the above reasons, this Court also observed that the role of the Sub-Registrar stood discharged once the document had been registered, since there is no express provision in the Registration Act which empowers him to recall the registration. This Court held:(Satya Pal Anad Case)

“34. The role of the Sub-Registrar (Registration) stands discharged, once the document is registered (see Raja Mohammad Amir Ahmad Khan [State of U.P. v. Raja Mohammad Amir Ahmad Khan, MANU/SC/0030/1961 : AIR 1961 SC 787])...There is no express provision in the 1908 Act which empowers the Registrar to recall such registration. The fact whether the document was properly presented for registration cannot be reopened by the Registrar after its registration. The power to cancel the registration is a substantive matter. In absence of any express provision in that behalf, it is not open to assume that the Sub-Registrar (Registration) would be competent to cancel the registration of the documents in question. Similarly, the power of the Inspector General is limited to do superintendence of Registration Offices and make Rules in that behalf. Even the Inspector General has no power to cancel the registration of any document which has already been registered.

89.This Court in Satya Pal Anand case observed that Section 35 of the Registration Act does not confer a quasi-judicial power on the registering officer, who is not expected to evaluate title or irregularity in the document. As such, the validity of the registered deed of extinguishment could be placed in issue only before a court of competent jurisdiction. On the above facts, this Court upheld the dismissal of the writ petition by the High Court,



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with an opportunity being granted to the Appellant to pursue a remedy in accordance with law. Therefore, the decision in Satya Pal Anand (supra) has held that once a deed of extinguishment had been registered by the registering officer, the registering officer had no power to recall it nor was it amenable to the supervisory control of the Inspector General of Registration Under Section 69 of the Registration Act.

90. The aforesaid decision does not deal with a situation such as the present case, where Sub-Registrar had in the first instance declined to order the registration of the document and the order of the Sub-Registrar was questioned in an appeal Under Section 72 filed by the second Respondent. The Registrar, in the course of the appellate proceedings, purported to hold an enquiry of the nature contemplated Under Section 74 of the Registration Act and concluded that the execution of the sale deed had been established and it was liable to be registered. The Registrar was evidently seized of a case where the Sub-Registrar had declined to order registration on the ground that the execution of the document was denied by the Appellant Under Section 35(3)(a). While exercising the jurisdiction pursuant to the invocation of the remedy Under Section 72, the Registrar relied on the statements of the scribe of the sale deed and the attesting witnesses to the effect that the sale deed had been signed by the Appellant and that the Appellant had also affixed her fingerprints on it. However, as rightly pointed out by the Appellant, the signing of the sale deed by her and the affixation of her fingerprints is not in dispute. The real issue is



whether there was due execution of the sale deed by the Appellant.

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91.The Appellant in the course of her objections specifically pleaded fraud, submitting that:

(i) The area which was reflected in the sale deed which was presented for registration was at variance that what had actually been agreed between the parties;

(ii) The boundaries as reflected in the sale deed did not correspond with the land agreed to be sold;

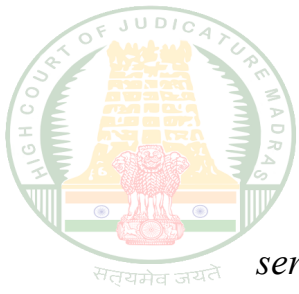
(iii) The sale consideration was seriously undervalued;

(iv) The purported sale deed was resulting not only in the transfer of excessive land but also the residential house which was in occupation of the Appellant after the death of her husband; and

(v) The full consideration payable under the terms of the transaction had not been received by the Appellant.

92.The plea of the Appellant, that the purported sale deed though signed by her was procured by fraud and undue influence, was a matter which raised a serious substantive dispute. In support of her contentions, the Appellant has also adduced before us the inspection report by the Sub-Registrar and the Naib Tahsildar. However, we are inclined to hold that we cannot decide on the merits of the dispute at this stage, since the Registrar clearly exceeded his jurisdiction by adjudicating on the issue of fraud and undue influence.

93. The Registrar purported to exercise the powers conferred Under Section 74 and arrived at a finding that the sale deed had been duly signed by the Appellant and was therefore liable to be registered. However, the objections of the Appellant raised

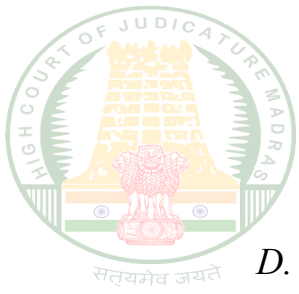


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serious issues of a triable nature which could only have been addressed before and adjudicated upon by a court of competent civil jurisdiction. As a matter of fact, during the course of the hearing, this Court has been apprised of the fact that in respect of the remaining area of 1000 square meters in the front portion of the land, a suit for specific performance²⁷ has been instituted by the second Respondent, resulting in a decree for specific performance dated 16 November 2018. As regards the subject matter of the sale deed, the second Respondent has instituted a suit for possession before the Civil Judge, Senior Division Fast Track Court²⁸, where certain proceedings are pending. In this view of the matter, we are clearly of the opinion that the Registrar in the present case acted contrary to law by directing the sale deed to be registered.

94. In the impugned judgment, the Single Judge of the Allahabad High Court has observed that registration does not depend upon the consent of the executant but on the Registrar's finding that the executant had actually signed the document. The High Court held that having found in the course of the enquiry that the sale deed was duly prepared by a scribe, that the attesting witness had stated that the sale deed was signed by the Appellant and she also placed her fingerprints in their presence, it was open to the Registrar to direct registration in spite of a denial of its execution by the Appellant. In doing so, the Single Judge of the High Court has, with respect, conflated the mere signing of the sale deed with its execution. For the reasons mentioned earlier in this judgment, such an approach is completely erroneous and cannot be upheld.



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D. Conclusion

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95. *For the above reasons, we allow the appeal and set aside the impugned judgment and order of the Single Judge of the High Court of Judicature at Allahabad dated 31 May 2018 in the Appellant's writ petition. The order passed by the District Registrar on 31 March 2012 shall, in the circumstances, stand set aside. However, it is clarified that the present judgment shall not affect any of the civil/criminal proceedings that are pending in respect of the subject matter of the transaction. In the circumstances of the case, there shall be no order as to costs."*

16. In the above judgment, the Hon'ble Supreme Court has considered the scope of enquiry by the District Registrar when the Sub-Registrar had refused to register a document on the ground of denial of execution. In that context, the Hon'ble Supreme Court also distinguished the judgment of Hon'ble Supreme Court in **Satya Pal Anand** case by saying that on account of pendency of dispute under the provisions of M.P. Co.Operative Societies Act, 1960, the Hon'ble Supreme Court was justified in declining to entertain a Writ Petition at the instance of the appellant.

17. It is to be noted that the judgment of Division bench in the case of **P.Rukumani and others vs. Amudhavalli and others** reported in **2020(1) CTC**



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241 was also confirmed by the Hon'ble Supreme Court in Civil Appeal No.7464 of 2021 in Amudhavalli and others vs. P.Rukumani and others by judgment dated 07.12.2021. While approving the view of Honourable Supreme Court in the case of *Thota Ganga Laxmi and another vs. Government of Andhra Pradesh and others* reported in (2010) 15 SCC 207, the Honourable Supreme Court was not inclined to examine the validity and effect of cancellation deed as the appellants had already filed a written statement in the civil suit in O.S.No.142 of 2008. Though the judgement of Division Bench of this Court in R.Rukmani's case was upheld, the law that was laid in (2010) 15 SCC 207 was quoted with approval. The following observation of Hon'ble Supreme Court is very important "Had the appellants not entered their appearance by filing a written statement, it would have been a different situation."

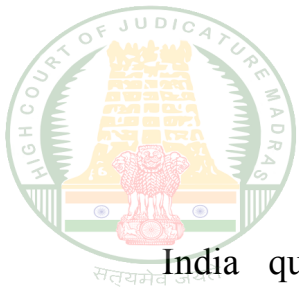
18.In the present context where the validity of registration of unilateral cancellation of a registered document and the authority of sub-registrar to register the document unilaterally cancelling a deed of conveyance is examined, it is also relevant and useful to refer to a recent judgment of Hon'ble Supreme Court in the case of *Asset Reconstruction Company (India) Limited-vs-J.P.Velayutham and ors.*, reported in 2022 SCC on-line SC 544. It is a case where the validity of registration of a document of sale through power



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of attorney was examined. A writ petition was filed by the appellant before the Hon'ble Supreme Court seeking a declaration that the act of the sub-registrar in registering the sale deed executed by the power of attorney agent in favour of his son was null and void. Finding that the power of attorney deed shown before the Registering authority does not authorize the power agent to sell or encumber the property conveyed, the writ petition was allowed holding that there was utter failure on the part of the Registering Authority to follow the mandate of law as prescribed in Sections 32 to 35 of the Registration Act, 1908. Two intra-Court appeals filed by the power of attorney agent as well as his son in favour of whom the sale deed was registered were allowed. On appeal, the Hon'ble Supreme Court considered the issue whether invocation of the writ jurisdiction of the High Court by the appellant was right, especially when civil suits at the instance of third parties are pending and the Hon'ble Supreme Court had directed the parties earlier to move the civil Court in a different proceedings arising under Section 145 of Code of Criminal Procedure.

19. After referring to the various provisions of Registration Act as applicable to the State of Tamil Nadu, the Hon'ble Supreme Court considered the scope of enquiry before registration by the registering officer and the scope of judicial review in a writ petition under Article 226 of the Constitution of



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India questioning registration. After noting down the three essential steps/stages of registration of any document, the Hon'ble Supreme Court held that the jurisdiction of the High Court under Article 226 of the Constitution is not ousted when a party approaches the High Court, questioning the failure of the Registering Authority to perform his statutory duties in the course of third step (Registration). So saying the civil appeals were allowed by restoring the order of the learned single Judge of this Court in the writ petition. The relevant paragraphs are extracted below for convenience:

“52. Actually, the registration of a document comprises of three essential steps among others. They are, (i) execution of the document, by the executant signing or affixing his left hand thumb impression; (ii) presenting the document for registration and admitting to the Registering Authority the execution of such document; and (iii) the act of registration of the document.

53. In cases where a suit for title is filed, with or without the relief of declaration that the registered document is null and void, what gets challenged, is a combination of all the aforesaid three steps in the process of execution and registration. The first of the aforesaid three steps may be challenged in a suit for declaration that the registered document is null and void, either on the ground that the executant did not have a valid title to pass on or on the ground that what was found in the document



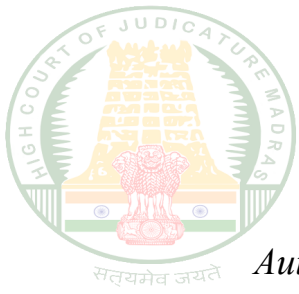
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was not the signature of the executant or on the ground that the signature of the executant was obtained by fraud, coercion etc. The second step of presentation of the document and admitting the execution of the same, may also be challenged on the very same grounds hereinabove stated. Such objections to the first and second of the aforesaid three steps are substantial and they strike at the very root of creation of the document. A challenge to the very execution of a document, is a challenge to its very DNA and any defect or illegality on the execution, is congenital in nature. Therefore, such a challenge, by its very nature, has to be made only before the civil court and certainly not before the writ court.

54. The third step namely the act of registration, is something that the Registering Authority is called upon to do statutorily. While the executant of the document and the person claiming under the document (claimant) are the only actors involved in the first two steps, the Registering Officer is the actor in the third step. Apart from the third step which is wholly in the domain of the Registering Authority, he may also have a role to play in the second step when a document is presented for registration and the execution thereof is admitted. The role that is assigned to the Registrar in the second step is that of verification of the identity of the person presenting the document for registration.

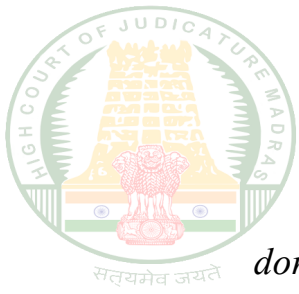
55. Thus, the first two steps in the process of registration are substantial in nature, with the parties to the document playing the role of the lead actors and the Registering



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Authority playing a guest role in the second step. The third step
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lead actor.

56. In suits for declaration of title and/or suits for declaration that a registered document is null and void, all the aforesaid three steps which comprise the entire process of execution and registration come under challenge. If a party questions the very execution of a document or the right and title of a person to execute a document and present it for registration, his remedy will only be to go to the civil court. But where a party questions only the failure of the Registering Authority to perform his statutory duties in the course of the third step, it cannot be said that the jurisdiction of the High Court Under Article 226 stands completely ousted. This is for the reason that the writ jurisdiction of the High Court is to ensure that statutory authorities perform their duties within the bounds of law. It must be noted that when a High Court, in exercise of its jurisdiction Under Article 226 finds that there was utter failure on the part of the Registering Authority to stick to the mandate of law, the Court merely cancels the act of registration, but does not declare the very execution of the document to be null and void. A declaration that a document is null and void, is exclusively within the domain of the civil court, but it does not mean that the High Court cannot examine the question whether or not the Registering Authority performed his statutory duties in the manner prescribed by law. It is well settled that if something is required by law to be done in a particular manner, it shall be



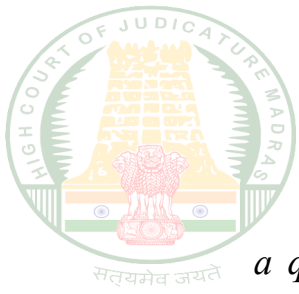
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done only in that manner and not otherwise. Examining whether the Registering Authority did something in the manner required by law or otherwise, is certainly within the jurisdiction of the High Court Under Article 226. However, it is needless to say that the High Courts may refuse to exercise jurisdiction in cases where the violations of procedure on the part of the Registering Authority are not gross or the violations do not shock the conscience of the Court. Lack of jurisdiction is completely different from a refusal to exercise jurisdiction.

57. In the case on hand, the Appellant has not sought a declaration from the High Court that the execution of the document in question was null and void or that there was no title for the executant to transfer the property. The Appellant assailed before the High Court, only the act of omission on the part of the Registering Authority to check up whether the person who claimed to be the power agent, had the power of conveyance and the power of presenting the document for registration, especially in the light to the statutory rules. Therefore, the learned Single Judge rightly applied the law and allowed the writ petition filed by the Appellant, but the Division Bench got carried away by the sound and fury created by the contesting Respondents on the basis of (i) pendency of the civil suits; (ii) findings recorded by the Special Court for CBI cases; and (iii) the order passed by this Court in the SLP arising out of proceedings Under Section 145 Code of Criminal Procedure.

58. Arguments were advanced on the question whether the Registering Authority is carrying out an administrative act or



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a quasi-judicial act in the performance of his statutory duties.

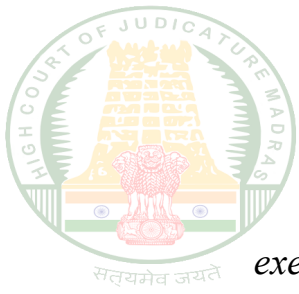
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But we think it is not relevant for determining the availability of writ jurisdiction. If the Registering Authority is found to be exercising a quasi-judicial power, the exercise of such a power will still be amenable to judicial review Under Article 226, subject to the exhaustion of the remedies statutorily available. On the contrary if the Registering Authority is found to be performing only an administrative act, even then the High Court is empowered to see whether he performed the duties statutorily ordained upon him in the manner prescribed by law.

*59. Much ado was sought to be made by contending that the Appellant approached the High Court without disclosing the previous orders of the High Court and this Court, relegating them to civil court for the adjudication of their claim. Reliance was also placed in this regard on the decision of this Court in *Raj Kumar Soni v. State of U.P.* MANU/SC/7271/2007 : (2007) 10 SCC 635.*

60. But we do not agree. The previous orders directing the Appellant to go to the civil court arose out of the proceedings Under Section 145 of the Code of Criminal Procedure. But it does not mean that the recourse to civil court was seen as the only panacea for all ills.

61. Therefore, in the light of (i) the Tamilnadu Registration Rules discussed above; (ii) the statutory scheme of Sections 32 to 35 of the Act as well as other provisions as amended by the State of Tamilnadu; and (iii) the distinction between a challenge to the first 2 steps in the process of



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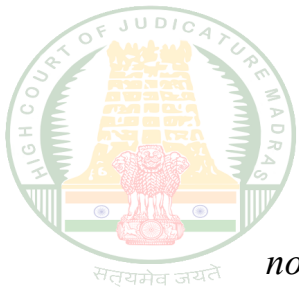
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execution of a document and the third step concerning registration, we are of the considered view that the Division bench of the High Court was not right in setting aside the order of the learned single Judge. If the Registering Officer under the Act is construed as performing only a mechanical role without any independent mind of his own, then even Government properties may be sold and the documents registered by unscrupulous persons driving the parties to go to civil court. Such an interpretation may not advance the cause of justice.

62. Therefore, in fine, the appeals are allowed, the impugned order of the Division Bench is set aside and the order of the learned single Judge is restored. There will be no order as to costs.”

20.It is interesting to note that the judgment of Hon'ble Supreme Court in **Satya Pal Anand Case** was also considered and explained that it does not apply to the case on facts. Para 45 and 46 of the judgment are very important and hence they are extracted below:

“45. The reliance placed by the Respondents on the decision in *Satya Pal Anand v. State of Madhya Pradesh MANU/SC/1359/2016 : (2016) 10 SCC 767*, is misplaced. The decision in *Satya Pal Anand (supra)* arose out a case where the allotment of a plot made by a cooperative society was cancelled unilaterally by a deed of extinguishment, by the society. The allottee raised a dispute which ended in a compromise but

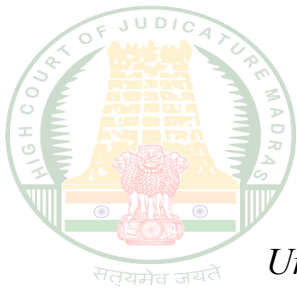


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notwithstanding the compromise the allottee raised a dispute under the relevant provisions of the Madhya Pradesh Cooperative Societies Act, 1960. When the dispute was pending, the allottee moved the Registering Officer for the cancellation of the deed of transfer executed in favour of the subsequent purchasers. When the Registering Authority refused to comply with the demand, a writ petition was moved seeking a declaration that the deed of extinguishment and the subsequent sales were null and void. The High Court dismissed the writ petition on the ground that a dispute was already pending before the competent authority under the Cooperative Societies Act. When the order of dismissal passed by the High Court was challenged before this Court, there was a difference of opinion as to whether the issue was directly covered by the decision of this Court in Thota Ganga Laxmi and Anr. v. Government of Andhra Pradesh and Ors. MANU/SC/1267/2010 : (2010) 15 SCC 206. Therefore, the matter was placed before a three Judge Bench. While upholding the decision of the High Court, the three member Bench held in Satya Pal Anand (supra) that there was no Rule in the State of Madhya Pradesh similar to Rule 26(k) (i) of the Rules issued by the State of Andhra Pradesh Under Section 69 of the Registration Act, 1908 and that therefore the decision in Thota Ganga Laxmi (supra) cannot be invoked.

46. The decision in Satya Pal Anand (supra) cannot go to the rescue of the contesting Respondents, for the simple reason that the writ Petitioner in that case, first accepted a compromise and then raised a dispute under the Cooperative Societies Act (which is akin to a civil suit) and thereafter approached the High Court



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Under Article 226 for a declaration, which he could have sought only in the already instituted proceedings. The very fact that Thota Ganga Laxmi was sought to be distinguished on the basis of the express provision contained in the Rules of the State of A.P., would indicate that there is no absolute bar for the High Court to exercise jurisdiction Under Article 226.”

21. In the course of hearing, the judgment of Hon'ble Supreme Court in the case of ***S.Sarojini Amma-vs-Velayudhan Pillai Sreekumar***, reported in ***2018(6)CTC 108*** is cited. The question involved in the Appeal before Hon'ble Supreme Court was whether a document styled as Gift deed but executed for consideration part of which had been paid and the balance promised to be paid, can be treated as formal document or instrument of gift. The appeal arose as against the judgment of High Court of Kerala in a Second Appeal. Since we are dealing with maintainability of a writ petition against unilateral cancellation of a deed of conveyance, this judgment has no relevance in the present context. The question before the High Court was whether the document could be a Deed of Gift or it is in the nature of Will. Though the deed of transfer was executed for consideration, it was found that it was subject to the condition that the Donee would look after the donor and her husband and that the Gift would take effect after the death of Donor. Hence, the Hon'ble Supreme Court held that



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there was no completed Gift and the Donor was within her right in cancelling the Deed pointing out that no evidence in proof of acceptance and the Gift does not become complete during life time of the Donor.

22.Recently a Division Bench of this Court headed by Hon'ble Chief Justice in the case of *N.Jeevalakshmi and another-vs-N.Maheswarman and others*, reported in *2022-3-L.W.604*, considered the maintainability of writ petition challenging unilateral cancellation of settlement deed. The Division Bench while upholding the maintainability of writ petition, distinguished the judgment of Hon'ble Supreme Court in Satya Pal Anand Case and specifically held that the order of learned Single Judge allowing the writ petition is not one going contrary to what has been held by the Apex Court. However, the Division Bench has observed in Para 14 of the judgment that once a deed is registered by the Sub-Registrar, he has no power to cancel it and this position is also covered by the judgment of Hon'ble Supreme Court in the case of 'Satya Pal Anad'. The observation may not be appropriate as the Hon'ble Supreme Court in Satya Pal Anand case has held that a writ petition for cancelling the deed of extinguishment cancelling the previous sale deed is not maintainable.

23.Let us consider the judgment of Hon'ble Supreme Court which is



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the centre of controversy for different or dissenting views. The judgment of three member Bench of Hon'ble Supreme Court in *Satya Pal Anand-vs- State of Madhyapradesh and Ors.*, reported in (2016) 10 SCC 767 is considered, explained and distinguished by Hon'ble Supreme Court and High Courts in a few judgments above referred to while examining its applicability to cases like the present one. It will be more appropriate to consider the said judgment with reference to facts, since the questions framed and answered by Hon'ble Supreme Court in the above judgment should be understood in the factual context before drawing legal inference.

Facts of the case in Satya Pal Anand Case:

24.1. A residential plot in Bhopal was allotted to the appellant's mother Smt.Veeravali Anand by Punjabi Housing Co-operations Society Ltd., (hereinafter referred to as the 'Society') by a registered deed dated 22.03.1962.

24.2. Smt.Veeravali Anand died on 12.06.1988. The Society executed a deed of extinguishment on 09.08.2001, unilaterally, cancelling the said allotment on the ground of violation of the bye-laws of the Society in not raising any construction on the plot within time.

24.3. On the basis of extinguishment deed the Society executed and



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got registered another sale deed in favour of the fifth respondent in respect of the same plot. The appellant objected to the said transaction. However, a compromise deed was executed where under the appellant received the consideration of Rs.6.50 lakhs. Despite the compromise deed, the appellant raised a dispute under Section 64 of Madhyapradesh Co-operative Societies Act, 1960, challenging the unilateral registration of extinguishment deed in 2001 and allotting the plot in favour of fifth respondent on 24.04.2004.

24.4. During the pendency of the dispute, the Society permitted transfer of the plot in favour of the respondents 6 and 7 by a sale deed dated 11.07.2006. Since the appellant was resorting to multiple proceedings in relation to the plot, the Society issued a notice on 12.07.2007 asking the appellant to return the consideration amount in furtherance of the compromise deed. The appellant did not return the money but continued with multiple proceedings including criminal proceedings.

24.5. The appellant thereafter filed an application before the Sub-registrar to cancel the registration of extinguishment deed dated 09.08.2001 and the subsequent sale deeds dated 21.04.2004 and 11.07.2007. The Sub-Registrar rejected the application on the ground that the dispute is pending



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adjudication and that the Sub-Registrar has no jurisdiction to cancel the registration of a registered document. Thereafter, the appellant filed an application under Section 69 of Registration Act, 1908 before the Inspector General of Registration, who rejected the said application by order dated 19.09.2008. The order of Sub-Registrar and the order of Inspector General of Registration are challenged in a writ petition where he also sought for a declaration that the deed of extinguishment deed and subsequent sale deeds are void ab initio and a direction to record cancellation of documents. The writ petition was dismissed by a Division Bench of High Court of Madhyapradesh on the ground that the appellant had already resorted to a remedy (a dispute) before the appropriate forum under Madhyapradesh Co-operative Societies Act, 1960 and that the Sub-Registrar has no power to cancel the registered documents.

24.6. On appeal before the Hon'ble Supreme Court, the matter was heard by a two member Bench of Hon'ble Supreme Court. Consequent to the difference of opinion between the two Hon'ble Judges of Division Bench, the appeal was placed before a three member Bench in terms of order of reference dated 25.08.2015. The larger Bench then proceeded to frame the questions to be answered by them on the facts of the case. It is relevant to extract para 23 to



Para 23.6(f) of the said judgment, which are as follows:

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“23.Having considered the rival submissions, including keeping in mind the view taken by the two learned Judges of this Court on the matters in issue, in our opinion, the questions to be answered by us in the fact situation of the present case, can be formulated as under:

23.1. (a) Whether in the fact situation of the present case, the High Court was justified in dismissing the Writ Petition?

23.2. (b) Whether the High Court in exercise of writ jurisdiction under [Article 226](#) of the Constitution of India is duty bound to declare the registered Deeds (between the private parties) as void ab initio and to cancel the same, especially when the aggrieved party (appellant) has already resorted to an alternative efficacious remedy under [Section 64](#) of the Act of 1960 before the competent Forum whilst questioning the action of the Society in cancelling the allotment of the subject plot in favour of the original allottee and unilateral execution of an Extinguishment Deed for that purpose?

23.1. (c) Even if the High Court is endowed with a wide power including to examine the validity of the registered Extinguishment Deed and the subsequent registered deeds, should it foreclose the issues which involve disputed questions of fact and germane for adjudication by the competent Forum under the Act of 1960?



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23.4. (d) *Whether the Sub-Registrar (Registration) has authority to cancel the registration of any document including an Extinguishment Deed after it is registered? Similarly, whether the Inspector General (Registration) can cancel the registration of Extinguishment Deed in exercise of powers under Section 69 of the Act of 1908?*

23.5. (e) *Whether the Sub-Registrar (Registration) had no authority to register the Extinguishment Deed dated 9th August 2001, unilaterally presented by the Respondent Society for registration?*

23.6. (f) *Whether the dictum in the case of Thota Ganga Laxmi (supra) is with reference to the express statutory Rule framed by the State of Andhra Pradesh or is a general proposition of law applicable even to the State of Madhya Pradesh, in absence of an express provision in that regard?"*

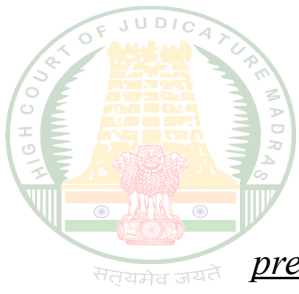
25. While considering the questions formulated by Hon'ble Supreme Court, the Hon'ble Supreme Court distinguished the judgment of Hon'ble Supreme Court in **Thota Ganga Laxmi case** reported in **(2010) 15 SCC 207** on the ground that the dictum in the said decision is based on Rule 26(k)(i) of Rule approved by state of Andhrapradesh under Section 69 of the Registration Act, 1908 which mandates the Registration authority to ensure that cancellation deeds are executed by all the executant and claimant to the previously registered conveyance and that such cancellation deed is accompanied by a



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declaration showing mutual consent or orders of a competent civil or High Court or State or Central Government annulling the transaction. A reference was also made to a decision of our High Court in the case of ***E.R.Kalaivan-vs-Inspector General of Registration***, reported in ***AIR 2010(Mad.) 18***, which was followed by his Lordship *V.Gopala Gowda.J* while giving his dissenting view before reference. The absence of a specific provisions under Registration Act, or Rules framed by the State of Madhyapradesh requiring signatures of both the vendor and the purchasers or the presence of both before the Sub-Registrar to present the deed of extinguishment was the main reason stated by the Hon'ble Supreme Court to distinguish a few judgments. The following paragraphs in the said judgment gives the reasonings of Hon'ble Supreme Court for its decision.

“44.In the dissenting opinion, reference has been made to the decision of the Division Bench of the Madras High Court in the case of E.R. Kalaivan (supra). It was a case where the Registering Officer refused to register the deed of cancellation presented before him on the ground that the cancellation deed was sought to be registered without there being a consent from the purchaser. The aggrieved person approached the Inspector General of Registration who in turn issued a circular dated 5.10.2007 addressed to all the Registering Officers in the State, that the deed of cancellation should bear the signatures of both the vendor and the purchaser. The validity of this circular was challenged by way of Writ Petition before the High Court. In the



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present case, our attention has neither been invited to any express provision in the Act of 1908, Rules framed by the State of Madhya Pradesh nor any circular issued by the Competent Authority of the State of Madhya Pradesh to the effect that the Extinguishment Deed should bear the signatures of both the vendor and the purchaser and both must be present before the Registering Officer when the document is presented for registration. Absent such an express provision, insistence of presence of both parties to the documents by the Registering Officer, may be a matter of prudence. It cannot undermine the procedure prescribed for registration postulated in the Act of 1908.

45. The moot question in this case is : whether the action of the Society to cancel the allotment of the plot followed by execution of an Extinguishment Deed was a just action? That will have to be considered keeping in mind the provisions of the Act of 1960 and the Bye-laws of the Society which are binding on the members of the Society. The interplay of the provisions of the *Contract Act* and the *Specific Relief Act* and of the *Co-operative Laws* and the *Bye Laws* of the Society permitting cancellation of allotment of plot or the membership of the concerned member will have to be considered in appropriate proceedings. Whether the decision of the Society to cancel the allotment of plot made in favour of its member is barred by the law of *Limitation Act*, is again a matter to be tested in the proceedings before the Cooperative Forum where a dispute has been filed by the appellant, if the appellant pursues that contention.

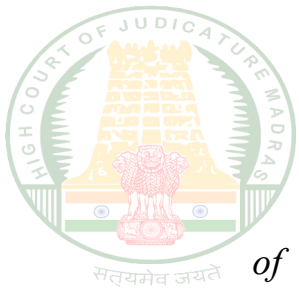


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46. *In our considered view, the decision in the case of Thota Ganga Laxmi (supra) was dealing with an express provision, as applicable to the State of Andhra Pradesh and in particular with regard to the registration of an Extinguishment Deed. In absence of such an express provision, in other State legislations, the Registering Officer would be governed by the provisions in the Act of 1908. Going by the said provisions, there is nothing to indicate that the Registering Officer is required to undertake a quasi judicial enquiry regarding the veracity of the factual position stated in the document presented for registration or its legality, if the tenor of the document suggests that it requires to be registered. The validity of such registered document can, indeed, be put in issue before a Court of competent jurisdiction.*

47. *In the present case, the document in question no doubt is termed as an Extinguishment Deed. However, in effect, it is manifestation of the decision of the Society to cancel the allotment of the subject plot given to its member due to non-fulfillment of the obligation by the member concerned. The subject document is linked to the decision of the Society to cancel the membership of the allottee of the plot given to him/her by the Housing Society. In other words, it is the decision of the Society, which the Society is entitled to exercise within the frame work of the governing cooperative laws and the Bye-laws which are binding on the members of the Society. The case of Thota Ganga Laxmi (supra), besides the fact that it was dealing with an express provision contained in the Statutory Rule, namely Rule 26 (k)(i) of the Andhra Pradesh Registration Rules 1960, was also not a case*

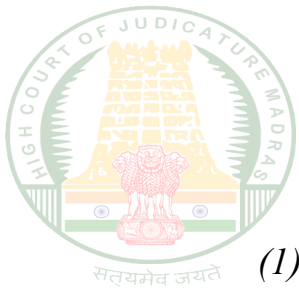


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of a deed for cancellation of allotment of plot by the Housing Society. But, of a cancellation of the registered sale deed executed between private parties, which was sought to be cancelled unilaterally. Even for the latter reason the exposition in the case of Thota Ganga Laxmi (supra) will have no application to the fact situation of the present case.

48. Taking any view of the matter, therefore, we are of the considered opinion that, the High Court has justly dismissed the writ petition filed by the appellant with liberty to the appellant to pursue statutory remedy resorted to by him under the Act of 1960 or by resorting to any other remedy as may be advised and permissible in law. All questions to be considered in those proceedings will have to be decided on its own merits.”

26. In the light of the precedents above referred to, this Court is inclined to refer some of the provisions of the Tamil Nadu Registration Act and the Rules. We noticed that at the time of hearing the issue by the Full Bench earlier. In *Latif Estate Line India Ltd.*, case, Section 22(A) of the Tamil Nadu Registration Act, which was then in the Statute was struck down. However, Section 22(A) was again introduced by Tamil Nadu Act 28 of 2012 dated 21.06.2012. The amendment came into force with effect from 20.10.2016. After amendment, *Section 22(A) of the Tamil Nadu Registration Act, 1908 reads as follows:*



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(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 Bhoodan 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 provision 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 ;



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(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.

27. Similarly Section 34-A as introduced by the Registration (Tamil Nadu Amendment) Act 28 of 2000, which came into effect from 14.04.2001 reads as follows:

“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.”

28. After amendment, every deed of sale should be mutual and an instrument relating to cancellation of sale deeds, without the consent of the person claiming under the said document, cannot be entertained by the Registering Officer and there is a statutory prohibition to register the document of unilateral cancellation. Therefore, by virtue of amendment, there is a statutory backing to support the view expressed by the earlier Full Bench,



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which we have no hesitation to approve. Similarly the judgment of Hon'ble

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Supreme Court in *Thota Ganga Laxmi-vs- State of Andhrapradesh*, reported in (2010)15 SCC 207 is applicable to the State of Tamil Nadu in view of the specific bar by virtue of sub-Section 3 of Section 22-A of Registration Act. We have to examine the position even before the amendment in 2016 introducing Sub Section 3 of Section 22-A of Registration Act.

29.We find that the scope of enquiry by the Registering Officer is broad. However, the remedies are also available to the aggrieved by virtue of specific provisions viz., Sections 71 to 76 of the Registration Act. Sections 34 and 35 are also relevant. It is useful to extract the Sections hereunder:

34.Enquiry before registration by registering officer.—(1) Subject to the provisions contained in this Part and in sections 41, 43, 45, 69, 75, 77, 88 and 89, no document shall be registered under this Act, unless the persons executing such document, or their representatives, assigns or agents authorised as aforesaid, appear before the registering officer within the time allowed for presentation under sections 23, 24, 25 and 26: Provided that, if owing to urgent necessity or unavoidable accident all such persons do not so appear, the Registrar, in cases where the delay in appearing does not exceed four months, may direct that on payment of a fine not exceeding ten times the amount of the proper registration fee, in addition to the fine, if any, payable under section 25, the document may be registered. (2) Appearances under sub-

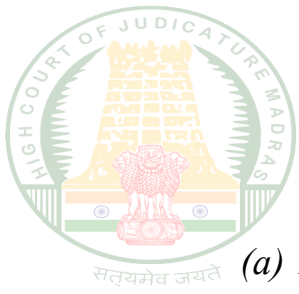


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section (1) may be simultaneous or at different times. (3) The registering officer shall thereupon— (a) enquire whether or not such document was executed by the persons by whom it purports to have been executed; (b) satisfy himself as to the identity of the persons appearing before him and alleging that they have executed the document; and (c) in the case of any person appearing as a representative, assign or agent, satisfy himself of the right of such person so to appear. (4) Any application for a direction under the proviso to sub-section (1) may be lodged with a SubRegistrar, who shall forthwith forward it to the Registrar to whom he is subordinate. (5) Nothing in this section applies to copies of decrees or orders.

Section 35. Procedure on admission and denial of execution respectively.—(1) (a) If all the persons executing the document appear personally before the registering officer and are personally known to him, or if he be otherwise satisfied that they are the person they represent themselves to be, and if they all admit the execution of the document, or (b) if in the case of any person appearing by a representative, assign or agent, such representative, assign or agent admits the execution, or (c) if the person executing the document is dead, and his representative or assign appears before the registering officer and admits the execution, the registering officer shall register the document as directed in sections 58 to 61 inclusive. (2) The registering officer may, in order to satisfy himself that the persons appearing before him are the persons they represent themselves to be, or for any other purpose contemplated by this Act, examine any one present in his office. (3)



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(a) If any person by whom the document purports to be executed denies its execution, or (b) if any such person appears to the registering officer to be a minor, an idiot or a lunatic, or (c) if any person by whom the document purports to be executed is dead, and his representative or assign denies its execution, the registering officer shall refuse to register the document as to the person so denying, appearing or dead: Provided that, where such officer is a Registrar, he shall follow the procedure prescribed in Part XII: 1 [Provided further that the 2 [State Government] may, by notification in the 3 [Official Gazette], declare that any Sub-Registrar named in the notification shall, in respect of documents the execution of which is denied, be deemed to be a Registrar for the purposes of this sub-section and of Part XII.]

30. In this context, it is useful to refer to Rules 55 and 162 of the Rules, which are approved by the State Government under Section 69 of the Registration Act, 1908.

55. It forms no part of a registering officer's duty to enquire into the validity of a document brought to him for registration or to attend any written or verbal protest against the registration of a document based on the ground that the executing party had no right to execute the document: but he is bound to consider objections raised on any of the grounds stated below:-

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



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- (b) that the document is forged;
- (c) that the person appearing as a representative, assign or agent, has no right to appear in that capacity;
- (d) that the executing party is not really dead, as alleged by the party applying for registration; or
- (e) that the executing party is a minor or an idiot or a lunatic."

Rule 162 of the Registration Rules reads as follows:

"162. When **registration** is refused the reasons for refusal shall be at once recorded in Book 2. They will usually come under one or more of the heads mentioned below---

I. **Section 19**.---That the document is written in a language which the Registering Officer does not understand and which is not commonly used in the District, and that it is unaccompanied by a true translation and a true copy.

II. **Section 20**.---That it contains unattested interlineations, blanks, erasures or alterations which in the opinion of the Registering Officer require to be attested.

III. **Section 21**.---(1) to (3) and **Section 22**.-- That the description of the property is insufficient to identify it or does not contain the information required by Rule 18.

IV. **Section 21(4)**.---That the document is unaccompanied by a copy or copies of any map or plan which it contains.



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V. Rule 32.---That the date of execution is not stated in the document or that the correct date is not ascertainable.

VI. Sections 23, 24, 25, 26, 72, 75 and 77.---That it is presented after the prescribed time.

VII. Sections 32, 33, 40 and 43.---That it is presented by a person who has no right to present it.

VIII. Section 34.---That the executing parties or their representatives, assigns, or agents have failed to appear within the prescribed time.

IX. Sections 34 and 43.---That the Registering Officer is not satisfied as to the identity of a person appearing before him who alleges that he has executed the document.

X. Sections 34 and 40.---That the Registering Officer is not satisfied as to the right of a person appearing as a representative, assign, or agent so to appear.

XI. Section 35.---That execution is denied by any person purporting to be an executing party or by his agent.

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

XII. Section 35.---That the person purporting to have executed the document is a minor, an idiot or a lunatic.



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

XIII. [Section 35](#).---That execution is denied by the representative or assign of a deceased person by whom the document purports to have been executed.

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

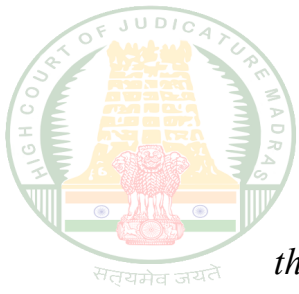
XIV. [Sections 35](#) and [41](#).---That the alleged death of a person by whom the document purports to have been executed has not been proved.

XV. [Section 41](#).---That the Registering Officer is not satisfied as to the fact of execution in the case of a will or of an authority to adopt presented after the death of the testator or donor.

XVI. [Sections 25, 34](#) and [80](#).---That prescribed fee or fine has not been paid.

XVII. [Section 230\(A\)](#) of the Income Tax Act, 1961 (Act 43 of 1961).--That the prescribed certificates from the Income Tax Officer has not been produced.

XVIII. [Section 10](#) of the Tamil Nadu Land Reforms (Fixation of Ceiling of Land) Act, 1961 (Act 58 of 1961).---That



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WEB COPY *the declaration has not been filed by the transfer. XIX. Section 27 of the Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1978 (Act 24 of 1978).---That the statement has not been filed by the transferror and transferee.*

31.Hence as per Rule 55 of the rules approved by the State, the Registering Officer is bound to consider any objections as to the identity of person appearing before him as executant or authority as representing the executant or the allegation of forgery. When the Registering Authority accept any document for registration despite objections or refuse to register the document, the person aggrieved can file an appeal under Section 72 of the Registration Act. In view of the specific provision under Sections 71 to 77 of the Registration Act, the aggrieved persons may either file an appeal under Section 72 or submit an application before the Registrar as the case may be. When the registrar refused to order the document to be registered under Section 72 or Section 76, it is open to the person aggrieved to institute a civil suit within the local limits of the whose original jurisdiction, the Registrar Office, in which, the document is sought to be registered is situate for a decree directing the document to be registered.

32.The scope of Sections 71 to 76 and the procedure to be followed



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were considered by the Hon'ble Supreme Court in *Veena Singh's case* reported in **(2022) 7 SCC 1**. On the combined reading of the provisions of the Registration Act and the Rules approved by the State Government of Tamil Nadu, and the other Provisions relating to Registration of Power of Attorney deed as dealt with by the Hon'ble Supreme Court in the case of *Asset Reconstruction Company (India) Limited-vs-S.P.Velayutham and others*, reported in **2022 SCC Online 544**, the registering authority, whether he is exercising a quasi-judicial power, or performing an administrative act, the High Court is empowered to see whether he performed the duties statutorily ordained upon him in the manner prescribed by law. The Hon'ble Supreme Court in the case of *Suraj Lamp and Industries (P) ltd,-vs-State of Haryana*, reported in **(2009) 7 SCC 363**, has considered the object of Registration Act, 1908. It is held that registration provides safety and security to transactions relating to immovable property and it gives publicity and public exposure to documents thereby prevent forgeries and frauds in regard to execution of documents. It is further held that Registration 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. Registration ensures that every person dealing with immovable



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property can rely with confidence upon the statements contained in the registers (maintained under Registration Act) as a full and complete account of all transactions by which title to the property can be ascertained. Any act or omission of Registrar which may interfere with the transfer or title of anyone has to be deprecated as one against public policy.

33.The Registering Authority in certain factual situation may accept a document for registration contrary to the statutory provisions and the person who is aggrieved by the registration of such document which ought not have been accepted as in the case of unilateral cancellation of sale deed or settlement deed, can always approach this Court invoking the extraordinary jurisdiction of High Court under Article 226 of the Constitution of India. Therefore, the Hon'ble Supreme Court on several occasion as referred to above has expressed the view that a writ petition is maintainable questioning the registration of document of cancellation of conveyance or accept fraudulent transactions without following the procedure. Even in a case where the power of attorney deed produced by the agent which does not authorize the power of attorney agent to sell the property, it is not necessary that the person aggrieved should be driven to the Civil Court for cancelling the sale under Section 31 of the Specific



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Relief Act, if a sale executed by the power of attorney is registered, as held by

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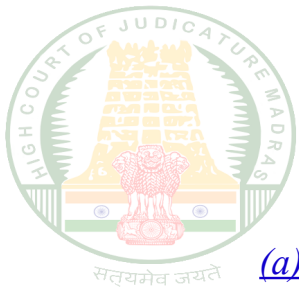
Hon'ble Supreme Court in *Asset Reconstruction Company (P) Ltd.*, case.

34.It is useful to extract Section 5 of the Transfer of Property Act, hereunder:

“Transfer of property” defined.—In the following sections “transfer of property” means an act by which a living person conveys property, in present or in future, to one or more other living persons, or to himself, 1[or to himself] and one or more other living persons; and “to transfer property” is to perform such act. 1[In this section “living person” includes a company or association or body of individuals, whether incorporated or not, but nothing herein contained shall affect any law for the time being in force relating to transfer of property to or by companies, associations or bodies of individuals.]

35.The properties that can be transferred are enumerated under Section 6 of the Transfer of Property Act. Section 6 of the Transfer of Property Act reads as follows:

“6.What may be transferred.—Property of any kind may be transferred, except as otherwise provided by this Act or by any other law for the time being in force,—



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(a) The chance of an heir-apparent succeeding to an estate, the chance of a relation obtaining a legacy on the death of a kinsman, or any other mere possibility of a like nature, cannot be transferred;

(b) A mere right of re-entry for breach of a condition subsequent cannot be transferred to any one except the owner of the property affected thereby;

(c) An easement cannot be transferred apart from the dominant heritage;

(d) All interest in property restricted in its enjoyment to the owner personally cannot be transferred by him; 1[(dd) A right to future maintenance, in whatsoever manner arising, secured or determined, cannot be transferred;]

*(e) A mere right to sue 2[***] cannot be transferred;*

(f) A public office cannot be transferred, nor can the salary of a public officer, whether before or after it has become payable;

(g) Stipends allowed to military 3[naval], 4[air-force] and civil pensioners of the 5[Government] and political pensions cannot be transferred;

(h) No transfer can be made (1) in so far as it is opposed to the nature of the interest affected thereby, or (2) 6[for an unlawful object or consideration within the meaning of section 23 of the Indian Contract Act, 1872 (9 of 1872)], or (3) to a person legally disqualified to be transferee; 7[(i) Nothing in this section shall be deemed to authorise a tenant having an untransferable right of occupancy, the farmer of an estate in respect of which default has been made in paying revenue, or the lessee of an estate, under the management of a Court of Wards, to assign his interest as such tenant, farmer or lessee.]



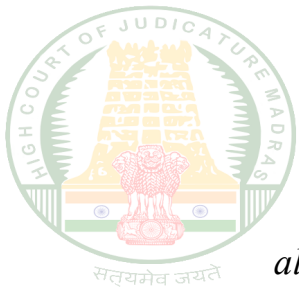
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WEB 36. Section 7 of the Transfer of Property Act, is extracted hereunder:

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

37. Section 8 of the Transfer of Property Act deals with the effect of the transfer by operation. Section 8 of the Transfer of Property reads as follows:

“8. Operation of transfer.—Unless a different intention is expressed or necessarily implied, a transfer of property passes forthwith to the transferee all the interest which the transferor is then capable of passing in the property and in the legal incidents thereof. Such incidents include, where the property is land, the easements annexed thereto, the rents and profits thereof accruing after the transfer, and all things attached to the earth; and, where the property is machinery attached to the earth, the moveable parts thereof; and, where the property is a house, the easements annexed thereto, the rent thereof accruing after the transfer, and the locks, keys, bars, doors, windows, and all other things provided for permanent use therewith; and, where the property is a debt or other actionable claim, the securities therefor (except where they are



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also for other debts or claims not transferred to the transferee), but not arrears of interest accrued before the transfer; and, where the property is money or other property yielding income, the interest or income thereof accruing after the transfer takes effect.”

38. Section 54 of the Transfer of Property Act, reads as follows:

54. “Sale” defined.—“Sale” is a transfer of ownership in exchange for a price paid or promised or part-paid and part-promised. Sale how made.—3Such transfer, in the case of tangible immovable property of the value of one hundred rupees and upwards, or in the case of a reversion or other intangible thing, can be made only by a registered instrument. In the case of tangible immovable property of a value less than one hundred rupees, such transfer may be made either by a registered instrument or by delivery of the property. Delivery of tangible immovable property takes place when the seller places the buyer, or such person as he directs, in possession of the property. Contract for sale.—A contract for the sale of immovable property is a contract that a sale of such property shall take place on terms settled between the parties. It does not, of itself, create any interest in or charge on such property.



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39.No transfer can be made in so far as it is opposed to the nature of interest affected thereby or for an unlawful object as per Section 6 of Transfer of Property Act. Only a person competent to contract and has a transferable right is competent to transfer such property. “Sale” is a transfer of ownership in exchange for a price paid or promised. In case of immovable property of the value of one hundred rupees and more, it can be made only by a registered instrument. Once a transfer is made by a registered instrument_all the interest which the transferor is then capable of passing in the property is passed on forthwith to the transferee. After a deed of conveyance, the transferor has no transferable interest. The Transfer of Property Act does not permit the transferor to recall an instrument so as to divest the transferee's title. The Registration Act does not deal with unilateral cancellation of a sale deed . The Registration Act does not confer any power to registrar to cancel a document which had been registered as per the Act. By registration a legal sanctity is given to the conveyance. When the object of Registration is to ensure public to rely with confidence upon the statements contained in the registers maintained in the Registrar's office as a full and complete account of all transaction affecting title, permitting registrars to accept unilateral cancellation of sale deed or any other deed of conveyance (except revocation of gift as may be permitted in accordance with Section 126 of Transfer of Property Act or a Will)



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will be opposed to the object and purpose of Registration Act itself and contrary to the provision of Transfer of property Act. A person, after conveying all his right by a deed of conveyance, has no right to deal with the property again affecting, limiting or extinguishing the right or title of transfer for no consideration. When such deed of cancellation is presented, the deed of conveyance which had been registered earlier is referred to. It is not as if the registrar needs to prove further to find out whether the person executing the document has title. When a deed of cancellation is presented, the incompetency to transfer is admitted by the executant. The intention of the person presenting a document cancelling the registered document is fraudulent and the fraud is accomplished, when such document is registered. Registering Officer has power to refuse to register a document. A person may file an appeal before Registrar against an order refusing to register, except on the ground of denial of execution. Similarly, if the Sub-Registrar refuses to register on the ground of denial of execution, a person claiming under the document can apply to the Registrar to establish his right to have the document registered. After accepting the document for registration and registering the document, the Registrar has no power under the Registration Act to cancel the Registration. If a document cancelling the registered deed is accepted for registration by the registering authority, he intends to do something which he is not authorised under the Act

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and it is beyond his power under the Registration Act.

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40.Hence, we have no hesitation to answer the issue by holding that the Sub-Registrar namely, the Registering Authority has no power to accept the deed of cancellation to nullify the deed of conveyance made earlier.

41.**Regarding gift or settlement:** With regard to unilateral cancellation of gift deed, which is not revokable and does not come under the purview of Section 126 of the Transfer of Property Act, the Registrar has no power to accept the deed of cancellation to nullify the registered settlement deed. Section 126 of the Transfer of Property Act, reads as follows:

“126. When gift may be suspended or revoked.—The donor and donee may agree that on the happening of any specified event which does not depend on the will of the donor a gift shall be suspended or revoked; but a gift which the parties agree shall be revocable wholly or in part, at the mere will of the donor, is void wholly or in part, as the case may be. A gift may also be revoked in any of the cases (save want or failure of consideration) in which, if it were a contract, it might be rescinded. Save as aforesaid, a gift cannot be revoked. Nothing contained in this section shall be deemed to affect the rights of transferees for consideration without notice.



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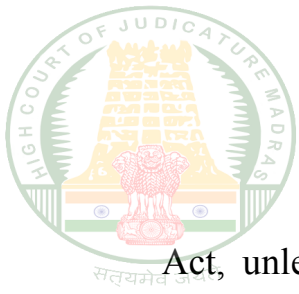
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42. Section 126 of the Transfer of Property Act recognizes the power of revocation where the donor reserves a right to suspend or revoke the gift on happening of any specified event. However, the illustrations clarify that the revocation should be with the assent of the donee and it shall not be at the will of donor as a gift revocable at the mere Will of the donor is void. The Sub-registrar cannot decide whether there was consent for revocation outside the document. If the donor by himself reserves a right to revoke the gift at his Will without the assent by donee, the gift itself is void. Since we are dealing with unilateral cancellation, the power of registration of cancellation or revocation of gift deed cannot be left to the discretion or wisdom of registering authority on facts which are not available or discernible from the deed of gift. When the power of revocation is reserved under the document, it is permissible to the registering officer to accept the document revoking the gift for registration only in cases where the following conditions are satisfied;

(a) There must be an agreement between the donor and donee that on the happening of a specified event which does not depend on the Will of the donor the gift shall be suspended or revoked by the donor.

(b) Such agreement shall be mutual and expressive and seen from the document of gift.

(c) Cases which do not fall under Section 126 of Transfer of Property



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Act, unless the cancellation of Gift or Settlement is mutual, the registering authority shall not rely upon the self serving statements or recitals in the cancellation deed. For example questioning whether the gift deed was accepted or acted upon cannot be decided by the registering authority for the purpose of cancelling the registration of gift or settlement deed.

43.The donor must specifically reserves such right to suspend or revoke the gift deed with the consent of donee to attract Section 126 of the Transfer of Property Act. Unless the agreement is mutual, expressed in the recitals, the Registering Authority cannot accept the document for registration. However, the factual allegations with regard to the acceptance of gift or the issue where the gift was acted upon or not do not come under the purview of the Registering Officer. Hence, the Registering Officer is not excepted to accept the document unilaterally cancelling the gift deed, merely on the basis of the statement of the donor or the recitals in the document for cancellation.

44.From the discussions and conclusions we have reached above with reference to various provisions of Statutes and precedents, we reiterate the dictum of Hon'ble Supreme Court in *Thota Ganga Laxmi and Ors.-vs-Government of Andhra Pradesh & Ors.*, reported in (2010) 15 SCC 207 and



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the Full Bench of this Court in *Latif Estate Line India Ltd.*, case, reported in

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AIR 2011(Mad) 66 and inclined to follow the judgment of three member Bench of Hon'ble Supreme Court in *Veena Singh's case* reported in *(2022) 7 SCC 1* and the judgment of two member Bench of Hon'ble Supreme Court in *Asset Reconstruction Company (India) Ltd.*, case, reported in *2022 SCC On-line SC 544* for the following propositions:

(a) A sale deed or a deed of conveyance other than testamentary dispositions which is executed and registered cannot be unilaterally cancelled.

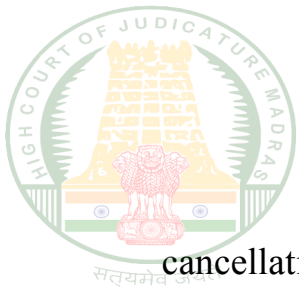
(b) Such unilateral cancellation of sale deed or a deed of conveyance is wholly void and non est and does not operate to execute, assign, limit or extinguish any right, title or interest in the property.

(c) Such unilateral cancellation of sale deed or deed of conveyance cannot be accepted for registration.

(d) The transferee or any one claiming under him or her need not approach the civil Court and a Writ Petition is maintainable to challenge or nullify the registration.

(e) However, an absolute deed of sale or deed of conveyance which is duly executed by the transferor may be cancelled by the Civil Court at the instance of transferor as contemplated under Section 31 of Specific Relief Act.

(f) As regards gift or settlement deed, a deed of revocation or



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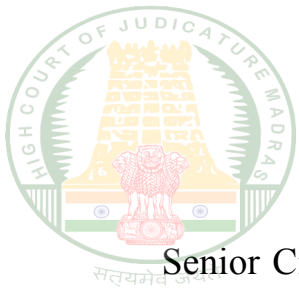
cancellation is permissible only in a case which fall under Section 126 of Transfer of Property Act, and the Registering Authority can accept the deed of cancellation of gift for registration subject to the conditions specified in para 42 of this judgment.

(g)The legal principles above stated by us cannot be applied to cancellation of Wills or power of Attorney deed which are revocable and not coupled with interest.

45.As a result of our forgoing conclusions, we answer the reference by holding that the Registrar has no power to accept the deed of cancellation to nullify the deed of conveyance made earlier, when the deed of conveyance has already been acted upon by the transferee. Since anyone may try to mislead or misinterpret our judgment by referring to the question of reference we insist that our answer to the reference should be understood in the light of our conclusions summarised in the previous paragraph.

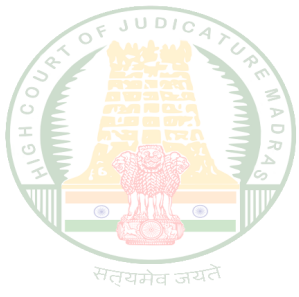
The decision on individual cases:

46.The writ petition in W.P(MD)No.6889 of 2020 is filed by the daughter of the second respondent to quash the order passed by the first respondent under Section 23 of the Maintenance and Welfare of Parents and



W.P.(MD).Nos.6889,8330,13297 of 2020,11674 of 2015
and W.A(MD)No.800 of 2022

Senior Citizens Act 2007. The gift deed executed by the second respondent in favour of the writ petitioner was unilaterally cancelled by the second respondent father. The settlement deed stated to have been executed by the second respondent, dated 06.03.2015 is irrevocable and it is a deed of settlement out of love and affection. The second respondent has specifically stated that he has no right to revoke the settlement deed. From the recitals, the settlement does not attract Section 126 of Tamil Nadu Property Act. It is seen that the settlor viz., the second respondent, has not put any condition. In other words, the gift deed is not subject to any condition or terms that the transferor shall provide the basic amenities and basic physical needs to the second respondent. In such circumstances, this Court is of the view that there is no scope for invoking the power provided to the second respondent under Section 23 of the Tamil Nadu Maintenance and Welfare of Parents and Senior Citizens Act, 2007. Therefore, the order impugned is liable to be quashed. Even though we agree that the writ petition can be allowed, this Court is unable to decide the writ petition in this batch where question referred to us is different. Hence, the writ petition in W.P(MD)No.6889 of 2020 is de-linked and the Registry is directed to list the matter before the appropriate Bench.



W.P.(MD).Nos.6889,8330,13297 of 2020,11674 of 2015
and W.A(MD)No.800 of 2022

47.In view of our conclusions and answer to the reference, the writ petition in W.P(MD)Nos.11674 of 2015 and 8330 of 2020 are allowed. The writ petition in W.P(MD)No.13297 of 2020 is dismissed. Similarly, the writ appeal in W.A(MD)No.800 of 2022 is dismissed. In all cases, it is open to the aggrieved person to file a civil suit challenging the gift or settlement deed as may be permissible under Section 31 of the Specific Relief Act. No costs. Consequently, connected miscellaneous petition is closed.

(S.S.S.R.J.) (G.R.S.J.) (R.V.J.)
02.09.2022

Index: Yes/No
Internet: Yes/No



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W.P.(MD).Nos.6889,8330,13297 of 2020,11674 of 2015
and W.A(MD)No.800 of 2022

S.S. SUNDAR, J.,
G.R.SWAMINATHAN
and
R.VIJAYAKUMAR
Ns

To

- 1.The Inspector General of Registration,
100, Santham Road,
Chennai.
- 2.The District Registrar,
Ramanathapuram District.
- 3.The Sub Registrar,
Abiramam,
Ramanathapuram District.
- 4.The Revenue Divisional Officer,
Paramakudi Division,
Ramnad District.

Pre-delivery order made in
W.P.(MD).Nos. 6889, 8330, 13297 of 2020, 11674 of 2015
and
W.A(MD)No.800 of 2022

02.09.2022