

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE RAJA VIJAYARAGHAVAN V

THURSDAY, THE 05TH DAY OF NOVEMBER 2020 / 14TH KARTHIKA, 1942

WP(C).No.22743 OF 2020(P)

PETITIONER:

DINESH KUMAR,
S/O. LATE SANKARAN NAIR, MANDOKKUNNI HOUSE,
KOTTARAKKUNNU P.O, VELLAMUNDA, WAYANAD-670 731

BY ADVS.
SRI.M.P.ASHOK KUMAR
SRI.P.C.GOPINATH
SMT.BINDU SREEDHAR
SHRI.ASIF N

RESPONDENTS:

- 1 STATE OF KERALA
REP. BY IT'S SECRETARY, REGISTRATION DEPARTMENT,
GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM-695 001
- 2 THE SUB REGISTRAR,
SUB REGISTRAR'S OFFICE,
VELLAMUNDA SUB REGISTRAR OFFICE,
WAYANAD-670 731

SRI KP HARISH, SR GP

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
05.11.2020, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

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JUDGMENT

The petitioner states that by a settlement deed executed in the year 1996 as Document No.1083 of 1996 of the Vellamunda SRO, the property having an extent of 1.06 Acres comprised in Sy.No.57/1/A/1/A of Vellamunda Amsom was settled in favour of the petitioner by his father late Sri. Sankaran Nair. The petitioner states that pursuant to the execution of the settlement deed as aforesaid, the petitioner remitted basic tax as is evident from Exts.P3 and P4. He states that he has been in possession of the said property and refers to Ext.P5 possession certificate dated 2.11.2016 to establish the said fact.

2. The petitioner states that he wanted to obtain a loan from a bank for which he approached the Sub Registrar and applied for an encumbrance certificate. On receiving the encumbrance certificate, he realized to his shock that the settlement deed executed by his father was unilaterally cancelled by him by executing a cancellation deed Vide No. 1838 of 1996 dated 7.7.1996 of the Vellamunda SRO. The contention of the petitioner is that the cancellation deed unilaterally executed by the transferor will not create, assign, limit or extinguish the right of the petitioner over the property and the same is null and void and non-est in

the eye of law. It is in the afore circumstances that the petitioner has approached this Court seeking the following reliefs:

- i) Declare that the validity of Exhibit P1 settlement deed is not nullified because of registration of Exhibit P2 cancellation deed.
- ii) Issue a writ of mandamus or other appropriate writ or order directing the 2nd respondent to issue fresh Encumbrance Certificate to the petitioner in respect of 1.06 Acres of landed property in Sy No.57/1/A/1/A in Vellamunda Amsam Desom Mananthavady Taluk without any entry regarding Exhibit P2 cancellation deed cancelling Exhibit P1 settlement deed.
- iii) Declare that the Cancellation deed No.1838/96 of Vellamunda SRO dt 07/07/1996(Exhibit P2) is a void document and it will not adversely affect in any manner the property right of the petitioner with regard to the property covered by Exhibit P1.
- iv) Issue a writ of mandamus or any other appropriate writ or order directing the 2nd respondent to delete all entries made in the concerned registers maintained in the office of the 2nd respondent with regard to 1.06 Acres of landed property in Sy No.57/1/A/1/A in Vellamunda Amsam Desom Mananthavady Taluk.
- v) Declare that a registered Settlement Deed document cannot be cancelled by a deed of cancellation.

3. I have heard Sri. M.P.Ashok Kumar, the learned counsel appearing for the petitioner and the learned Government pleader.

4. A Division Bench of this Court in **Hamsa P. A. v. District Registrar General, Kozhikode and others** (2011 (3) KHC 342) relying on a judgment of the Apex Court in **Thota Ganga Lakshmi and another v. Government of Andhra Pradesh** (2011 (3) KLT 345) has conclusively held that cancellation of deed executed unilaterally by the vendor of a property, which had been duly transferred and conveyed earlier, cannot be legally sustained. It was held that such documents are void, non-est and "meaningless transactions". A Division Bench of this Court in **Santhosh Antonio S. Netto v. Joshy Thomas and Ors.** [2020 (3) KLT 408], relying on the above judgments had occasion to observe that once registration of a deed is effected, in accordance with the law, then the only alternative available to the vendor is to get the sale deed cancelled in terms of law seeking adjudication through a Civil Court as provided under Section 31 of the Specific Relief Act. Of course, Section 83 A of the Registration Act, enables the authorities under the Registration Act to cancel such registration of documents under the circumstances mentioned in the provision on specified and limited circumstances to protect public interest. It was further held that the Sub Registrar has no power to register a cancellation deed unilaterally executed by the vendor of the sale deed. The principles laid down in the above decisions would apply on all fours to the case on hand. In that view of the matter, the

petitioner is entitled to succeed.

5. In the result, this writ petition will stand allowed and the registration of the deed of cancellation Vide No. 1838 of 1996 of the Vellamunda SRO produced in this case as Ext.P2 will stand quashed. The 2nd respondent shall cancel/strike off and remove the said deed from the register maintained by him in respect of the property covered under Ext.P1 deed. The details of Ext.P2 cancellation deed shall not be included in the encumbrance certificate to be issued in respect of the property covered under Ext.P1. The needful shall be done by the 2nd respondent within a period of four weeks from today. The revenue documents requested for by the petitioner shall be issued to him without showing the details of Ext.P2.

sd/-

RAJA VIJAYARAGHAVAN V

JUDGE

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APPENDIX

PETITIONER'S EXHIBITS:

- EXHIBIT P1 PHOTOCOPY OF THE REGISTERED SETTLEMENT
DEED NUMBER 1083/96 OF VELLAMUNDA SRO
DT. 16.04.1996.
- EXHIBIT P2 PHOTOCOPY OF CANCELLATION DEED NO.
1838/96 OF VELLAMUNDA SRO DT.
07.07.1996.
- EXHIBIT P3 PHOTOCOPY OF BASIC TAX RECEIPT SHOWING
THE REMITTANCE OF TAX DT. 17.12.1996.
- EXHIBIT P4 PHOTOCOPY OF BASIC TAX RECEIPT SHOWING
THE REMITTANCE OF TAX DT. 17.09.2018.
- EXHIBIT P5 PHOTOCOPY OF THE POSSESSION CERTIFICATE
DT. 02.11.2016.
- EXHIBIT P6 PHOTOCOPY THE ORDER DT. 12.01.2010
PASSED BY THE JFCM I MANANTHAVADY.
- EXHIBIT P7 PHOTOCOPY OF THE LETTER OF INTIMATION
SENT BY THE DISTRICT COLLECTOR, WAYANAD
DT. 07.06.2012.
- EXHIBIT P8 PHOTOCOPY OF THE ENCUMBRANCE
CERTIFICATE DT. 20/10/2020 ISSUED BY
THE REGISTRATION DEPARTMENT.

RESPONDENTS EXHIBITS:NIL

//TRUE COPY//

P.A TO JUDGE