

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE V.G.ARUN

THURSDAY, THE 25TH DAY OF JUNE 2020 / 4TH ASHADHA, 1942

WP(C).No.16402 OF 2015(A)

PETITIONER/S:

VADAKKE KUDIYIL ROSE
THIRUVAMBADI AMSOM AND DESOM,
KOZHIKODE TALUK,
KOZHIKODE DISTRICT,
P.O.THIRUVAMBADI.

BY ADVS.
SRI.R.SUDHISH
SMT.M.MANJU

RESPONDENT/S:

- 1 STATE OF KERALA@neeharam
REPRESENTED BY SECRETARY,
REGISTRATION DEPARTMENT,
SECRETARIAT,
THIRUVANANTHAPURAM-695001.
- 2 INSPECTOR GENERAL OF REGISTRATION
GOVT.OF KERALA,
VANCHIYOOR,
THIRUVANANTHAPURAM-695035.
- 3 DISTRICT REGISTRAR
KOZHIKODE DISTRICT,
KOZHIKODE-673001.
- 4 SUB REGISTRAR
MUKKOM,
KOZHIKODE-673602.
- 5 VADAKKE KUDIYIL MATHEW
THIRUVAMBADI AMSOM AND DESOM,
KOZHIKODE TALUK,
KOZHIKODE DISTRICT,
P.O.THIRUVAMBADI.

R1, R4 BY GOVERNMENT PLEADER
R1, R5 BY ADV. SRI.A.RANJITH NARAYANAN
R1 BY ADV. SMT.A.SIMI

OTHER PRESENT:

GP MATHEW GEORGE VADAKKEL

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 16-03-2020, THE COURT ON 25-06-2020 DELIVERED THE
FOLLOWING:

JUDGMENT

Dated this the 25th day of June, 2020

The petitioner has approached this Court seeking the following reliefs:-

“1. To declare that Doc No.142/1999 dated 13.11.1999 of Mukkom S.R.O. (Ext.P2) - cancellation deed executed by respondent No.5 and registered by respondent No.4 is per-se void non est as opposed to law, public policy and principles of natural justice and hence quash the registration of the same by issuance of a writ of certiorari or any other appropriate writ.

2. Issue a writ of mandamus or any other appropriate writ or order directing the 4th respondent to delete the entry reflecting the registration of Ext.P2 in Book 1 and other registers maintained at the office of the 4th respondent i.e. Sub Registrar's Office, Mukkom.

3. Issue a writ of mandamus or any other appropriate writ or order or direction restraining respondent No.5 from interfering in any manner in the legitimate enjoyment of the property owned by the petitioner either by misusing Ext.P2 cancellation or in any other manner.”

2. The reliefs are founded on the following facts:

The petitioner is the absolute owner of 4.54 Acres of land in Koodaranhi Village in Kozhikode Taluk. The property was purchased by the petitioner under Ext.P1 registered sale deed dated 22.10.1974. The vendor of the property is none other than the petitioner's brother, arrayed as the 5th respondent herein. The petitioner being an NRI, had entrusted the management of the property with her brothers, including the 5th respondent. On retirement from her employment abroad, the petitioner returned to her native place on 07.04.2015, with the intention of settling down in her property. To the surprise and dismay of the petitioner, she came to know that during her absence the 5th respondent had unilaterally executed Ext.P2 deed dated 13.01.1999, cancelling

Ext.P1 sale deed. The cancellation deed was registered as document No.142 of 1999 of the Mukkom Sub Registry. The petitioner alleges that registration of the cancellation deed is the result of collusion between the Sub Registrar and the 5th respondent and is vitiated by fraud and hence Ext.P2 is void *ab initio* and *non est*. Hence, the prayers.

3. The 5th respondent has filed a counter affidavit, refuting the allegations and contending that even though Ext.P1 sale deed was executed by him, that was never acted upon and never intended to be acted upon. That, the sale consideration was never paid by the petitioner and as such, Ext.P1 is not legally valid or enforceable. It is stated that in the year 1996, the petitioner had executed a power of attorney in favour of another brother named Joy Paul. Ext.P1 cancellation deed was

executed with the consent and knowledge of Joy Paul; the power of attorney holder. The 5th respondent claims to have been in uninterrupted possession of the property, in spite of execution Ext.P1 sale deed. It is contended that the petitioner's remedy, as against registration of the cancellation deed, is before the Civil Court. That, the time prescribed for availing civil remedy having lapsed, no relief could be granted by exercising the discretion vested with this court under Article 226 of the Constitution.

4. The Sub Registrar, Mukkom, who had registered Ext.P2 cancellation deed, has filed counter affidavit stating that as per the provisions of the Registration Act, 'cancellation deed' is a compulsorily registrable document and if the deed is presented with proper stamp duty and registration fee, the Sub Registrar is bound

to register the document. It is pointed out that under Section 67 of the Registration Act, it is not the duty of the Registering Officer to enquire into the validity of a document submitted for registration. The allegation of fraud is stoutly denied by the 5th respondent.

5. Heard Sri.R.Sudhissh, learned Counsel for the petitioner, Sri.A Ranjith Narayanan, learned Counsel for the 5th respondent and Sri.Mathew George Vadakkal, learned Government Pleader.

6. The learned Counsel for the petitioner placed reliance on the decisions of this Court in Noble John v. State of Kerala [2010(3) KLT 941] and Hamsa P.A v. District Registrar General [2011(3) KHC 342] and that of the Apex Court in Thota Ganga Laxmi v. Government of Andra Pradesh [2011 (3) KLT 345 (SC)], to contend that a cancellation deed registered unilaterally, without the knowledge or

consent of the owner, is not a valid document and is, on the other hand, void *ab inito*. Reference was also made to Section 32A of the Registration Act, 1908.

7. In elaboration of the contention, the learned Counsel pointed out that in Ext.P1 document, it is specifically stated that the 5th respondent had received an amount of Rs.11,350/- towards sale consideration. As against this, in Ext.P2, what has been stated is that, other than executing Ext.P1 document, no consideration was demanded or paid or possession of the property entrusted with the petitioner or taken over by her. The learned Counsel submits that the Sub Registrar is not expected to blindly receive and register every document presented before him and is duty bound to consider the legality of those documents, particularly when it is a cancellation

deed executed unilaterally by one of the parties. It is submitted that identical question was elaborately considered by a learned Single Judge of this Court in Noble John (*supra*) and the following conclusions arrived at:

"(i) The Sub Registrar is legally obliged to reject and refuse a deed of cancellation of a sale unilaterally executed without the knowledge and consent of the other parties to the sale deed and without complying with S.32A of the Registration Act, 1908.

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

Based on the conclusion, the learned Single Judge had directed the Sub Registrar to cancel, strike off and remove the cancellation deed under challenge from the registers maintained at the Sub Registrar's office and not to include the cancellation deeds in the encumbrance certificates

to be issued in respect of those properties.

8. In Hamsa P.A (supra), the Division Bench had held the cancellation deeds to be documents not falling within the provisions of the Registration Act and that, being a document beyond the purview of the Act, the Rules prescribed under the Act cannot confer a better status on such documents. In Thota Ganga Laxmi (supra), the Apex Court rejected the contention that the challenge against the cancellation deed ought to be raised before the Civil Court, on the premise that the cancellation deed and its registration were wholly void and *non est* and liable to be ignored altogether. The learned Counsel submits that the legal position being thus settled, the writ petition is liable to be allowed.

9. The learned Counsel for the 5th respondent made elaborate submissions, in his attempt to

distinguish the dictum laid down in the decisions
aforementioned. Further, it was submitted that
Section 32A was introduced only with effect from
24.09.2001. Ext.P2 cancellation deed having been
registered much earlier, there was no reason for
refusing to register the document. The learned
Counsel points out that both Noble John and Hamsa
P.A were decided with reference to Section 32A and
as such, are inapplicable to the case at hand.
According to the learned Counsel, the dictum in
Thota Ganga Laxmi is no longer good law in view of
the subsequent decision by a three Judges' Bench
in Satya Pal Anand v. State of Madhya Pradesh
[2016 KHC 6722]. It is contended that, in the
light of the dictum in Satya Pal Anand, the
petitioner is bound to approach the Civil Court
for cancellation of Ext.P2 document.

10. The learned Counsel traced the

precedential history, as regards the validity of cancellation deeds, as under:

The Full Bench of the Andhra Pradesh High Court, had in, Yanala Malleshwari v. Ananthula Sayamma [AIR 2007 AP 57], repelled the challenge raised against the cancellation deed under Article 226, holding that the remedy is to challenge the document in a properly constituted civil suit. An identical writ petition filed by Thota Ganga Laxmi was dismissed by the Andhra Pradesh High Court relying on Yanala Malleshwari. The judgment in the subsequent writ petition was subjected to challenge in Thota Ganga Laxmi. The Apex Court refused to accept the findings in Yanala Malleshwari and held as follows:

"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 that sale deed cancelled, he has to file a civil suit for cancellation or else he can request 'B' to sell the land back to 'A' but by no stretch of imagination, can a cancellation deed be executed or registered. This is unheard of in law."

Subsequently, in Satya Pal Anand, the Apex Court referred to Yanala Malleshwari and distinguished Thota Ganga Laxmi in the following manner:

"25. The Andhra Pradesh High Court, in the case of Yanala Malleshwari (supra) was called upon to consider whether a person can nullify the sale by executing and registering a cancellation deed and whether the Registering Officer like District Registrar and/or Sub-Registrar appointed by the State Government is bound to refuse registration when a cancellation deed is presented. The fact remains that if the stipulation contained in Section 17 and 18 of the Act of 1908 are fulfilled, the Registering Officer is bound to register the document. The Registering Officer can refuse to register a document only in situations mentioned in Sections such as 19 to 22, 32 and 35. At the same time, once the document is registered, it

is not open to the Registering Officer to cancel that registration even if his attention is invited to some irregularity committed during the registration of the document. The aggrieved party can challenge the registration and validity of the document before the Civil Court. The majority view of the Full Bench was that if a person is aggrieved by the Extinguishment Deed or its registration, his remedy is to seek appropriate relief in the Civil Court and a Writ Petition is not the proper remedy.

26. Section 35 of the Act does not confer a quasi-judicial power on the Registering Authority. The Registering Officer is expected to reassure that the document to be registered is accompanied by supporting documents. He is not expected to evaluate the title or irregularity in the document as such. The examination to be done by him is incidental, to ascertain that there is no violation of provisions of the Act of 1908. In the case of Park View Enterprises (supra) it has been observed that the function of the Registering Officer is purely administrative and not quasi-judicial. He cannot decide as to whether a document presented for registration is executed by person having title, as mentioned in the instrument. We agree with that exposition.

27. In absence of any express provision in the Act of 1908 mandating the presence of the other party to the Extinguishment Deed at the time of presentation for registration, by no stretch of imagination, such a requirement can be considered as mandatory. The decision in

the case of Thota Ganga Laxmi (supra) is with reference to an express provision contained in the Andhra Pradesh Rules in that behalf. That Rule was framed by the State of Andhra Pradesh after the decision of Full Bench of the High Court. Therefore, the dictum in this decision cannot have universal application to all the States (other than State of Andhra Pradesh).

As regards the contention of Ext.P2 being hit by fraud, the learned Counsel submitted that, the allegation of fraud has to be substantiated with material evidence, which cannot be done in a proceeding under Article 226. It is therefore contended that the writ petition is liable to be dismissed and the petitioner relegated to work out her civil remedy, if any available.

11. The learned Government Pleader submits that with the provisions in the Registration Act, as it stood prior to the introduction of Section 32A, the Sub Registrar was bound to register the cancellation deed. Reference was made to Section

71 of the Act and Rule 67 of the Kerala Registration Rules.

12. A Division Bench of this Court had occasion to consider an identical issue and has rendered its decision in Santhosh Antonio S.Netto v. Joshy Thomas and others [2020 (3) KHC 278]. It may be pertinent to note that the writ appeal in Santhosh Antonio's case was filed against the judgment in W.P.(C) No.37150 of 2009, which was considered along with W.P.(C) No.34367 of 2009 (Noble John's case) and decided by a common judgment. The Division Bench took note of the stipulation in Section 31 of the Specific Relief Act, that, any person against whom a written instrument is void or voidable, and who has reasonable apprehension that such instrument, if left outstanding may cause him serious injury, may sue to have it adjudged void or voidable and the

court may, in its discretion, so adjudge and order it to be delivered and cancelled. Reference is also made to Section 54 of the Transfer of Property Act to find that once the sale deed is executed by and between the vendor and the vendee, the title and interest in the properties owned by the vendor is transferred to the vendee and therefore, no part of the interest that was vested and owned by the vendor is retained with the vendee. With respect to the applicability of the decision of the Apex Court in Satya Pal Anand, the Division Bench made the following observation:

"9. Even though learned counsel for the appellant has invited our attention to the judgment of the Apex Court in Satyapal Anad v. State of Madhyapradesh and others 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 statutory authority under Section 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 Section 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."

As regards the conclusions and the directions in the judgment (rendered vide the common judgment in Noble John), which was under challenge in the writ appeal, the Division Bench held as follows:-

"10. It was taking into account the said circumstances and also the duties and obligations of a Sub Registrar to verify the documents when the same was presented for registration, learned Single Judge has entered into the conclusive finding that the Sub Registrar has no power to register a

cancellation deed, unilaterally executed by the vendor of the sale deed. Evaluation of the provisions discussed above, and construing them harmoniously it is quite unequivocal and clear that the Sub-Registrar is not vested with powers to register a cancellation deed unilaterally. Which thus means the Sub-Registrar cannot assume powers which are not conferred under law to do an act adverse to the interest of the beneficiary of a sale deed, without notice to him/her. It is also well settled that, when any provision of law prescribes a modality to do an Act, it has to be performed in such manner only and in the case on hand, the course open to the appellant was to approach the Civil Court in contemplation of Section 31 of the Specific Relief Act."

I am in respectful agreement with the observations and the findings in Santhosh Antonio S.Netto and following the dictum laid down by the Division Bench, the challenge against maintainability of the writ petition on the ground of alternative remedy is repelled and the petitioner found entitled for the reliefs sought.

In the result, the writ petition is allowed.

Ext.P2 (Document No.142 of 1999 dated 13.01.1999 of Mukkom SRO is declared to be non est and the fourth respondent directed to cancel, strike off and delete Ext.P2 cancellation deed from the relevant registers and ensure that the registration of Ext.P2 is not reflected in the encumbrance certificates pertaining to the property covered by Ext.P1 document.

@neeharam

sd/-
V.G.ARUN
JUDGE

APPENDIX

PETITIONER'S/S EXHIBITS:

- EXHIBIT P1 EXT.P1 COPY OF THE SALE DEED NO.1974 OF
MUKKOM S.R.O.DATED 22.10.1974 WITH
TYPED COPY
- EXHIBIT P2 EXT.P2 COPY OF THE DOCUMENT NO.142 OF
1999 OF MUKKOM SUB REGISTRY ISSUED ON
4.11.2014.

RESPONDENT'S/S EXHIBITS:

- EXHIBIT R5 (a) TRUE COPY OF THE DOCUMENT NO. 1397 OF
1974
- EXHIBIT R5 (B) TRUE COPY OF THE CERTIFIED COPY OF
DOCUMENT NO 990/1/1982
- EXHIBIT R5 (C) TRUE COPY OF THE CERTIFIED COPY OF
DOCUMENT NP 3951/1/1996
- EXHIBIT R5 (D) TRUE COPY OF THE CERTIFIED COPY OF
DOCUMENT NO 976/1/1994
- EXHIBIT R5 (E) TRUE COPY OF THE CERTIFIED COPY OF THE
DOCUMENT NO.1910/1/1997
- EXHIBIT R5 (F) TRUE COPY OF THE SKETCH DATED
08/12/1998
- EXHIBIT R5 (G) TRUE COPY OF THE SKETCH DATED
08/12/1998 WITH RESPECT TO THE PROPERTY
HELD BY RESPONDENT'S WIFE.
- EXHIBIT R5 (H) TRUE COPY OF THE SKETCH DATED
08/12/1998 WITH RESPECT TO PROPERTY
HELD BY RESPONDENTS DAUGHTER

EXHIBIT R5 (I) TRUE COPY OF THE TAX RECEIPT DATED 21-04-2016 ISSUED TO RESPONDENTS DAUGHTER

EXHIBIT R5 (J) TRUE COPY OF THE TAX RECEIPT DATED 21-04-2016 ISSUED TO THE RESPONDENT.

EXHIBIT R5 (K) TRUE COPY OF THE TAX RECEIPT DATED 21-04-2016 ISSUED TO THE RESPONDENTS WIFE.

EXHIBIT R5 (I) TRUE COPY OF THE COMPLAINT DATED 08-12-2015