

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

INTERLOCUTORY APPLICATION NO. 2
IN

CIVIL APPEAL NO(s). 4672 OF 2007

ABDUL SHEIK MAQBOOL & ANR.

Appellant (s)

VERSUS

DISTRICT REGR.VISAKHAPATNAM & ORS.

Respondent(s)

O R D E R

This appeal arises out of the order dated 8.11.2006 passed by the Andhra Pradesh High Court, dismissing the Writ Petition filed by the appellants herein giving the liberty to the appellants to approach the Civil Court and file a suit under Section 31 or under Section 34 of the Specific Relief Act, 1963. It was also made clear in the said judgment that as and when the appellants filed a suit, the Civil Court has to decide the disputed questions of fact without in any manner being influenced by the decision of the Full Bench in Yanala Malleshwari & Ors. v. Ananthu la Sayamma & Ors. reported in 2006(6) ALD 623.

Being aggrieved by the said order, this appeal is filed, challenging the legality of the aforesaid judgment. The appellants at the time of issuance of notice took up a plea that in a similar matter being C.A. 5092 of 2006, this Court

has issued notice and, therefore ¹ in this case also either notice could be issued or leave could be granted. In terms of

the said prayer, by order dated 10.9.2007, leave was granted

with a direction that the matter shall be tagged with the

aforesaid Civil Appeal No. 5092 of 2006 and an interim order

was passed. The aforesaid Civil Appeal No. 5092 now stands

disposed of by an order dated 27th August, 2007 in view of the

fact that the appellants in that appeal sought permission to

withdraw the appeal, which was granted.

An application is, therefore, filed by the respondents herein for disposal of the present appeal also. We have heard the learned counsel appearing for the parties on this appeal. The appellants herein have challenged, by filing a writ petition, the action on the part of the respondent Nos. 3 to 6 in getting the sale deed executed in favour of the appellants cancelled by executing a Cancellation Deed bearing Document No. 2534/2006 dated 9.6.2006. The appellants have challenged the aforesaid action seeking a mandamus against registering the cancellation deed and declaring the action of the Registering Authority as illegal and arbitrary. The High Court took up the aforesaid Writ Petition for consideration and after relying upon a Full Bench decision of the Andhra Pradesh High Court dismissed the Writ petition by extracting the following passage from the aforesaid judgment:-

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"The person, who has ex facie right whether such right is registered or not can always approach the registering authority, with a request to cancel a sale deed, which was registered earlier by such registering authority by showing that subsequent registration was obtained by fraud by a person who is not entitled to transfer the property or that such transfer was registered by playing fraud on the owner or on the stranger. In the present statutory dispensation, namely Transfer of Property Act, Contract Act, Specific Relief Act and Registration Act, the Court does not see any prohibition operating on the exercise of inherent power by the registering authority to cancel the sale deed earlier registered, which is likely to cause prejudice to the true owner as well as to the entire public at large."

The Full Bench also considered and held that in a matter in which such action is challenged, a writ petition is not appropriate remedy and therefore not maintainable, particularly in view of the fact that it is filed with a request for invalidation of a Cancellation Deed. What the appellants have sought to question by filing this appeal and also by filing the Writ Petition was to challenge the execution of the Cancellation Deed. The aforesaid dispute is out and out a civil dispute and, therefore, in our considered opinion the

High Court was justified in dismissing the Writ Petition giving liberty to the petitioners to approach the Civil Court in accordance with law. We find no merit in this appeal and is dismissed accordingly.

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I.A. also stands disposed of in terms of the aforesaid order.

.....J
(Dr. MUKUNDAKAM SHARMA)

.....J
(ANIL R. DAVE)

NEW DELHI,
NOVEMBER 22, 2010

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ITEM NO.1 COURT NO.14 SECTION XIIA

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS
I.A.NO. 2 IN CIVIL APPEAL NO(s). 4672 OF 2007

ABDUL SHEIK MAQBOOL & ANR. Appellant (s)

VERSUS

DISTRICT REGR.VISAKHAPATNAM & ORS. Respondent(s)

(With appln(s) for revocation and office report)

Date: 22/11/2010 This matter was called on for hearing today.

CORAM :

HON'BLE DR. JUSTICE MUKUNDAKAM SHARMA
HON'BLE MR. JUSTICE ANIL R. DAVE

For Appellant(s)

Mrs. B.Sunita Rao,Adv.

For Respondent(s)

Mr. V. Sridhar Reddy, Adv.
Ch. Leela Sarveswar, Adv.
Mr. Abhijit Sengupta,Adv.

UPON hearing counsel the Court made the following
O R D E R

The appeal is dismissed and Interlocutory application
also stands disposed of in terms of the signed order.

(NEELAM GULATI)

Sr. P.A.

(RENU DIWAN)

COURT MASTER

(Signed order is placed on the file)'