

Registering a cancellation deed a must

The registering officer is bound to register it if procedural requirements have been complied with

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Our previous columns addressed various aspects of cancellation of sale deed of an immovable property, including the nature of legal relief to be sought and court fee implications. To summarise, if a person seeking annulment of the sale deed is a party to the deed, he should seek the relief of cancellation. On the other hand, a person who is not a party to the sale deed but whose interests are affected by it, may seek the relief of declaration. Further, in a suit for cancellation of sale deed, court fee is to be calculated on the basis of the value of the property given in the sale deed, and not on the basis of its current market value. In order to ensure that the transaction of cancellation of sale deed is valid in the eyes of law, it is also important to understand the stamp duty and registration aspects.

Stamping

Where transfer of an immovable property has been made absolute by execution of a sale deed, such document may be subsequently annulled or cancelled by the parties only by executing a conveyance deed. In the case of *Latif Estate Line India Ltd V Hadeeja*

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Ammal, inspector general of registration (2011), the High Court of Madras held that if a cancellation deed is executed by both buyer and seller, it is nothing but a conveyance by the buyer of his right in the immovable property in favour of the seller – although cancellation deed may be the nomenclature used by the parties, such a transaction in essence amounts to a reconveyance of immovable property, as the intention of the buyer is to re-transfer all rights, title and interest in the immovable property back in favour of the seller.

Hence, once the title of ownership to the property is vested in the transferee (buyer), the title of ownership cannot be vested back unto the transferor (seller) by execution and registration of a cancellation deed, even with the consent of the parties involved. The proper course would be to re-convey the property by a deed of conveyance by the transferee in favour of the transferor. Given that such a transaction would be treated only as sale/conveyance, the parties would be liable to pay stamp duty as is leviable on a sale/

FAST FACT

A cancellation deed of a document relating to transfer of interest/ownership of immovable property is required to be compulsorily registered as per the provisions of Registration Act, 1908 (Act). The registering officer may refuse to register a cancellation deed that has been executed without the consent of all parties or without having fulfilled requirements under the Act

conveyance deed of immovable property. Parties cannot evade making full payment of stamp duty under the guise that it is a mere deed of cancellation and it attracts stamp duty of much lesser value.

Registration

A cancellation deed of a document relating to transfer of interest/ownership of immovable property is required to be compulsorily registered as per the provisions of Registration Act, 1908 (Act). When a cancellation deed has been duly executed with mutual consent by all parties, the registering officer is bound to register the document provided other procedural requirements have been



complied with. The registering officer may refuse registration of a cancellation deed that has been executed unilaterally or without the knowledge/consent of all parties or without having fulfilled requirements under the Act. In the case of *Thota Ganga Laxmi V Government of Andhra Pradesh* (2010), the Supreme Court held that it is only when a sale deed has been cancelled by a competent court, and a notice duly served upon the concerned

parties, can a cancellation deed be duly registered.

In this case, the father of the appellants had purchased the disputed property from the respondent by a registered sale deed. Subsequently the respondent purported to get the sale deed cancelled unilaterally by executing a cancellation deed, without giving any prior notice to the appellants.

This cancellation deed had also been registered. The apex

court held that both the cancellation deed as well as registration of such cancellation deed were wholly void, invalid and meaningless.

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