In the High Court of Judicature at Madras

Dated: 22.07.2015

Coram:

The Hon'ble Mr.Justice SATISH K. AGNIHOTRI
and
The Hon'ble Mr.Justice M.VENUGOPAL

W.A.No.985 of 2015 and
M.P.No.1 of 2015

The Joint Sub-Registrar II,
O/o The Joint Sub Registrar,
Tiruppur, Tiruppur District ..Appellant / Respondent

Vs.

Dr.Jannathul Alia ..Respondent/Petitioner

Prayer: Writ Appeal filed under Clause 15 of the Letter Patent Appeal to set aside the order dated 30.03.2015 made in W.P.No.32166 of 2014 and allow the Writ Appeal Writ Petition filed under Article 226 of the constitution of India to issue a writ of certiorarified mandamus calling for the records pertaining to the order passed by the order passed by the respondent herein in Demand Notice in Na.Ka.No.502/2015, dated 05.11.2014, and quash the same and consequently, direct the respondent to release the document, bearing document No.2926/2014, dated 18.06.2014, registered in the office of the Joint Sub-Registrar-II, Thiruppur, in respect of the property belonging to the petitioner bearing Door No.4A, 4B, 4C, comprised in survey No.81/1 of Tiruppur Village, in Town Survey No.3/1 block No.1, Town Survey ward No.6, Nandavana Thottam, within Tiruppur Municipality limits, Tamilnadu.

For Appellant : Mr.P.S.Sivashanmugasundaram
Special Government Pleader

For Respondent : Mr.A.Thiyagarajan, Senior Counsel
for Mr.F.Kamal Baig,

J U D G M E N T

[Judgment of the Court was Delivered By
M.VENUGOPAL, J.]

The Appellant / Respondent has preferred the instant intra Court Writ Appeal as against the Order dated 30.03.2015 passed by the Learned Single Judge in W.P.No.32166 of 2014.

2.According to the Learned Special Government Pleader for the Appellant/Respondent, the Order of the Learned Single Judge dated 30.03.2015 in W.P.No.32166 of 2014 is contrary to Law. Further, it is represented on behalf of the Appellant that the Learned Single Judge should not have directed the release of Sale Deed registered as Document No.2926 of 2014 on the file of the Appellant.

3.Advancing his arguments, the Learned Special Government Pleader for the Appellant submits that the Learned Single Judge had failed to take into account the ingredients of Section 61 of the Indian Registration Act, 1908 which enjoins that the Registrar has power to withhold a registered document for payment of correct stamp duty in terms of Indian Stamp Act, 1899.

4.The Learned Special Government Pleader appearing for the Appellant urges before this Court that the Learned Single Judge had failed to observe that the Impugned Demand Notice was issued on the basis of instructions issued by the Inspector General of Registration, Chennai vide Lr.No.25052/E2/2011 dated 14.09.2011. Furthermore, the Division Bench of this Court in W.A.Nos.2407 and 2408 of 2010, in the Order dated 01.04.2011 had held that the Sale Certificate executed by the Bank Officer is not a Certificate executed by the Civil Court and hence the said Sale Certificate has to be treated as Sale Seed only and such documents are liable to be levied with Stamp Duty as per the guideline value and are liable to be referred under Section 47-A of the Indian Stamp Act.

5.The Learned Special Government Pleader for the Appellant contends that the Learned Single Judge had failed to take note of the issue decided in the full Bench decision Champaklal J. Gadani V. State of Gujarat and Others AIR 1988 Gujarat Page 29(ii) whereby and whereunder it is observed as follows:-

"Section 32-A (of the Bombay Stamp Act) authorises the officer registering under the, Registration Act an instrument mentioned therein to refer the instrument to the Collector of such district in which either the whole or any part of the property is situated for determining of the true market value of such property and the proper duty payable on the instrument, if he has reason to believe that the consideration set forth therein does not approximate to the market value of the property which is the subject matter of such instrument. This enabling power does not run counter to the obligation of the registering officer to return the instrument after registration. Such an enabling provision cannot be said to be inconsistent with either S.60 or 61 of the Registration Act. Ss.60 and 61 cannot be so interpreted as to impose an absolute obligation on the registering officer to return the document immediately after registration even though it becomes necessary for him either to retain the same or to deal with it in a similar manner if some other law requires that to be done. Both the provisions are complimentary to each other and cannot be considered as contradictory in nature.

> A person presenting a document before the registering authority who has reason to believe that it is under valued cannot say that no action should be taken by the registering officer under S.31-A and that he should immediately return the document after registration and take action in future on the basis of a copy of such an instrument. No person presenting a document is likely to suffer as a result of the registering officer exercising this power under S.32-A. A xerox or certified copy of such a document can be given to the person who presents it for registration and such a copy can be used in evidence and also for other purposes, e.g., to show that such a document has been registered..."

6.Lastly it is the stand of the Appellant that the Learned Single Judge had failed to appreciate that the Registrar has power to withhold a registered document for non-compliance of conditions for Registration under the Indian Registration Act, 1908.

7.At this stage, a perusal of the contents of the Writ Affidavit filed by the Respondent/Petitioner in W.P.No.32166 of 2014 indicates that the pleas were taken that Cantilena Clothing, Represented by its Partners took a loan of Rs.3,05,00,000/- from Jammu and Kashmir Bank Limited. As a matter of fact, the said Cantilena Clothing, a Partnership firm purchased the property on 05.02.1975 and was in continuous possession and enjoyment of the same. Since it had not paid the loan amount to the Jammu and Kashmir Bank, it was declared as a Non-Performance Company and hence a Notice under Section 13(2) of the SARFAESI Act was issued. Moreover, the Bank had proceeded further to sell the property under the provisions of SARFAESI Act read with Rule 9 of the Security Interest Enforcement Rules, 2002.

8.It is the case of the Respondent/Petitioner that the sale consideration was fixed at Rs.1,42,50,000/- to the said property and after the sale notification being issued the property was sold. Finally, the Bank issued a Sales Certificate on 06.05.2014 for a sum of Rs.1,42,50,000/-. Thereafter, a sale deed was issued by the Authorised Officer of the Bank.

9.The grievance of the Respondent/Petitioner is that after Registration of the Sale deed, when he insisted for the documents by sending the letter through registered post dated 30.10.2014, the Appellant issued a Communication on 05.11.2014 calling upon him to pay a sum of Rs.8,33,800/- and further, he was called upon to pay a compounding fee of Rs.7,085/-. In fact, the Respondent/Petitioner takes a stand that the properties purchased in a Court Auction are the sale which could not be equated with other transactions. Therefore, the Respondent/Petitioner had questioned the demand notice of the Appellant dated 05.11.2014, mainly contending that the same is an illegal, arbitrary one and also against the Principles of Natural Justice.

10. In the Counter Affidavit filed by the Appellant (before the Writ Court), it was categorically averred that a Sale certificate on 06.05.2014 was issued by the Jammu and Kashmir Bank in favour of the Respondent/Petitioner for a sum of Rs.1,42,50,000/- and inasmuch as the Sale Certificate was presented before the Appellant for registration and the same being registered as Document No.2926 of 2014 on 18.06.2014, the Appellant issued a letter on 05.11.2014 directing the Respondent to pay a sum of Rs.8,33,800/- and also to pay compounding fee of Rs.7,085/-

11.Apart from the above, the Appellant comes out with a plea that the Impugned Notice dated 05.11.2014 was issued on the basis of instructions issued by the Inspector General of Registration vide Lr.No.25052/E2/2011 dated 14.09.2011. Also, it is the contention of the Appellant that Sale Certificate executed by the Bank Officer was not a Certificate executed by a Civil Court. As such, the Sale Certificate could not be classified under Section 18 (1) of the Indian Stamp Act, 1899. Further, the Sale Certificate in question has to be treated as Sale Deed only and such documents are liable to be levied stamp duty as per the guideline value and are liable to be referred in terms of Section 47(A) of the Indian Stamp Act.

12.It is to be borne in mind that the Registration of a document shall be deemed to be conferred under Section 61(2) of the Indian Registration Act, 1908 only when it is registered in terms of Sections 58 to 61 (1) and not otherwise. Further, in terms of the provisions of Sections 60 and 61 of the Indian Registration Act, the deed is registered at a latter date, but, by reason of Section 47 thereof the Right, Title and Interest in relation to the lands stands transferred from the date of execution of the deed of sale and not from the date of its registration as per decision Rahim Baker V. Sub-Registrar reported in AIR 2002 Kerala at Page 27 at Special Page 29.

13.It is to be relevantly pointed out that it is open to the State Legislature to lay down the basis for computing the Stamp Duty on the market value of the property as per decision Himalaya House Co., V. Chief Controlling Revenue Authority AIR 1972 SC at Page 899

14.Further, the basic valuation is only for the purpose of collecting the Stamp Duty and it cannot form the foundation to determine the market value as per decision U.P.Jal Nigam, Lucknow V. Kalrah Properties (P) Ltd., AIR 1996 SC at Page 1170

15.Also that, when the property is purchased through an Auction at the instance of a State Agency, then, it is not permissible to impeach the value set forth in the instrument of conveyance of title on an assumption it is not the true value as per decision Tungabhadra Holdings (P) Ltd., V. District Registrar and Collector, Medak District and Another AIR 2006 Andhrapradesh Page 383.

16.As far as the present case is concerned, the Learned Single Judge had disposed of the Writ Petition No.32166 of 2014 on 30.03.2015 by directing the Appellant/Respondent to register and release the document in question with an endorsement that release of the document would be subject to further proceedings that may be initiated under the provisions of the Indian Stamp Act. Also, it was made clear that the concerned authority under the Indian Stamp Act was entitled to issue Notice in Form-I and proceed to adjudicate the matter regarding the Court Stamp Duty payable on the said Sale Certificate, affording opportunity of hearing to the Respondent/Petitioner to raise his objections etc., Indeed, the aforesaid directions and observations of the Learned Single Judge while disposing of the Writ Petition No.32166 of 2014 on 30.03.2015, in the considered opinion of this Court do not suffer from material irregularities and patent illegalities in the eye of Law. Consequently, the Writ Appeal fails.

In fine, the Writ Appeal is dismissed, leaving the parties to bear their own costs. Consequently, the Order of the Learned Single Judge in W.P.No.32166 of 2014 is confirmed by this Court for the reasons assigned in this Appeal and connected Miscellaneous Petition is closed.

Sd/-
Asst.Registrar (J)

/true copy/

Sub Asst. Registrar

ssd

To

The Joint Sub-Registrar II,
O/o The Joint Sub Registrar,
Tiruppur, Tiruppur District

+1 cc to Mr.F.Kamal Baig, Advocate, sr.36968
+1 cc to The Government Pleader, sr.37164

W.A.No.985 of 2015 and
M.P.No.1 of 2015

br(co),
kra,12/08