

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 02.09.2015

Coram:

THE HONOURABLE Ms. JUSTICE K.B.K.VASUKI

CMA Nos.973 of 2010 and 2534 of 2012
and MP.No.1 of 2012

P.Babu

... Appellant in
both CMAs

vs.

1.The Chief Revenue Controlling Officer,
cum the Inspector General of Registration,
Chennai-28.

2.The Special Deputy Collector (Stamps)
Cuddalore.

3.The Joint I Sub Registrar,
Tindivanam.

... Respondents
in both CMAs

Civil Miscellaneous Appeals are filed under Section 47A(10) of the Stamps Act, against the orders passed by the first respondent Chief Revenue Controlling Officer cum the Inspector General of Registration, Chennai in Proceedings Nos.55884/N3/04 and 55884/N3/04-1 dated 27.01.2009.

For Appellant : Mr.T.Karunakaran

For Respondents: Mr.T.Jayaramaraj, GA

सत्यमेव जयते
COMMON JUDGMENT

Both the Civil Miscellaneous Appeals are filed against the orders of the first respondent, Chief Revenue Controlling Officer-cum-Inspector General of Registration, Chennai, thereby fixing the higher value of the property than what was mentioned in the documents registered on 5.9.2002 and 2.9.2002.

2.The subject matter of the present CMAs are the sale deeds registered as Doc.Nos.487/2002 dated 5.9.2002 and 488/2002 dated 2.9.2002 respectively. While Doc.No.487/2002 is in respect of vacant site measuring 852.24 sq.m in natham patta, S.No.42/2-A, Sakkarapuram village, Gingee Taluk, Villupuram District, Doc.no.488/2002 is in respect of both land and building measuring 1.261.79 sq.m and 1/4th share in the well comprised in Sakkarapuram Village, natham patta

S.No.41/2A. The market value of entire property covered in both the sale deeds are Rs.1,20,000/- and Rs.1,30,000/- respectively. The third respondent Joint Sub Registrar, Tindivanam, on receipt of the documents, registered the same as Doc Nos.487 and 488/2002, but refused to release the documents by valuing the property covered under Doc No.487/2000 at Rs.498/- per sq.ft and other property covered in Doc No.488/2002 at Rs.95/- per sq.ft. The third respondent, having refused to release the documents on the ground that it was undervalued, referred the same to the second respondent Special Deputy Collector (Stamps), Cuddalore under section 47(A)(1) of the Act for determining the correct market value of the property and also issued notice in Form I, thereby fixing the value of the property in Doc.No.487/2002 at Rs.45,66,660/- and the other property in Doc.No.488/2002 at Rs.12,94,900/-. Thereafter, the second respondent also issued Form II notice to the parties to the documents for enquiry before him. The appellant, who is the purchaser of the property filed his objections. After enquiry, the second respondent Special Deputy Collector (Stamps) in his proceedings dated 12.10.2004 fixed the market value of the property covered under Doc no.487/2002 at Rs.51,16,565 @ Rs.51,16,600/- (Rs.400/- per sq.ft for 9170/- sq.ft + building at Rs.14,48,565/-) and fixed the market value of the property covered under Doc.no.488/2002 at Rs.10,36,937/- @ Rs.10,37,000/- (Rs.76/- per sq.ft for 13,577 sq.ft + Well and laying stone at Rs.5,085/-) and accordingly demanded deficit stamp duty payable for the documents. Aggrieved against the same, the purchaser who is the appellant herein, preferred further appeals before the first respondent Inspector General of Registration, who by the impugned orders dated 27.01.2009, determined the value of the property covered in Doc No.487/2002 at Rs.498/- per sq.ft for land and the property covered in Doc No.488/2002 at Rs.95/- per sq.ft. for land and Rs.15,96,999/- for building. Aggrieved against the same, these two civil miscellaneous appeals before this court by the purchaser of the property.

3.The appellant herein has questioned the correctness of the impugned orders passed by the first respondent by contending that the property in question was purchased by one Veeraswamy Nainar who was the appellant's grandfather as early as on 24.10.1946 from the original owner by name Jeevarathinam Ammal, who was the mother of the appellant's vendor and thereafter, the property was divided between the appellant's father and his brother Varadha Nainar by way of partition deed dated 31.03.1962 and there was further partition between the appellant's father and his sons i.e., the appellant and his brothers on 31.8.1970. Since then, the appellant has been in possession and enjoyment of the property by paying property tax and electricity consumption charges and by letting it out to third party and enjoying the income derived by the same. After Hindu Succession Act, 1956, Jeevarathinam Ammal became the absolute owner of the property and her legal heirs executed two sale deeds in favour of the appellant for the purpose of transfer of title alone and as the possession was already handed over, there was no transfer of possession under the present sale deeds bearing Doc Nos.487 and

488/2002 and the documents in question are only nominal sale deeds without actual transfer of any property, as such, no stamp duty is payable on such documents and the question of determining the correct market value and to pay additional/deficit stamp duty does not arise herein.

4.The learned counsel for the appellant has also contended that the third respondent Joint Sub Registrar, Tindivanam before referring the matter to the competent Authority, has not recorded the reasons for arriving at the conclusion that the true value of the property was not set forth in the documents and the documents were required to be referred to the competent authority for determination of the correct market value and his failure to comply with such mandatory requirement renders the entire proceedings and the outcome of the impugned order to be ex facie bad in law and vitiated.

5.It is further contended on the side of the appellant that both the respondents 1 and 2 have fixed the value at higher rate than the value mentioned in the documents, on the basis of irrelevant consideration and on assumption and presumption. The value of the property determined by the respondents 1 and 2, on the basis of spot inspection held by the lower authority, without giving notice to the appellant for local inspection and without furnishing the copy of the documents relied on by them, is contrary to the procedure laid down under law and is in violation of the principles of natural justice.

6.The learned counsel for the appellant in support of the contention so raised, relied on the following authorities:

- (i) 2007 (5) CTC 737 (FB) (G.Karmegam and others vs. The Joint Sub-Registrar, IV, Gowri Plaza, Bye Pass Road, Madurai and others)
- (ii) 2001 (2) MLJ 458 (DB) (The District Collector, Erode District, Erode and others vs. M.Ponnusamy)
- (iii) An unreported judgment of this Court made in C.M.A.No.1863 of 2004 dated 04.03.2010.
- (iv) An unreported judgment of this Court made in C.M.A.(NPD) No.1415 of 2004 dated 24.04.2009.
- (v) 2010 (6) CTC 35 (KK Flats (P) Ltd., Rep. by its Managing Director, D.Muthumukar, 1K, No.6, Mandapam Cross Road, Kilpauk, Chennai - 10 vs. The Inspector General of Registration, Chennai - 28 and another)
- (vi) An unreported judgment of this Court made in C.M.A.No.1443 of 2006 (S.Sivasubramaniam vs. Chief Controlling Revenue Authority cum Inspector General of Registration, Santhome High Road, Chennai - 600 028 and others).
- (vii) 2009 (7) SCC 438 (V.N.Devadoss v. Chief Revenue Control Officer-cum-Inspector General of Registration and others).

7.Per contra, the learned Government Advocate appearing for the respondents would rely on the decision reported in 2008 (4) CTC 661 (P.Mahalingam and another v. the Registrar of Documents, Registration Office, Thirumangalam, Madurai District and others) in support of his legal contention that sale is completed with the transfer of

ownership and the payment of stamp duty attracted in respect of the document, can be only at the time of execution of the sale deed and not before the same. The learned standing counsel for the department has also attempted to defend the correctness of the procedure and method adopted for valuation by the respondents.

8. Heard the rival submissions made on both sides and perused the documents produced before this court.

9. The facts made available herein would reveal that the mother of the appellant's vendor by name Jeevarathinam Ammal executed a sale deed on 24.10.1946 in respect of the property covered under the documents in question in favour of the appellant's grand father. In pursuance of the same, the appellant's grander father had been in possession and enjoyment of the property and the same was partitioned between the appellant's father and his brother and further partitioned between the appellant's father, appellant and appellant's brothers on 31.8.1970. The legal heirs of Jeevarathinam Ammal again executed the sale deeds on 2.9.2002 which were registered as Doc.nos.487 and 488/2002 in respect of the same property in favour of the appellant stating that the appellant's vendor mother - Jeevarathinam Ammal on the date of execution of the sale deed in 1946, had only the right of enjoyment till her life time and the same got blossomed into absolute right by virtue of section 14 of the Hindu Succession Act 1956 and after her death, the entire property was succeeded by her legal heirs and the legal heirs of the original owner Jeevarathinam Ammal, in order to transfer absolute title in respect of the property in favour of the appellant, came forward to execute the sale deeds and executed the sale deeds.

10. As rightly argued by the Government Advocate appearing for the respondents, the reading of the recitals contained in the documents in question would only reveal that the right of enjoyment of the original owner Jeevarathinam Ammal was not absolute right, but limited one and the limited right got enlarged into full right after 1956 Act and no title is conveyed to the vendor under the earlier sale deed and the title conveyed only under the present sale deeds, as such, the stamp duty is attracted on the market value of the property. The argument so advanced is also fortified by the learned single judge in the decision cited on the respondent's side reported in 2008 (4) CTC 661 (P.Mahalingam and another v. the Registrar of Documents, Registration Office, Thirumangalam, Madurai District and others), wherein it is clearly held that "it is not mere payment of price alone or delivery of possession that completes the conveyance, but it is the intention of the parties to transfer ownership from vendor to the purchaser that completes the sale. Therefore, by applying section 17 of the Indian Stamp Act, the stamp duty attracted in respect of the documents can be only at the time of execution of the sale deed". That being the legal position, the first contention raised on the side of the appellant that there is no conveyance as defined under the Transfer of Property Act so as to attract stamp duty, is without any merit and substance and is hence rejected.

11.Regarding the other grounds as referred to above, it is contended by the learned counsel for the appellant, by relying on the judgments above cited that failure on the part of the Registering Officer to perform the statutory obligation by recording any reason to believe that the true market value has not been set forth in the document, before referring the document for determination of the market value, is contrary to the procedure laid down under the Act and Rules and against the well laid down legal principles and the same has also prejudiced the valuable rights of the parties concerned causing serious injustice.

12. Before going into the factual issue involved herein, the legal principles laid down regarding the procedure adopted under Section 47A of the Act can be looked into. The Hon'ble Supreme Court in the judgment reported in 2009(7) SCC 438 cited above has, after extracting the relevant provisions of law, observed as follows:

"Sub-sections (1) and (3) of Section 47-A clearly reveal the intention of the legislature that there must be a reason to believe that the market value of the property which is the subject-matter of the conveyance has not been truly set out in the instrument. It is not a routine procedure to be followed in respect of each and every document of conveyance presented for registration without any evidence to show lack of bona fides of the parties to the document by attempting fraudulently to undervalue the subject of conveyance with a view to evade payment of proper stamp duty and thereby cause loss to the revenue."

13. The Full Bench of our High Court in para 7 of the decision reported in 2007(5)CTC 737, held as follows:

".... The Registering Officer cannot make a roving enquiry to ascertain the correct market value of the property by examining the parties. However, it is expected that he has to give reasons for his conclusion for undervaluation, however short they may be. He can neither delay nor refuse registration of the instrument, merely because the document does not reflect the real market value of the property. In order to reach a conclusion, there is no bar for the Registering Officer to gather information from other sources, including official or public record. Valuation guidelines, prepared by the revenue officials, periodically, are intended with an avowed object of assisting the Registering Officer to find out prima facie whether the market value set out in the instrument has been set forth correctly".

14. The learned brother Judge of this Court, who is also one of the members of the Full Bench, in his judgment reported in CDJ 2010 MHC 6496 (Tata Coffee Limited v. The State of Tamil Nadu rep. by its Secretary to Government, Commercial Taxes and Registration and others), following the Full Bench judgment, has in para 14 held that recording of reasons by the second respondent for initiation of proceedings under Section 47A of the Indian Stamp Act, 1899, referring the matter for finding out the correct value of the

property mentioned in the document, to the third respondent is mandatory. It is further held by the learned brother Judge by applying his view expressed in another judgment reported in 2010 (4) TLNJ 170 (Civil) - G.Gunasekaran vs. The Inspector General of Registration, Chennai - 28, that the third respondent/District Revenue Officer (Stamps), being a quasi judicial authority, must state reasons, while issuing notice calling for explanation from the person in whose favour the document is registered.

15. The learned brother Judge, Justice R.Subbiah in para 6 of his judgment made in CMA.29/2009 dated 16.08.2011 reported in MANU/TN/3105/2011 Ceebros Developers rep. by its Managing Partner C.Subba Reddy vs. The State of Tamil Nadu, rep. by its Inspector General of Registration, referred to another Judgment of this Court reported in 2008 (5) CTC 239 Mapillai Mohadeen vs. The Sub Registrar, Registration Department, wherein, it is held that power under Section 47A can only be exercised when the Registering Officer has reason to believe that the market value of the property, which is the subject of conveyance has not be truly set forth, with a view to fraudulently evade the payment of property stamp duty. Unless there is fraudulent attempt on the part of the parties to the document, the authority cannot exercise his power arbitrarily without any basis and such power should be exercised with great caution and care. The same view is expressed by the learned brother Judges, Justice A.Arumughaswamy and Justice R.Subbiah in their unreported judgments made in C.M.As. above referred to.

16. The learned sister Judge, Justice Chitra Venkataraman, in paras 8, 14 and 16 of her decision reported in 2010 (6) CTC 35, referred to other judgments dealing with the same issue and other judgments are: (i) 2009 (1) CTC 698 (Ezhilarasi v. The Inspector General of Registration); (ii) 2004 (1) CTC 187, (The Special Deputy Collector (Stamp) vs. Chemicals and Plastics Ltd); (iii) 2006 (2) CTC 433 (Sakthi & Co. vs. Shree Desigachary).

17. The Full Bench decision of this Court reported in 2006(2) CTC 433 (Sakthi & Co. vs. Shree Desigachary), is referred to for the legal proposition that the market value is not determined by the guideline value. The Full Bench of this Court, after considering catenna of decisions, held the concept of the market value as follows:

"(1) The guideline value, contained in the Basic Valuation Register, maintained by the Revenue Department or the Municipality for the purpose of collecting stamp duty, has no statutory base or force. It cannot form a foundation to determine the market value mentioned thereunder in instrument brought for registration.

(2) Evidence of bona fide sales between willing prudent vendor and prudent vendee of the lands acquired or situated near about that land possessing same or similar advantageous features would furnish basis to determine the market value."

18. In Ezhilarasi's case reported in 2009 (1) CTC 698, it is held by this Court that "onus is on the Department to establish that the market value of the property has not been truly set forth and the market value as claimed by the Department is contemporaneous to the document tendered for registration and when there is a doubt that the market value has not been truly set forth in the instrument, the guideline value is only a prima facie guide for ascertaining the market value and the Department will have to go by the various parameters set down in the rules for determination of the market value, if they have a reasonable belief that the market value of the property has not been truly set forth in the said document". It is further held therein that "it must be noted that a mere fact of difference in value stated in the instrument and the market value, per se, does not justify the invoking of the provisions under Section 47-A of the Indian Stamp Act, that only if and when the authorities have a reasonable belief that the market value of the property has not been truly set forth in the document that the Registering Officer, after registration the document, may refer the same to the Collector for determination of the market value of the property. Thereupon, as per Section 47-A(2) of the Indian Stamp Act, the Collector holds an enquiry as prescribed under the rules and determine the market value of the property. Thus, in all cases of Section 47-A proceedings, law requires that there are prima facie materials at the hands of the Registering Authority to form an opinion as to the market value not truly set forth in the instrument and this leads to an enquiry and a final order passed depending on the outcome of the enquiry. The invoking of the jurisdiction on a sheer difference in price stated in the instrument with the market price, would only make the exercise an automatic and ritualistic exercise opposed to the very scheme of the provisions of Section 47-A of the Indian Stamp Act."

19. In the Special Deputy Collector's case reported in 2004 (1) CTC, our High Court has observed as follows:

"12. What is the market value of the land is what a willing buyer is ready to pay to a willing vendor at the price agreed to. It may be that the lands may be used for the purpose of letting industrial effluent and for treatment and it may incidentally be part of an industrial activity. But that cannot constitute a ground to value the land as industrial site."

20. That being the legal position, if the contention raised on the side of the learned counsel appearing for the appellant is appreciated in the legal proposition, as above laid down by the Supreme Court, Full Bench, Division Bench and Single Judges of our High Court, it would compel this court to hold that the proceedings referring the documents for determination of the market value, without recording any reason to say that the document is undervalued, thus without performing the statutory obligation, cast upon the third respondent Registering Officer, to record such reasons to arrive at a decision that the documents are undervalued and the same are required to be referred to the authority concerned to determine the actual

market value of the property is contrary to the procedure laid down under law and is ex facie, illegal. Furthermore, no material is made available to show that the third respondent/Registering Officer, on the basis of such material, arrived at the conclusion that the true value is not set forth in the documents. In the absence of one such material, the proceedings initiated under Sec.47A is legally unsustainable, as such, the proceedings initiated for determination of the market value and the outcome of such proceedings, fixing the value of the property covered under Doc Nos.487 and 488/2002 at Rs.498/- per sq.ft. and Rs.95/- per sq.ft respectively and demanding additional stamp duty, on the basis of such exorbitant value fixed, is hence arbitrary and bad in law and null and void.

21. In this case, the documents were registered on 05.09.2002, and 2.9.2002, whereas Form-I notice was issued on 25.09.2002 and 12.9.2002 respectively. However, Form-I notices did not reflect the reasons, for which, the value mentioned in the documents was treated as undervalued and the material based on which the value mentioned in the documents was enhanced. Further, the orders of the second respondent Special Deputy Collector (Stamps) dated 12.10.2004 did not indicate the basis on which the value mentioned in the documents in question was enhanced. The reading of the same would reveal that his valuation was based on spot inspection and local enquiry. But what was the manner of local enquiry and what was the material collected in the course of such local enquiry to arrive at higher valuation at Rs.400/- per sq.ft and 76/- per sq.ft. for the property covered in both the documents, are not made available before this court. It is stated in the orders passed in respect of both the documents that the property at Sakkarapuram was situated at 150 feet from Chengi Bus stand and was on the north of the street leading to MP Nagar. When the property covered in both the documents is stated to be situated in the same village more or less adjacently, how the value was fixed at Rs.400/- per sq.ft. for one property and Rs.76/- per sq.ft. for other property is remained unexplained in the orders passed by the second respondent. Further, the appellant was not given any notice either for spot inspection or for local enquiry as contemplated under the relevant rules and their failure to do so is contrary to the procedure laid down under law and is in violation of the principles of natural justice.

22. Insofar as the orders passed by the first respondent Chief Revenue Controlling Officer-cum-Inspector General of Registration, Chennai are concerned, the first respondent was not inclined to accept the orders of the second respondent for the reasons stated therein. On the other hand, he called for report from the Deputy Inspector General of Registration who has in his report suggested the value at Rs.400/- per sq.ft for the documents mentioned property which is situated within the same four boundaries. However, the first respondent based on the guideline value, fixed the market value of the property at Rs.498/- per sq.ft. and Rs.95/- per sq.ft respectively. It is at this juncture note worthy to recollect the observation of the full bench in decision reported in 2006(2) CTC 433 (Sakthi & Co. vs. Shree Desigachary), wherein, it is the

observation of the Full Bench that the basis to determine the actual market value is the value bona fide agreed between willing prudent vendor and willing prudent vendee and the same need not be necessarily based on guideline value periodically fixed by the Revenue department or Municipality. In my considered view, the course so adopted by the first respondent in fixing higher value and demanding additional/deficit stamp duty for the property covered in the documents in question is contrary to the above well laid down legal principles.

23. Thus, the discussion held above would only reveal that the determination of the market value of the property in question is in pursuance of the reference made by the third respondent - Registering Authority under Section 47A of the Stamp Act, without following the procedure laid down under the Act and without performing the statutory obligation cast upon the third respondent and the impugned orders of the Respondents 1 and 2, in enhancing the market value and demanding the additional stamp duty, based on such enhancement, are without any basis and based on irrelevant consideration and assumption and presumption and without application of mind. Further, as onus to prove that the instrument was undervalued, is on the department and the same has not been satisfactorily discharged by the respondents, the impugned orders of the respondents are liable to be set aside.

24. Viewing from any angle, the impugned orders are bad in law and vitiated and legally unsustainable and are liable to be set aside.

25. In the result, both the Civil Miscellaneous Appeals are allowed by setting aside the impugned orders of the respondents 1 and 2. The respondents are directed to release the documents registered as Doc.No.487/2002 dated 5.9.2002 and Doc.No.488/2002 dated 2.9.2002 within one week from the date of receipt of a copy of this judgment. No costs. Consequently, connected miscellaneous petition is closed.

rk

Sd/-

Asst.Registrar (CS III)

/true copy/

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Sub Asst. Registrar

To

1. The Chief Controlling Revenue
Authority and the Inspector
General of Registration,
Chennai - 600 028.

2.The Special Deputy Collector (Stamps)
Cuddalore.

3.The Joint I Sub Registrar,
Tindivanam.

4.The Section Officer, VR Section, High Court, Madras

+1 cc to Special Government Pleader(CS), sr.47236

+4 ccs to Mr.T.Karunakaran, Advocate, sr.47843 & 47844

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