BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 14.07.2015
CORAM:

THE HONOURABLE MS.JUSTICE V.M. VELUMANI
C.M.A.(MD) No. 506 of 2015 and
M.P.(MD).Nos. 1 of 2015

1.Sujatha Dinesh

2.Deepahariharan ... Appellants

Vs.

1. The Inspector General of Registration cum
Chief Controlling Revenue Authority,
Office of the Inspector General of Registration,
No.100, Santhome Road, Chennai – 28

2. The Special Deputy Collector,
Thirunelveli

3. The Joint Sub-Registrar No.I,
Sub Registrar Office,
Kanyakumari, Kanyakumari District .. Respondents

Prayer:

This Civil Miscellaneous Appeal is filed under Section 47(A)(10) of Indian Stamp Act, 1899, r/w. Rule 9(5) of the Tamil Nadu Stamp (Prevention of Undervaluation of Instruments Rules, 1968) against the order dated 26.03.2015 passed by the first respondent herein Pa.Mu.No.45830/N5/2013.

For Appellant : Mr. D. Nallathambi

For Respondents : Mr. G. Muthukannan
Government Advocate

JUDGMENT

The Civil Miscellaneous Appeal is filed against the order dated 26.03.2015, passed by the first respondent, confirming the order of the second respondent.

2. The facts of the case are as follows:-

(i) One Santha Bhagavathi Pillai and the appellants entered into an agreement of sale with one N.M. Gobikumar, on 24.09.2002, for purchasing the property in question. The sale consideration was fixed at Rs.10,00,000/-. The owner of the property failed to execute the sale deed, as per agreement of sale. Therefore, the said Santha Bhagavathi Pillai and the appellants filed O.S.No.36 of 2003, on the file of Principal Sub-Court, Nagercoil, for specific performance of agreement of sale deed, dated 24.09.2002. The defendant therein N.M. Gobikumar, remained ex parte and ex parte decree was passed. Even after the decree, the said N.M. Gobikumar did not execute the sale deed. Therefore, the Court executed the sale deed dated 19.03.2003. The value of the property was Rs.10,00,000/-. The said sale deed was presented for registration. The third respondent referred the instrument to second respondent under Section 47(A)(1) of Stamp Act, 1899, as the same was undervalued. The second respondent following the procedure contemplated in the Act and Rules, fixed the value of land at Rs.2,15,622/- per cent and arrived at value of land at Rs.1,07,81,100/- and the value of the building at Rs.4,00,000/-.

(ii) Against the said order, the said Santha Bhagavathi Pillai filed appeal to the first respondent. She filed W.P.(MD).No.4282 of 2014, for a direction to the respondents 1 and 2, to release the sale deed, dated 10.01.2003, registered as Document No.2981 of 2003. This Court directed the respondents to release the documents pending disposal of the appeal, after making an endorsement with regard to charge in favour of Government. She also filed W.P.(MD).No.4283 of 2014, for a direction to the first respondent to dispose her appeal, dated 19.07.2012. This Court directed her to file fresh appeal in a prescribed form. This Court also directed the first respondent to consider the appeal and pass orders on merits, after affording an opportunity to the parties concerned.

(iii) As per the orders of this Court, Santha Bhagavathi Pillai, filed an appeal before the first respondent on 02.04.2015, in the prescribed form. Pending appeal, she died. On her behalf the appellants herein were heard in the appeal through, their agent C.K. Hariharan. The first respondent after hearing the contentions of the appellants and materials on record, dismissed the appeal, confirming the order of the second respondent. Against the said order dated 26.03.2015, the present appeal is filed.

3. The learned counsel for the appellant contended that:-

(i) the appellants and Santhi Bhagavathi Pillai entered into an agreement of sale on 24.09.2002, for purchasing the property in question, for a sum of Rs.10,00,000/-. The vendors did not execute the sale deed, therefore, they filed O.S.No.36 of 2003;

(ii) as per the decree, the Court executed the sale deed in respect of the property on 19.09.2003, and the same was registered as Document No.2981 of 2003 and the second respondent demanded a sum of Rs.12,21,733/- as difference in Stamp Duty;

(iii) the respondent calculated the Stamp Duty payable on Document No.2981 of 2003 for the entire 50 Cents, against the schedule of the property in the sale deed executed by the Court;

(iv) the first respondent failed to follow the procedure contemplated under the Tamil Nadu Stamp (Prevention of Undervaluation of Instruments) Rules, 1968;

(v) the first respondent mis-interpreted and mis-construed the description of Document No.2981 of 2003; and

(vi) the appellants purchased only first floor I.e. Rajan Kalayana Mandapam and the market value fixed by the first respondent, for land in question is untenable without any evidence.

Therefore, prayed for setting aside the impugned order of the second respondent.

4. Per contra, the learned Government Advocate, contended that,

(I) the property covered by agreement of sale, decree of Court and sale deed executed by Court is described as 50 Cents of land and Kalyanamandapam is in the first floor. In addition to 50 Cents, additional lands adjoining this 50 Cents was also conveyed to the appellants; and

(ii) as per the agreement of sale and sale deed executed by the Court, the value of the land was calculated, on the basis that 50 Cents of land is conveyed. Nowhere in the documents produced by the appellants, mentioned that the appellants have purchased half of 50 cents. The market value of the property was arrived at only after due enquiry and following the procedure laid down in Section 47(A) and Rules 3 and 5 of Tamil Nadu Stamp (Prevention of Undervaluation of Instruments) Rules, 1968.

5. He further contended that the date of registration of Document has to be taken into account for arriving at market value of the property conveyed. The guideline value is arrived taking into consideration topography of the property and possibility of enhancement in the value. Therefore, market value arrived at for the land is proper and prayed for dismissal of this appeal.

6. The learned counsel appearing for the respondents relied on the following judgments:

(i) 2011(5) MLJ 30 (V. Sivakumar and others Vs. Inspector General of Registration and another), wherein in para 15, reads as follows:-

> *15. The Honourable Supreme Court held that In a suit for specific performance, after the dispute was ultimately decided by the Supreme Court, which took long time, when the sale deed was presented before the registering authority, the registering authority would insist on payment of the stamp duty as per the prevailing guide line value on the date of the presentation of the instrument for registration. The Honourable Supreme Court has also held that the stamp duty has to be paid as per the prevailing guideline value as on the date of registration even though the agreement to convey the*

property entered long back. By applying that theory in this case, necessarily, the holder of the sale certificates have to pay the stamp duty as per the guide line value prevailing as on the date of presentation of the sale certificates. The valuation of the property on the date of auction is totally different when compared to the value of the property on the date of presentation of the sale certificates for registration, especially, in this case, as per the dates and events mentioned above, the delay was only on the part of the purchasers and therefore, they are liable to pay the stamp duty as on the date of registration of the instrument. Consequently, the registering authorities are empowered to refer the matter under Section 47A of the Indian Stamp Act for determination of the correct value of the property apart from collecting the actual stamp duty at Rs.9.30 crores being the total value of the property as stated in the sale certificates and the corresponding registration charges. Therefore, we hold that the appellants are liable to pay stamp duty on the actual value of the property apart from registration charges and the registering authority is empowered to refer the matter under Section 47A of the Indian Stamp Act for determination of the correct value of the property. Consequently, we find no reason to interfere with the reasoned order of the learned single Judge.

(i) *CRP(NPD),No.218 of 2015, (Prabavathi Vs. The Joint Registrar No.I, Stuartpet, Arakkonam and Post, Vellore District)*, wherein in para Nos. 4 and 6, reads as follows:-

4. The Hon'ble Supreme court in State of Haryana V. Manoj Kumar reported in 2010(4) SCC 350 has held that the parties have to pay stamp duty as per the guideline value on the date of registration. The Division Bench of this Court in V. Sivakumar V. IG of Registration reported in 2011 (5) MLJ 30 has held as follows.

6. The only contention of the petitioner is that the property has to be valued as agricultural land and the petitioner has to be directed to pay the guideline value of the agricultural land. I do not agree with the contention of the learned counsel for the petitioner. In the light of the decisions referred supra, the petitioner has to pay the stamp duty for the guideline value on the date of registration of the document. Hence, I do not find any illegality or irregularity in the order of the Court below.

7. The points to be decided in this appeal are:-

(i) Whether the appellants purchased 50 Cents of land along with building or not?

(ii) Whether the value of land arrived at by the respondents are correct market value?
(iii) Whether the respondents followed the procedure contemplated under Section 47(A) of Indian Stamp Act, 1899 and Rules 3 and 5 of Tamil Nadu Stamp (Prevention of Undervaluation of Instruments) Rules, 1968.

Point No.I

The said Santha Bhagavathi Pillai and the appellants entered an agreement of sale on 24.09.2002, with one N.M.Gobikumar, for purchase of the property and the said N.M. Gopikumar did not execute the sale deed as agreed upon. Therefore, they filed O.S.No.36 of 2003, on the file of Principal Subordinate Court, Nagercoil. The suit was decreed ex parte on 21.03.2003. The owner / Judgment debtor did not execute the sale deed. This Court on 19.09.2003, executed the sale deed. The sale consideration mentioned in the sale deed is Rs.10,00,000/-, comprising Rs.6,00,000/- for land and Rs.4,00,000/- for the building thereon. In all the documents viz., sale agreement, schedule to the plaint, decree dated 21.03.2003 and sale deed to the extent of land is mentioned as 50 Cents. The said Santha Bhagavathi Pillai and appellants valued the land at Rs.12,000/- per Cent. They have calculated value for 50 Cents and mentioned in the sale deed as Rs.6,00,000/-. Therefore, it is not open to the appellants to contend that they have purchased only one half of 50 Cents. Further, the Santha Bhagavathi Pillai was not consistent her stand with regard to extent of land purchased by her. In the appeal, originally filed by her on 09.07.2012, before the first respondent, she has stated that she has purchased only ½ of 26 Cents i.e 13 Cents. In the affidavit filed in W.P.(MD).No.4282 of 2014, at para 7 she has stated that she purchased half of half share i.e 25 Cents only. In Para 4 of the affidavit filed in W.P (MD).No.4283 of 2014, again she stated that she has purchased only half of 26 Cents only. In the appeal filed in the prescribed form on 02.04.2014, in the grounds of appeal, she has stated that she purchased only one share of 50 Cents. The respondents 1 and 2 considered the sale deed executed by the Court and held that the appellants purchased only 50 Cents as mentioned in the schedule-II, sale deed.

In view of the schedule in agreement of sale, schedule to plaint and sale deed and Santhi Bhagavathi Pillai and appellants have calculated the value of the lands only on extent of 50 Cents. I hold that the findings of the respondents 1 and 2, with regard to extent of land purchased by the appellants is correct.

Point Nos. 2 and 3

The appellants themselves have valued building at Rs.4,00,000/-. The respondents 1 and 2 followed the procedure laid down in Section 47(A) and Rule 3 and 5 of Tamil Nadu Stamp (Prevention of Undervaluation of Instruments) Rules 1968, and then only, arrived at market value of the land mentioned in the sale deed. Originally, the first respondent without affording an opportunity to Santha Bhagavathi Pillai, passed an order. This Court set aside the order and directed the first respondent to dispose of the appeal as per law. The first respondent gave an opportunity to the appellants. The said Santha Bhagavathi Pillai died pending appeal. The first respondent considered the objection of the appellants and then only, passed an order. The said order is as per procedure laid down in the Act and Rules and first respondent has given cogent and valid reasons for arriving at market value and the property in question. There is no infirmity in the impugned order passed by the respondents.

8. In the result, the appeal is dismissed and the order dated 26.03.2015, passed by the first respondent, dated 26.03.2015, is confirmed. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(AS)

/True copy/

Sub Assistant Registrar

To

1. The Inspector General of Registration cum
Chief Controlling Revenue Authority,
Office of the Inspector General of Registration,
No.100, Santhome Road, Chennai – 28

2.The Special Deputy Collector, Thirunelveli

3. The Joint Sub-Registrar No.I, Sub Registrar Office,
Kanyakumari, Kanyakumari District

+1CC TO MR.D. NALLATHAMBI, ADVOCATE SR NO.38685

+1CC TO SPCIAL GOVERNMENT PLEADER SR NO.38847

trp:

sdr:27.07.2015: 6p/6c

C.M.A.(MD) No. 506 of 2015 and
M.P.(MD).Nos. 1 of 2015
14.07.2015