IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.02.2016

CORAM

THE HONOURABLE MR.JUSTICE C.S.KARNAN

C.M.A.No.2281 of 2015
and
M.P.No.1 of 2015

1.A.Selvakumar
2.T.Sekar
3.R.Arul
4.C.Sivakumar
5.V.Srinivasan
6.V.Durai
7.D.Pavadai
8.A.Arumugam
9.P.Govindan ... Appellants / Applicants

vs.

1.The Inspector General of Registration
O/o.The Inspector General of Registration
Santhome, Chennai

2.The Special Deputy Collector (Stamps)
Cuddalore

3.The Sub-Registrar-II
Kallakurichi ... Respondents / Authorities

PRAYER: Civil Miscellaneous Appeal is filed under Section 47-A (10) of Indian Stamps Act, 1899 to set aside the order passed by the Chief Controlling Officer-cum-Inspector General of Registration vide his proceedings in Pa.Mu.No.27705/N3/2015, dated 18.08.2015 and allow the appeal by directing the respondents to collect the stamp duty of Rs.20/- per sq.ft., vide the sale deed in registration No.690 of 2001, on the file of the third respondent.

For Appellants : Mr.V.Vijayakumar

For Respondents: Mr.M.Venugopal
Special Government Pleader

J U D G M E N T

Reserved on : 30.10.2015
Pronounced on : 03.02.2016

The appellants / applicants have preferred the present appeal against the proceedings in Pa.Mu.No.27705/N3/2015, dated 18.08.2015, passed by the first respondent / Chief Controlling Officer-cum-Inspector General of Registration to direct the respondents herein to collect stamp duty of Rs.20/- per sq.ft., in respect of the property registered under a Sale Deed bearing document No.690 of 2001, on the file of the third respondent.

2. The short facts of the case are as follows:-
The appellants herein had purchased a landed property, measuring about 81 ½ Cents, in Survey Nos.282/1, 282/2, 282/4, 290/7A, 290/7B, 290/8, 290/9, 290/11 and 290/12A of Kallakurichi Village, for a total sum of Rs.4,20,000/-, under a Sale Deed registered, on 11.05.2011, as document No.690 of 2001, on the file of the third respondent. After registration, the second respondent had directed the appellants to pay stamp duty at the rate of Rs.400/- per sq.ft., after deducting the earlier stamp duty paid by them. Aggrieved by the same, the appellants had preferred an appeal before the first respondent herein. The first respondent had conducted an enquiry and passed the impugned order, dated 18.08.2015, confirming the order passed by the second respondent and also directed the appellants herein to pay the deficit stamp duty within a period of two months, in default they were directed to pay the deficit stamp duty together with interest at the rate of 1% per month for the delay period. The said order, dated 18.08.2015, is under challenge in this civil miscellaneous appeal.

3. The learned counsel appearing for the appellants has submitted that the first respondent had failed to refer any contemporaneous registered document to determine the market value of the subject matter of land. The concerned Village Administrative Officer had issued a certificate certifying that the subject matter of the land has been classified as dry land and the same is now vacant as barren land and it has not been utilized for any purpose. As per the records maintained by the third respondent, Rs.126/- per sq.ft., was the guideline for the relevant period i.e.01.04.2003. However, the second respondent had assessed the value of the property as early as during 2001 at Rs.500/- per sq.ft. The second respondent determined the subject matter of land as house site in an arbitrary manner. The said conclusion is only based on assumption and presumption. The first respondent had not decided upon the earlier appeal and

confirmed the second respondent's order by his proceedings, dated 04.08.2004 in an arbitrary manner. Hence, the earlier proceedings had been challenged before this Court by way of civil miscellaneous appeal in C.M.A.No.3892 of 2004 and this Court has set aside the first respondent's earlier order and remanded the matter to the file of first respondent with a direction to conduct a comprehensive enquiry, after obtaining Chitta, Adangal Certificates from the Village Administrative Officer and decide the issue on merits as to whether the subject land is cultivable or non-cultivable.

4. The learned counsel has further submitted that in order to decide the said issue the appellants had submitted Chitta, Certificate issued by the Village Administrative Officer and Field Map Sketch and all these documents revealed that the subject matter of land has been classified as wet land and it is suitable for cultivation. This is the factual position on basis of relevant records. The first respondent dismissed the appeal preferred by the appellant without assigning any reason and without considering the documentary proof.

5. The learned Government Advocate appearing for the respondents has submitted that originally the subject matter of land was classified as dry land. Further, the said land is situated on Kallakurichi-Salem Main Road, which is a prime location. Now, the adjacent lands have been used for residential purpose. Therefore, considering the current position, the subject matter of land has been treated as house-site and accordingly demanded stamp duty at Rs.400/- per sq.ft. This assessment is based on the contemporaneous document. Therefore, the impugned order passed by the first respondent is suitable for execution. Hence, the learned Government Advocate has prayed for dismissal of the appeal.



6. Per contra, the learned counsel appearing for the appellants has submitted that at the time of registration, the guideline value of the subject matter of the land was Rs.1,52,200/- per Acre. Therefore, without any documentary proof, the respondents have calculated the stamp duty and demanded the same on their own views. Such an order is not fit to be operated upon any further against the appellants herein.

7. From the above discussion, this Court is of the view that:

i. The subject matter of the land was originally classified as dry land as per sale deeds, parental documents, besides revenue records, namely, patta, chitta and adangal extracts, as well as certificate issued by the Village

Administrative Officer and field map sketch. Originally, the subject matter of the land was cultivated. There is no authenticated records recognized by the Government that the subject matter of land has been converted into house site from cultivable land. Therefore, the stamp duty pertaining to the subject matter of land has been assessed by the respondents not on the basis of documentary proof or any substantial evidence.

ii. Basically, conversion of agricultural land into house site requires plan approval from the concerned authorities attached to the State Government. In the instant case, there is no approved plan for conversion of the subject matter of land into house site. Hence, the assessment of the stamp duty by the respondents demanding Rs.400/- per sq.ft., is not appropriate.

iii. The Sale Deed bearing document No.690 of 2011 has been executed by the erstwhile vendors, wherein it is clearly mentioned that the subject matter of land, comprising various survey numbers, is cultivable land. The same was not objected to by the third respondent herein at the time of registering the document. Therefore, the demand of stamp duty itself becomes superfluous.

8. On considering the factual position of the case, arguments advanced by the learned counsel on either side, and on perusing the typed set of papers and the views of this Court 1 to 3 as stated above, this Court holds that there is sufficient force in the civil miscellaneous appeal to allow it.

9. In the result, the civil miscellaneous appeal is allowed and the impugned order, dated 18.08.2015, passed by the first respondent is set aside. The third respondent is directed to release the Sale Deed registered as document No.690 of 2001, within a period of fifteen days from the date of receipt of a copy of this Order. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Asst.Registrar (CS III )

/true copy/
Sub Asst. Registrar

krk

To:

1.The Chief Controlling Officer cum
Inspector General of Registration,
O/o.The Inspector General of Registration,
Santhome, Chennai.

2.The Special Deputy Collector (Stamps),
Cuddalore.

3.The Sub-Registrar-II,
Kallakurichi.

1 cc to Mr.V. Vijayakumar, Advocate, Sr. 7116
1 cc to Spl.Government Pleader (CS), Sr. 7014

C.M.A.No.2281 of 2015
and
M.P.No.1 of 2015

TEJ (CO)
kk 11/2