IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 28.07.2016

CORAM

THE HONOURABLE MR.JUSTICE M.SATHYANARAYANAN

Writ Petition No.11913 of 2016
and
W.M.P. No.10289 of 2016

K.Palanisamy .. Petitioner

Versus

The Sub Registrar,
Komarapalayam Sub Registrar Office,
Komarapalayam, Namakkal District. .. Respondent

Prayer: Petition has been filed under Article 226 of the Constitution of India seeking a writ of certiorarified mandamus, calling for the records pertaining to the cheque slip No.1 of 2016 dated 15.03.2016 passed by the respondent and quash the same and consequently direct the respondent to register the mortgage deed dated 14.03.2016 submitted by the petitioner by considering the representation dated 15.03.2016.

For Petitioner : Mr.R.Marudhachalamurthy

For Respondent : Mr. S.Pattabiraman
Government Advocate.

O R D E R

By consent, the writ petition is taken up for final disposal.

2.The petitioner would state that he purchased the property in Survey Nos.297/2, 297/3 and 297/4 admeasuring to an extent of Punja Acre 3.08 situated at Komarapalayam Agraharam Village, Trichengode Taluk, Namakkal District through a registered Sale Deed dated 29.03.1990 bearing Document No.742 of 1990 on the file of Office of the Sub Registrar, Vadakancherry, Palakkad District, Kerala State and according to the petitioner, he claims to be in possession and enjoyment of the said property and the said registration particulars have also been furnished to the respondent herein. It is however stated that the petitioner on 26.12.2006, have mortgaged the above said property with Indian Bank and the same was duly registered by way of Mortgage Deed with the very same respondent in Document No.2057 of 2014 dated 17.03.2014 and once again, the petitioner for the purpose of marriage of his daughter, has decided to mortgage his property and therefore, created a mortgage deed dated 14.03.2016 for a sum of Rs.23,00,000/- and the same was duly presented before the respondent herein for registration. But, the respondent refused to register the same stating that the petitioner has to pay stamp duty to the mortgaged document No.742/1990, which is registered in the office of Sub Registrar, Vaddakencheri at Kerala State. The petitioner in this regard had submitted a representation dated 15.03.2016 stating all those facts.

3.Learned counsel for the petitioner would submit that the matter in issue is squarely covered by the order dated 10.02.2016 made in W.P. Nos.38363 and 38887 of 2015 (P.Ramiah and others vs. The Inspector General of Registration, Chennai and others). Learned counsel for the petitioner has drawn the attention of this Court to Section 19-B(4) of the Indian Stamp Act 1899 and as per the said proviso, action is to be taken within a period of four years from the date of receipt of the copy of such instrument in the State of Tamil Nadu under the Registration Act, 1908 and admittedly even as per the letter of the Sub Registrar, Vadakkencherry, Palakkad District addressed to the District Registrar, Namakkal, the fact of the said registration, was brought to the knowledge of the said District Registrar, Namakkal as early as on 06.09.2006 and further that the very same property was also subjected to earlier mortgage in document No.2057/2014 dated 17.03.2014. He would further submit that in the light of the same, there cannot be any impediment or difficulty on the part of the respondent to register and return the document and prays for appropriate order to direct the respondent to register the mortgage deed.

4.Per contra, by way of filing counter affidavit, the respondent would state that unless and until the petitioner pays the differential stamp duty in support of the Indian Stamp Act 1899 in the office of Sub Registrar, Palakkad District, Kerala State, the document sought to be registered cannot be registered and prays for dismissal of this writ petition.

5.This Court considered the rival submissions and also perused the materials placed before it.

6.It is seen that the very same issue arose for consideration in Civil Appeal No.4968 of 2009 upto the Hon'ble Apex Court and it is relevant to extract para 9:-

“9. The Act was enacted to consolidate and amend the law relating to stamps. Stamp duty is payable on different types of instruments as prescribed by the State.
Section 19B of the Act was inserted by Tamil Nadu Act 43 of 1992. It reads as under:

"19B. Payment of duty on copies, counter parts or duplicates when that duty has not been paid on the principal or original instrument (1) Where any instrument is registered in any part of India other than the State of Tamil Nadu and such instrument relates, wholly or partly to any property situate in the State of Tamil Nadu, the copy of such instrument shall, when received in the State of Tamil Nadu under the Registration Act, 1908 (Central Act XVI of 1908), be liable to be charged with the difference of duty as on the original instrument.

(2) The difference of duty shall be calculated having regard to--

(a) the extent of property situate in the State of Tamil Nadu; and

(b) the proportionate consideration or value or market value of such extent of property.

(3) The party liable to pay duty on the original instrument shall upon the receipt of notice from the registering officer, pay the difference in duty within the time allowed by such registering officer.

(4) Where deficiency in duty paid is noticed from the copy of any instrument, the Collector may suo motu or on a reference from any court or any registering officer, require the production of the original instrument before him within the period specified by him for the purpose of satisfying himself as to the adequacy of the duty paid thereon, and the instrument so produced before the Collector, shall be deemed to have been produced or come before him in the performance of his functions and the provisions of section 47-A shall mutatis mutandis apply :

Provided that no action under this sub- section shall be taken after a period of four years from the date of receipt of the copy of such instrument in the State of Tamil Nadu under the Registration Act, 1908 (Central Act XVI of 1908.

(5) In case the original instrument is not produced within the period specified by the Collector, he may require the payment of deficit duty, if any, together with penalty under section 40, on the copy of the instrument, within such time as may be prescribed."

10. We may notice that the proviso appended to Section 19B (4) underwent an amendment insofar as in stead and place of

"from the date of registration of such instrument", the words "from the date of receipt of the copy of such instrument in the State of Tamil Nadu under the Registration Act, 1908" were inserted. The said amendment came into force with effect from 22.02.2000 in terms of Tamil Nadu Act 39 of 1999.

11. Section 47A of the Act was inserted in the State of Tamil Nadu by Act 24 of 1967. Indisputably, the period of limitation was two years for initiation of a proceedings thereunder. However, Section 47A of the Act also underwent an amendment by Tamil Nadu Act 1 of 2000 which came into force with effect from 6.03.2000 whereby and where under the period of limitation was extended to five years.

12. The liability to pay stamp duty arises on presentation of a document. Indisputably, the registration office of the State of Kerala had the requisite jurisdiction to register the document in terms of the provisions of the Registration Act.

13. The registration authorities of the State of Tamil Nadu came to know of the registration of the said documents on 30.03.1996 when they were filed before some authorities. In terms of the provisions of the Act, the Collector alone would initiate a proceeding for recovery of deficit stamp duty. The proceeding was initiated on 5.05.1998 but the notices were issued only on 7.06.1998.

14. The period of limitation so far as Section 47A of the Act is concerned is two years. The limitation of period of four years was provided for in terms of the proviso appended to Section 19B(4) of the Act but the statute which was applicable at the relevant point of time provided for invoking the period of limitation was four years from the date of registration.

15. Sections 47A and 19B of the Act provide for penalty. A statute of limitation conferring jurisdiction upon the statutory authorities to impose penalty must, therefore, be construed strictly. A penal statute, as is well- known, unless expressly provided, cannot be given a retrospective effect. [See Ritesh Agarwal and Another v. Securities and Exchange Board of India (2008) 8 SCC 205]

16. The amendments carried out by the State of Tamil Nadu in the Act must, therefore, be held to have a prospective operation only. There cannot be any doubt whatsoever that ordinarily in a case of this nature, the date of knowledge would be the starting point for computing the period of limitation. The authorities of the State of Tamil Nadu came to know of the execution of the deeds of sale dated 1.02.1990 only on 30.03.1996. They could have initiated a proceeding, if any, within a period of two years from the said date as provided for in Section 47A of the Act.

However, in terms of Section 19B of the Act, the period of limitation provided was four years from the date of registration and not from the date of knowledge.”

7.The said decision was also followed in subsequent orders dated 10.02.2016 in W.P. Nos.38363 and 38887 of 2015 cited supra and 06.01.2016 in W.P. No.15656 of 2002 (M.S.K.Constructions [Pvt.] Limited, rep. by its Managing Director vs. District Registrar (Administration), Chennai. The facts of this case would disclose that the Sub Registrar, Vadakkencherry, Palakkad District has informed the District Registrar, Namakkal about the registration of the said document vide Document No.742/1990 of Book I in respect of the very same property.

8.In the light of communication of the Sub Registrar, Vadakkencherry, Palakkad District dated 27.07.2008 addressed to the District Registrar, Namakkal, this Court is of the view that the said proviso to 19-B(4) of the Indian Stamp Act 1899 would come to the aid of the petitioner and admittedly such a demand for deficit stamp duty came to be made after a lapse of four years and therefore, the impugned cheque slip warrants interference.

9.In the result, the writ petition is allowed and the impugned cheque slip dated 15.03.2016 issued by the respondent is set aside. Accordingly, the petitioner is directed to present the document before the respondent and as and when the document is presented for registration of mortgage, the respondent shall entertain, if the papers are otherwise in order and pass appropriate orders in the light of the observations made in the above said orders as expeditiously as possible and not later than two weeks from such presentation. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

vga

To

The Sub Registrar,
Komarapalayam Sub Registrar Office,
Komarapalayam, Namakkal District.

1 cc to Mr.R.Marudhachalamurthy, Advocate, sr.43120
1 cc to Government Pleader, sr.43315

Writ Petition No.11913 of 2016

skv co
kra 17.08.2016