C.M.P.No.19099 of 2016 in C.M.A.No.1539 of 2016

T.RAJA, J.

This miscellaneous petition has been filed by Mr.K.V.Moovendhan represented by his Power of Attorney Mr.R.Richard Jamespeter seeking a direction to the respondents herein, especially the Sub Registrar, Burkit Mahanagaram, Palayamkottai, Tirunelveli, the third respondent herein to register the sale deed dated 25.11.2016 furnished on behalf of the petitioner/appellant in respect of Survey No.46/1, Uthamandiyanpalayam Kulam Village, Palayamkottai Taluk, Tirunelveli District.

2. Mr.S.Haja Mohideen Gisthi, learned counsel for the petitioner/appellant submitted that admittedly the issue as to the valuation of property covered in Document Nos.853 of 2013 dated 16.9.2013 and 854 of 2013 dated 17.9.2013 covering a total extent of 14 acres and 37.5 cents situate in Survey No.46/1 at Uthamapandiankulam village is pending before this Court in C.M.A.No.1539 of 2016 and in the meanwhile, by an interim order dated 28.7.2016, the registering authority has been directed to register the aforesaid two documents on receipt of 30% of the demanded stamp duty and to return the same to the petitioner/appellant. Thereafter, the petitioner/appellant has approached the Sub Registrar, Burkit Mahanagaram and presented two documents in respect of the property covered in Survey No.46/1 at Uthamapandiankulam village on 25.11.2016 for registration on the basis of civil Court judgment. But the third respondent has

refused to register the same. When the said refusal was informed to this Court, this Court also observed that the learned Government Advocate can instruct the officials to register the subsequent documents also in the manner known to law. In spite of the above, the third respondent has issued the check slips dated 25.11.2016 as per Rule 27 of the Tamil Nadu Registration Rules framed under the Indian Registration Act, 1908 refusing to register the documents submitted by the petitioner/appellant. The two reasons cited for refusal cannot stand to scrutiny of this Court, he pleaded. Firstly, the reason that when the deficit stamp duty has not been paid in respect of the earlier Document No.853 of 2013 in terms of the order No.251/C1/2012 dated 24.5.2012 (Circular No.02/2012) passed by the Inspector General of Registration, the subsequent registration cannot be entertained, is not in order. Adding further, he submitted that when the third respondent herein had registered the earlier sale deeds in respect of the very same property, after registration of the documents, he cannot say that the petitioner/appellant has not paid the deficit stamp duty in terms of the aforesaid circular. Secondly, the check slips dated 25.11.2016 stating that there is no proof of filing of the relevant stamp papers/non-judicial stamp papers for the subsequent registration are also not valid, for the reason that the issue of valuation of the property covered in Document Nos.853 & 854 of 2013 dated 16.9.2013 & 17.9.2013 respectively in respect of the total extent of 14 acres and 37.5 cents covered in Survey No.46/1 at Uthamapandiyankulam village is pending consideration before this Court in the appeal subject to the deposit of 30% of the demanded stamp duty, which was paid subsequently and the said documents have also been released to the petitioner/appellant in pursuance of the interim order granted by this Court.

3. So far as the present controversy is concerned, since the petitioner/appellant had purchased the undivided share covering an extent of 14 acres and 37.5 cents of land, he had presented the documents for registration of the undivided portion of land in Survey No.46/1 at Uthamapandiyankulam village. After the passing of preliminary decree, the first registration was done in Document Nos.853 & 854 of 2013. Subsequently, final decree has been passed. In view of the final decree, all the properties have been properly divided with clear description and demarcation, therefore, the petitioner/appellant has proposed to register the divided share of his properties in order to avoid any future contingency, hence the petitioner/appellant, after such demarcation of the share so divided, had presented these documents for registration, as against the undivided property registered earlier. Therefore the third respondent cannot refuse to entertain the present documents for registration and the issuance of the check slips under Rule 27 of the Tamil Nadu Registration Rules cannot be entertained. Secondly, citing a circular issued by the Inspector General of Registration stating that in view of the pendency of the previous documents, no registration can be

allowed, is also not legally valid. The reason is that the petitioner/appellant, being the owner of the landed property covered in Survey No.46/1 to an extent of 14 acres and 37.5 cents for valid consideration, as per the ratio laid down by the Full Bench of this Court in the case of **G.Karmegam and others v. The Joint Sub Registrar, Madurai and others, 2007 (5) CTC 737**, it is mandatory on the part of the registering authority to perform his statutory obligation within a reasonable time by registering the document on its presentation. Even if the registering authority was of the opinion that sufficient stamp duty has not been paid, he has to register the document and refer it to the higher officer, namely, the Special Deputy Collector (Stamps) under Section 47-A(1) of the Indian Stamp Act.

4. In response to the above contentions, the learned Government Advocate for the respondents, taking instructions from the District Registrar in-charge present before the Court, submitted that when the petitioner/appellant, having registered two documents bearing Document Nos.853 & 854 of 2013 in respect of the total extent of 14 acres and 37.5 cents of land in Survey No.46/1, has obtained an order from this Court for registration and release of the documents on payment of 30% of the stamp duty demanded, on the ground that the earlier documents are relating to undivided share, once again two more documents have been presented for registration relating to the same property covered in Survey No.46/1 stating that he has now got the share divided as per the final decree passed by the

civil Court on 19.10.2016. Therefore only the check slips dated 25.11.2016 have been issued.

5. Replying to the above, the learned counsel for the petitioner/appellant submitted that prior to the passing of final decree, as the property was not divided, the petitioner/appellant purchased the undivided share. But now after demarcating the undivided share, a necessity arose for again registering the divided share pursuant to the final decree passed in O.S.No.708 of 1998. But in any event, when the petitioner/appellant have repeatedly paid the stamp duty for the same property which is now divided with proper and clear boundaries, the registering authority cannot raise any objection, as it relates to the title of the property.

6. I also find merits in his submissions. No doubt, on an earlier occasion, the petitioner/appellant had purchased the undivided share, because the property in question was not divided. Only on the basis of the preliminary decree passed by the civil Court, the petitioner had entered into the purchase of the undivided share. However, when the earlier documents bearing Document Nos.853 & 854 of 2013 were sought to be retained on the ground of deficit stamp duty payable by the petitioner/appellant and when the said orders were put to challenge in the appeal, this Court, by an interim order, had directed the respondents to register the documents on receipt of 30% of the stamp duty demanded and to return the same

to the petitioner/appellant. Subsequently, the petitioner/appellant had also paid the said amount and the documents were also released to him. During the pendency of the appeal, since now the final decree has been passed in respect of the property sought to be divided, the petitioner/appellant has decided to register the share so divided with clear and definite boundaries and only in this regard, he has presented the documents to the third respondent for registration based on the civil Court judgment. However, the third respondent has refused to register the documents, by issuing the check slips as per Rule 27 of the Tamil Nadu Registration Rules as well as citing a circular issued by the Inspector General of Registration, on the ground that when the petitioner/appellant had not paid the deficit stamp duty in respect of the earlier documents, the subsequent documents cannot be entertained and also there is no proof of filing of the relevant stamp papers/non judicial stamp papers for registration of the documents. When it is a settled legal position that the registering authority cannot refuse registration even if a document is undervalued, because if he has reason to believe that the true market value has not been set forth in the document, he can only refer the same to the Special Deputy Collector (Stamps) for determination of proper market value, the documents now sought to be presented by the petitioner/appellant needs to be registered. In this context, it is also relevant to refer to the judgment of the Hon'ble Full Bench of this Court in the case of **G.Karmegam and others v. The Joint Sub Registrar, Madurai and others, 2007 (5) CTC 737**, wherein the

Full Bench, in paragraphs 6 & 7, has held as follows:-

> "6. A careful reading of the above provision would show that if the Registering Officer has reason to believe that the market value of the property, which is the subject of conveyance, has not been truly set forth, he may, after registering such instrument, refer the same to the Collector for determination of proper market value of the property. The rationale behind the said Section is to neutralise the effect of undervaluation of the property, with a view to avoid evading stamp duty.
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> 7. Registration of document is a *sine quo non* for referring the matter to the Collector, if the Registering Officer believes that the property is undervalued. No jurisdiction has been conferred on the Registering Officer to refuse registration, even if the document is undervalued. Besides, there is no authority for him to call upon the person concerned to pay additional stamp duty. Collector is the prescribed authority to determine the market value, after affording a reasonable opportunity of hearing the parties. 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."

7. In the light of the ratio laid down by the Hon'ble Full Bench, the third respondent has no other option except to register the documents presented by the petitioner/appellant on the basis of the division. Accordingly, the third respondent is hereby directed to register the sale deed dated 25.11.2016 in respect of the property in question on payment of the stamp duty as per law. The civil miscellaneous petition is ordered accordingly.

Post the appeal for hearing next week.

01.12.2016

ss

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