IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATE: 07.06.2016
CORAM
THE HONOURABLE MR.JUSTICE M.SATHYANARAYANAN
W.P.No.18999/2016

Sri Lakshmi Ganesh Spinning Mills
O.E.Division, rep. by its Partner
K.C.Chandrasekaran,
Arachanallur Road, Ammapalayam,
Chinnimalai, Erode District. ... Petitioner

Versus

1.The District Revenue Officer
[Stamps], Collectorate Building
Coimbatore 641 018.

2.The Sub registrar
Avalpoondurai, Erode District. .. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, seeking for a writ of mandamus, directing the respondents to release the original document dated 30.08.2013 registered as Doc.No.4621/2013 on the file of the 2nd respondent forthwith by considering the petitioner's representation dated 22.01.2014 and 17.05.2016.

For Petitioner : Mr.N.Manoharan

For Respondents : Mr.R.Vijayakumar, AGP

ORDER

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

2 The petitioner would state that the three-fourth share out of total extent of 6.24 ½ acres bearing RS.No.498/1B, 498/1C, 498/1C2 and 498/2, Elumathur Village, Erode District, were purchased by two out of five partners of the Parnership Firm, viz., M/s.Lakshmi Ganesh Spinning Mills, under four registered Sale Deeds bearing Document Nos.1085 to 1088 of 2007 on the file of the 2nd respondent and the said property was brought into the Firm and became the property of the Firm and a superstructure in the form of Mill was constructed in the above said lands and one of the partners, viz., S.Sekar, retired from the Firm and executed a retirement deed. Though he was evinced in executing a release deed, it was released and he died on 01.04.2011 leaving behind a Will in favour of his minor son represented by three guardians who were nominated to execute the registered release deed, who in

turn, executed a registered release deed on 28.06.2013 in respect of the said lands in favour of the petitioner concerned and so also one of the partners, viz., Tmt.Savithri, also executed a registered sale deed bearing Dcoument No.4521/2013 dated 30.08.2013. Despite the fact that there is no mandate to register the said sale deed, it was presented and registered and however, it has not been returned on the ground that there is a deficit stamp duty and the 1st respondent has also passed a provisional order dated 05.02.2016 for which, the petitioner has submitted his response/objections on 17.05.2016 and since no final order is passed, the petitioner is constrained to approach this Court by filing the present writ petition.

3 The learned counsel for the petitioner would submit that once a document is registered, it is not open to the registering authority, viz., the 2nd respondent herein, to retain the document for the purpose of adjudication in collection of deficit stamp duty u/s.47-A[1] of the Indian Stamp Act and also drawn the attention of this Court to the judgment of this Court reported in 2002 [3] CTC 544 [B.Rajappa and another Vs. The Special Deputy Collector [Stamps], O/o.the Collectorate [V Floor], Mr.Singaravelar Maligai, Rajaji Salai, Madras-1 and 2 others] and would submit that despite very many judgments passed by the Hon'ble Single Bench as well as by the Division Bench, every time the documents are being retained under the pretext of collecting deficit stamp duty and prays for release of the document.

4 Per contra, Mr.R.Vijayakumar, learned Additional Government Pleader, who accepts notice on behalf of the respondents, would contend that there is a deficit stamp duty to the tune of Rs.77,92,827/- and though the provisional assessment order was passed, the petitioner has not paid the same and therefore, the documents are being retained u/s.47-A[1] of the Indian Stamp Act, 1890.

5 This Court considered the rival submissions.

6 It is relevant to extract paragraph 15 of the above cited judgment, which reads thus:-

> "15.While appreciating the anxiety expressed on behalf of the State by the learned Advocate General, this Court directs that:-
>
> > [i]It is open to the Registering Authority to affix a seal, while releasing the original deed or conveyance or any other document indicating that a reference is pending

under section 47-A with respect to under-valuation and assessment of Stamp Duty payable, as and when the proceedings reach finality, the same shall be intimated to the person who is liable to pay stamp duty demanding payment of deficit stamp duty payable on the instrument.

[ii]The Registrar to make corresponding entries u/s.54, 55 of the Registration Act, 1908, in the Register of indexes as to pendency of proceedings u/s.47-A.

[iii]On completion of adjudication as to the under-valuation by the competent authority as well as appeal or revision, if any, thereof, and depending upon the ultimate decision, the said authorities to recover deficit stamp duty according to law.

[iv]Till such proceeding reaches finality and deficit is paid, there will be a charge for the deficit stamp duty, which is the subject matter of transfer or conveyance.

[v]On payment of deficit stamp duty, if any payable, the Registrar may once again, on production of the original deed of transfer, make appropriate entry and recording the additional stampt duty paid and release of charge and also make consequential entries in the registers/indexes maintained under sections 54, 55 etc., of the Registration Act."

7 In the light of the above settled position of law, this Court is of the view that it is not open to the 2nd respondent to retain the registered Sale Deed bearing Document No.4621/2013 dated 30.08.2013 and by following the above said dictum laid down by this Court, this Court directs the 2nd respondent to release the registered Sale Deed bearing Document No.4621/2013 dated 30.08.2013 to the petitioner within a period of two weeks from the date of receipt of a copy of this order and this order is passed without prejudice to the rights of the respondents 1 and 2 to recover the alleged deficit stamp duty u/s.47-A[1] of the Indian Stamp Act, 1890.

8 The writ petition is disposed of with the above direction. No costs.

Sd/-
Assistant Registrar(CS-VI)

//True Copy//

Sub Assistant Registrar

AP

To

1.The District Revenue Officer
[Stamps], Collectorate Building
Coimbatore 641 018.

2.The Sub registrar
Avalpoondurai, Erode District.

1 cc to Mr.N.Manoharan, Advocate, sr.30467
1 cc to Government Pleader, sr.30504

W.P.No.18999/2016

lrs co
kra 16.06.2016