IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.08.2016

CORAM

THE HONOURABLE MR.JUSTICE T. MATHIVANAN

C.M.A.No.3553 of 2008

K.Apoorvammal and J.Balagujambal Trust,
Represented by its Chiarman
and Managing Director
J.Karthikeyan ... Appellant

Vs

1.The Inspector General of Registration
and Tamil Nadu Principal Revenue Controller,
Chennai-28.

2.Sub-Registrar,
Poonamallee District,
Poonamallee High Road,
Chennai-600 056. ... Respondents

Prayer: Civil Miscellaneous Appeal is filed Under Section 47-A (10) of Indian Stamp Act 1998), against the order dated 20.07.2006 and made in No.5178/N1/2004, dated 20.07.2006 by the Inspector General of Registration and Tamil Nadu Principal Revenue Controller, Chennai-28.

For Appellant : Mr.N.Jothi
for M/s.M.C.Govindan

For Respondents : Mr.T.Jayaram Raj
Government Advocate (C.S.)

JUDGMENT

Invoking the provisions of Section 47(A)(10) of Indian Stamp Act, 1998, this memorandum of Civil Miscellaneous Appeal has been directed against the proceedings No.5178/N1/2004 dated 20.07.2006 on the file of the Inspector General of Registration and Tamil Nadu Principal Revenue Controller, Chennai.

2. Heard Mr.N.Jothi, learned counsel assisted by Mr.M.C.Govindan, learned counsel who is on record for the Appellant and Mr.Jayaramraj, learned counsel appearing for the respondent.

3. The facts which are absolutely necessary for the disposal of this Civil Miscellaneous Appeal are summarised briefly as under:

The appellant K.Apoorvammal and J.Balagujambal Trust had purchased a landed property measuring 10.06 acres from one C.M.Kothari Educational Trust, Chennai for a total sale consideration of Rs.80,00,000/-.

4. It is apparent from the above said sale deed that the entire extent of land measuring 10.06 acres is situated at Chembarambakkam Village, Poonamallee Taluk, Tiruvallur District within the Registration District of Chennai South and Sub-Registration District of Poonamallee.

5. As argued by Mr.N.Jothi, page No.41 of the above said sale deed undoubtedly and unambiguously indicates that the land measuring 10.06 acres is an agricultural land. Not only in page No.41 but in various places of the sale deed it is very clearly indicated that the entire extent of the land measuring 10.06 acres is classified as agricultural land and besides this, 120 Coconut Trees with a Pump Set, Well and a Shed are available over the land with electricity connection. Therefore, it is understood from the contents of the sale deed that the land is admittedly an agricultural land. The land measuring 10.06 acres is situated in one compartment containing 17 pieces comprised in various survey numbers with various measurements.

6. The appellant has also given a statement under Rule 3(1) of The Tamil Nadu Stamp (Prevention of undervaluation of Instruments) Rules 1968 as under:

Sl.No.	Name of Village	Survey No.	Extent	Market Value as per Executant's Assessment Rs.
1	Chembarambakkam	155/7A	1.15	9,14,480/-
2	-Do-	155/11A	0.65	5,16,880/-
3	-Do-	156/2A	1.58	12,56,416/-
4	-Do-	160/8	2.15	17,09,968/-
5	-Do-	227/1	0.23	1,82,896/-
6	-Do-	227/3	0.20	1,59,040/-
7	-Do-	227/4A	0.16	1,27,232/-
8	-Do-	227/4B	0.35	2,78,320/-
9	-Do-	227/5	0.14	1,11,328/-
10	-Do-	227/6	0.14	1,11,328/-
11	-Do-	227/7	0.62	4,93,024/-

Sl.No.	Name of Village	Survey No.	Extent	Market Value as per Executant's Assessment Rs.
12	-Do-	227/8-A	0.31	2,46,512/-
13	-Do-	227/8-B	0.31	2,46,512/-
14	-Do-	227/10	0.86	6,83,872/-
15	-Do-	227/12	0.58	4,61,216/-
16	-Do-	227/13	0.38	3,02,176/-
17	-Do-	227/17	0.25	1,98,800/-

7. Mr.N.Jothi, learned counsel has also maintained that the classification of land even today is continued to be the nature of agricultural land and the concerned Village Administrative Officer had also certified that it is an agricultural land.

8. He has further adverted to that when the document was tendered for Registration, the appellant, as per the prevailing Guideline value, had fixed the value of the land at Rs.18/- per sq.ft., The appellant had followed the guideline value as per the record maintained by the registering authority, Poonamallee, as on 01.04.2003. However, the Sub-Registrar, Poonamallee had referred the document to the District Revenue Officer (I/c.) (Stamps), Chennai, after fixing the land value at Rs.152/- per sq.ft. On perusal of the records it is revealed that the First Appellate Authority viz., the District Revenue Officer had reduced the land value to an extent of Rs.130/- per sq.ft.

9. In this connection, Mr.N.Jothi has submitted that without application of mind, the District Revenue Officer had simply filled it up in the blanks in a printed format reducing the value of the land to an extent of Rs.130/- per sq.ft. He has further added that the entire proceedings of the Appellate Authority/District Revenue Officer, Chennai seemed to be a mere farce and fulfilment of formality without assigning any reason.

10. Only under this circumstance, the appellant had taken up this issue to the 1st respondent viz., Inspector General of Registration and Tamil Nadu Principal Revenue Controller, Chennai-28 who, on his part, had fixed the value of the land at Rs.65/- per sq.ft., and called upon the appellant herein to make the differential amount with 2% interest. The following table would illustrate the different valuation fixed by different authorities in accordance with their whims.

1.Amount of Stamp Duty paid at the time of Registration @ Rs.18/- per sq.ft. (Doc.No.899/2003 dated 30.05.2003)	Rs.10,40,000/-
2.Sub-Registrar referred this under 47(A)(1) fixing the rate @ Rs.152/- per sq.ft.	
3. The First Respondent reduced the rate and fixed the value @ Rs.65/- per sq.ft., which works out to	Rs.39,60,801/-
4. As per the Guideline Value (as on 01.04.2003) works out to Rupees.	Rs.23,50,297/-
5. The differential amount between item 1 and 4 (23,50,297-10,40,000)	Rs.13,10,297/-

11.Impugning the proceedings of the 1st respondent, present Civil Miscellaneous Appeal has been preferred by the appellant.

12. Originally this appeal was filed along with a delay condonation petition in M.P.No.1 of 2008 to condone the delay of 605 days. The above said petition was allowed and the delay was ordered to be condoned on 29.10.2008, on condition that the appellant/petitioner deposits a sum of Rs.13,10,297/- to the treasury towards Stamp Duty to the account of Doc.No.899 of 2003 dated 30.05.2003 registered on the file of the 2nd respondent viz., Sub-Registrar, Poonamallee.

13. This Court has also added that the proof of the deposit shall be furnished to the 2nd respondent as well as to the Registry of this Court for the purpose of numbering the appeal. The order of this Court dated 29.10.2008 is extracted as under:

> ''2.Mr.N.R.Chandran, Senior Counsel appearing for the petitioners submitted that as per the document No.899 of 2003, dated 30.05.2003, the value of the land was Rs.18/- per Sq.ft., and the stamp duty for a value of Rs.10,40,000/- was paid. The Appellate Authority, on reference, has fixed the value at Rs.65/- per Sq.ft., and the stamp duty payable thereon comes to Rs.39,60,801/-. The Appeal is filed challenging the order of the appellate authority along with the application for condonation of delay. Respondents were noticed.
>
> 3. Without prejudice to their right in the appeal, for the purpose of condonation of delay in filing the appeal, the petitioners are willing to deposit a sum of Rs.13,10,297/-. The basis on which the differential amount has been offered is that as per the guideline value as on 01.04.2003, the stamp duty payable would be Rs.23,50,297/- and not

Rs.39,60,801/- as determined by the appellate authority. Since, Rs.10,40,000/- has been paid, the petitioners are willing to pay the sum of Rs.13,10,297/- pending appeal. It was submitted that the excess of stamp duty as per Appellate Authority's order can be engrossed in the original document at the appropriate time subject to result of the appeal.

4. Heard Mr.Srikanth, Additional Government Pleader (C.S.), who stated that in the event of the Court condoning the delay, on payment of stamp duty amount now offered, the balance amount will have to be paid subject to the result of the appeal and if the documents are required, the difference in amount will be engrossed on the document.

5. Having considered the factual matrix under which the relief for reduction in the value has been sought, this petition is allowed on condition that the appellants/petitioners deposits a sum of Rs.13,10,297/- to the Treasury towards stamp duty to the account of Document No.899 of 2003, dated 30.05.2003 registered on the file of the Second Respondent. Proof of the same shall be furnished to the second respondent and to the Registry of the Court as well for the purpose of numbering the appeal.''

14. It is revealed from the records that the sale deed bearing Doc.No.899 of 2003 dated 30.05.2003 was released after a period of nearly five years and more, only on the deposit of Rs.13,10,297/- (Rupees Thirteen Lakhs Ten Thousand Two Hundred and Ninety Seven Only) to the treasury Account No.899 of 2003 dated 30.05.2003.

15. This Court, while perusing the order of Sub-Registrar, Poonamallee, District Revenue Officer (Stamps) and the Inspector General of Registration, understands that all the authorities concerned are not really sticking on to the existing Guideline value pertaining to the land purchased by the appellant. All the authorities had treated the land as house sites and evaluated themselves among various levels. While the Sub-Registrar had valued the land at Rs.152/- per sq.ft., the District Revenue Officer had valued the same at Rs.130/- per sq.ft. Eventually, the head of the Registration Department namely the 1st respondent had valued it at Rs.65/- per sq.ft.

16. Mr.N.Jothi, learned counsel had also brought to the notice of this Court that all the three authorities had assessed the value of the land as if it is house site. Virtually, the sale deed indicates that the land within the four corners has been classified as agricultural land and therefore, the land

purchased by the appellant ought to have been valued as agricultural land.

17. Mr.N.Jothi has canvassed that even as per the Guideline value, nowhere it is indicated that the Guideline value of the land is fixed at Rs.152/- or Rs.130/- per Sq.Ft. The Guideline value of Rs.65/-, as fixed by the First Appellate Authority, is in respect of two survey numbers 'viz' S.No.227/1 and 227/3. He has adverted to that the value of the 1st respondent at Rs.65/- is also incorrect.

18. The 1st respondent viz., Inspector General of Registration and Tamil Nadu Principal Revenue Controller while deciding the appeal made by the appellant under Section 47 (A) (5) of the Indian Stamp Act had directed the appellant to pay the differential amount with interest at the rate of 2% for Rs.100/- per month.

19. In this connection, Mr.N.Jothi, has submitted that the levy of interest at 2% as suggested by the 1st respondent is not at all permissible, under law. In order to support his contention, the learned counsel has assigned the following two reasons:

a) The issue is in adjudication at proper forum. The time taken by the Department to dispose of the Appeal cannot be a ground for levy of interest.

b) The Tamil Nadu Stamp (Prevention of undervaluation of Instruments) Rules, 1968, enables to present an appeal and adjudicate on the issue before various authorities. Hence, the question of levy of interest while adjudication is pending before the concerned authorities and the time taken by them to decide the issue cannot be mulcted with or resulted in penalising with levy of interest.

20. He has also continued that the Rules nowhere indicate the collection of stamp duty with interest. The order of the 1st respondent on the levy of interest is not justified by any legal backing. No rule is quoted to levy the interest. Assuming that any Government Order is issued directing to do so it may be seen that the Act has no legal sanction by means of any statutory provision.

21. While advancing his argument, Mr.N.Jothi, has also drawn the attention of this Court to the provision of Article 265 of the Constitution of India, wherein, it is envisaged that No Tax shall be levied or collected except by authority of law.

22. Mr.N.Jothi, has further contended that no sub-ordinate legislation, unless it is so authorised by sanctioning of legislation could be considered, as the one having legal effect.

23. Mr.N.Jothi has also drawn the attention of this Court to the provisions of Sections 75A and 76A of the Indian Stamps Act, 1899.

24. From the circumstances narrated above, this Court finds that the provisions of the Rule 6 of Tamil Nadu Stamp (Prevention of Undervaluation of Instruments) Rules, 1968 has not been followed in this case either by the District Revenue Officer(First Appellate Authority) or by the 1st respondent, the Inspector General of Registration and Tamil Nadu Principal Revenue Controller, Chennai.

25. Rule 6 of the Tamil Nadu Stamp (Prevention of Undervaluation of Instruments), Rules, 1968 is extracted as under:-

> ''6.Procedure after arriving at provisional market value.-
>
> The Collector shall communicate a copy of his order provisionally determining the market value of the properties and the duty payable, to all the persons who are liable to pay the duty along with the notice in Form II and call upon the parties to lodge their objections, if any, to such determination of the market value within the time specified in the notice. The Collector shall also hear the parties on the date specified in the notice or on such other day as may be fixed by him.''

26. As it is revealed from the document bearing No.899 of 2003 dated 30.05.2003, the nature of land is an agricultural land as per the Village Administrative Officer's report apart from the existence of 120 standing coconut trees with a pumpset, well and shed. The registering authorities by hypothetical considerations and on the imaginary views have considered that the land may in future be converted into house sites. Based on such imagination an agricultural land cannot be valued as if it is a house site. It is for the owner of the land to decide either it may be converted as house site or not. But, what is the present nature of the land alone is to be taken in to consideration for the assessment of stamp duty.

27. Sub-section 4 of Section 47-A of the Indian Stamp Act, 1899 contains three compartments as detailed here under:

a) Every person liable to pay the difference in the amount of duty under sub-section (2) or sub-section (3) shall, pay such duty within such period as may be prescribed.
b) In default of such payment, such amount of duty outstanding on the date of default shall be a charge on the property affected in such instrument.

c) On any amount remaining unpaid after the date specified for its payment, the person liable to pay the duty shall pay, in addition to the amount due, interest at two per cent per month on such amount for the entire period of default.

28. In this connection it is to be noted that the registration of the document No.899 of 2003 took place on 30.05.2003. Thereafter, the document had been travelling in ''Lis''; even as on this date by way of this appeal, (C.M.A.No.3553 of 2008). Under this circumstance, it cannot be heard to say that the three portions of sub-section 4 of Section 47-A of the Indian Stamp Act, 1899 could be applied in this case.

29. The Sub-Registrar, Poonamallee who is the 2nd respondent herein had registered the document bearing No.899/2003, after fixing the Guideline value for the property under dispute at Rs.152/- per Sq.ft.,

30. The Collector of Stamps viz., D.R.O. Chennai had assessed the value of the property at Rs.130/- per sq.ft.,

31. On appeal, ultimately, the 1st respondent viz., Inspector General of Registration and Tamil Nadu Principal Revenue Controller had taken 3 or 4 months time to dispose the appeal fixing the value at Rs.65/- per Sq.ft.

32. The records, on perusal, would go to show that the registration of the document was taken place on 30.05.2003, but the ''Lis'' was virtually ended on13.09.2006. Though the proceedings of the 1st respondent was passed on 20.07.2006, actually it was signed on 13.09.2006. The proceedings of the registering authorities would go to show that everyone had treated the landed property as house site and not an agricultural land.

33. It is pertinent to note here that the Indian Stamp and the Registration (Tamil Nadu Amendment) Act, 2006 has come in to force w.e.f.01.09.2010 as per G.O.Ms.No.152/CT & R(11), Dept., dated 31.08.2010. As per Section 2 of this Act (Tamil Nadu Act 13 of 2008) Section 47-A of the Indian Stamp Act, 1899 was amended.

34. As per clause (d) of sub-section (1) to Section (2) of Act 13 of 2008 in sub-section (4), for the expression ''interest at two per cent per month on such amount for the entire period of default'', the following has been substituted, namely:-

''interest at one percent per month on such amount for the entire period of default:

Provided that where a person has preferred an appeal against the order under sub-section (2) or sub-section (3), the interest payable under this sub-section shall be postponed till the disposal of appeal and shall be calculated on the amount that becomes due in accordance with the final order passed in appeal as if such amount had been determined under sub-section (2) or sub-section (3), as the case may be.''

35. Therefore, original sub-section (4) of Section 47-A of the Indian Stamp Act, 1899 was subject to amendment and accordingly, the penal interest was reduced to one percent from two percent per month on such amount for the entire period of default.

36. As aforestated, since the Act itself came into force w.e.f. 01.09.2010 as per G.O.Ms.No.152/CT & R (11) Department, dated 31.08.2010, it is only having prospective effect and not retrospective effect. There is no policy declared in the Act so as to have it with retrospective operation. There is no policy declaration to that effect. It applies only to future transactions and not to the earlier transactions which took place prior to the commencement of this Act.

37. Under this circumstance, the instrument under appeal since got registered on 30.05.2003 will not attract any interest at all.

38. Insofar as the 1st respondent is concerned, he had reduced the value from Rs.130/- to Rs.65/- per sq.ft., considering it as house site and directed the payment of interest at 2%. He has also held that 2% interest would be levied subsequent to the expiry of two months period within which the differential amount of Stamp Duty to be paid. With reference to this context Mr.N.Jothi has adverted to that it means no interest could be paid during the pendency of the proceedings before any of the authorities.

39. Already this statutory Civil Miscellaneous Appeal in C.M.A.No.3553 of 2008 has been filed and pending. Hence, the question of payment of interest will not arise during the interregnum period from the date of Registration on 30.05.2003 till the disposal of this appeal.

40. As it is seen from the order of this Court dated 29.10.2008, as on date of registration of Document No.899 of 2003 (i.e.,) on 30.05.2003, the value of the land was Rs.18/- per Sq.ft., Accordingly, the stamp duty for the value of Rs.10,40,000/- was paid. The 1st respondent being the Appellate Authority had fixed the value at Rs.65/- per Sq.ft. As per his valuation, the stamp duty payable thereon comes to Rs.39,60,801/-.

41. While the petition to condonation of delay was allowed, this Court had directed the appellant to deposit a sum of Rs.13,10,297/- as the appellant had expressed his willingness to deposit the amount being the differential one as per the guideline value as on 01.04.2003. Accordingly, the stamp duty payable would be Rs.23,50,297/- and not Rs.39,60,801/- as determined by the 1st respondent (Appellate Authority). Since, Rs.10,40,000/- has already been paid, subsequently, in pursuant to the order of this Court, the appellant had also deposited a sum of Rs.13,10,297/- to the credit of the Document bearing No.899 of 2003. Therefore, no amount is payable by the appellant in excess being the differential amount because neither the 2nd respondent, the Sub-Registrar, Poonamallee nor the Collector, (Stamps, Chennai) D.R.O. or 1st respondent had justified the reason in fixing the value of the land in different level. It shows that all of them have not fixed the correct value of the land. As adverted by Mr.N.Jothi, as on 01.04.2003, the Guideline value of the land was worked out at Rs.18/- per sq.ft., and accordingly, the entire amount was paid. Nothing is due. The appellant is also not liable to pay interest either at 2% or at 1% as per the Act 13 of 2008.

42. In support of his contention Mr.N.Jothi has made reference to the following decisions:-

1. V.R.Venkataraman vs. Chief Controlling Revenue Authority/The Inspector General of Registration, Santhome High Road, Mylapore, Chennai and 4 others (2005 (2) CTC 465).
2. The District Collector, North Arcot Ambedkar District, Vellore and another vs. Manickam (2005 (2) TLNJ 118).
3. S.Sivasubramaniam vs. Chief Controlling Revenue Authority-cum-Inspector General of Registration and 2 others (2013 (6) CTC 295).

43. In the result, this Civil Miscellaneous Appeal is allowed and the impugned order passed by the 1st respondent is set aside.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

ssn

To

1.The Inspector General of Registration
and Tamil Nadu Principal Revenue Controller,
Chennai-28.

2.The Sub-Registrar,
Poonamallee District,
Poonamallee High Road,
Chennai-600 056.

+2cc's to Mr.M.C.Govindan, Advocate, S.R.No.43885
+1cc to Mr.M.Venogopal, Advocate, S.R.No.44417

C.M.A.No.3553 of 2008

KS(CO)
CA(23/06/2017)