IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 07.02.2017

Pronounced on : 24.05.2017

CORAM:

THE HON'BLE DR. JUSTICE S.VIMALA

Civil Miscellaneous Appeal No.1539 of 2016

Mr. K.V.Moovendhan ... Appellant

..Vs..

1. Tamil Nadu Chief Controlling Revenue Authority and Inspector General of Registration, Chennai 600 028
2. The Special Deputy Collector of Stamps, Tirunelveli
3. The Sub-Registrar, Burkit Mahanagaram, Palayamkottai Taluk, Tirunelveli ... Respondents

Civil Miscellaneous Appeal filed under Section 47 (10) of the Indian Stamp Act, 1899, to set-aside the order, dated 03.03.2016, passed by the first respondent, in his proceedings in Pa.Mu.No.9228/N-5/2015, confirming the order of the second respondent passed in his proceedings in Mu.Sa.X1/1937/13 and Mu.Sa.X1/1938/13, dated 30.12.2014 and 21.07.2014.

For Appellant : Mr. S.Haja Mohideen Gisthi

For Respondents : Mr. T.Jayaramaraj, Govt. Advocate (CS)

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J U D G M E N T

The properties covered in the sale deed, dated 10.02.2016, located at Palayamkottai Registration District, Burkit Managaram Sub-Registration Saragam, Uthamapandiyakulam Village, Patta No.81, Iyan Punja, Survey No.44 (an extent of hectare 0.72.0), Survey No.45 (an extent of hectare 0.72.0), Survey No.48 (an extent of hectare 0.36.0) and Survey No.49 (an extent of 0.11.50 hectare, out of 0.50.0 hectare), have been sold for a sale consideration of Rs.32,200/-.

2. The question raised in this Appeal is, when the properties covered in adjacent Survey Nos.44, 45, 48 and 49 have

been sold for a sum of Rs.28/- per ***sq. mt.**, how the value of Rs.900/- per sq.mt., can be fixed in respect of the property covered in survey No.46/1 (1 sq.mt., = 10.7639 sq.ft.,). Thus, the value is Rs.83.61 per sq.ft., (roughly ***thirty** times more than the value fixed at Rs.28/- per ***sq.mt.**,).

3. The appellant / K.V.Moovendhan purchased the property, on 16.09.2013, an extent of 3 acres and 12½ cents, out of 9 acres and 37.5 cents in Survey No.46/1 at Uthamapandiyankulam Village, in Patta No.81 along with others, for a sale consideration of Rs.18,75,000/-, under Document No.853/2013.

3.1. Under document No.854/2013, the appellant and others have purchased an extent of 5 acres (out of 27 acres and 26 cents) in the same Survey Number and same Patta Number, for a sale consideration of Rs.10,00,000/-, on 17.09.2013.

3.2. The appellant has executed a Power of Attorney, in favour of R.Richard James Peter, on 20.11.2014. Those documents were referred to the second respondent for valuation. The second respondent has passed an order, valuing the land at Rs.900/- per sq.mt.,

S. No.	Document No.	Date of Registra-tion	Original Value Stated in the document / Rs.	Value fixed by R-2 / Rs.	Balance Payable towards deficit stamp duty/ Rs.
1.	853/2013	16.09.2013	18,75,000/-	3,41,45,064 /-	22,58,655/-
2.	854/2013	17.09.2013	10,00,000/-	1,82,10,708 /-	12,04,750/-

4. The main grievance of the learned counsel for the appellant is that the authorities omitted to take note that the property sold is only a Punja Land and not a layout property; the essential rules for valuation has not been followed and that has led to arbitrary fixing of the value.

5. This Court, by the order, dated 01.11.2016, has directed the respondents herein to release the impugned documents, on the appellant herein, by depositing 30% of the demanded amount, as directed in the order dated 28.07.2016 made in CMP No.11687 of 2016. But, this order was not complied with and therefore, this Court has directed the Tamil Nadu Chief Controlling Revenue Authority to initiate necessary departmental action against Mrs.S.Shenbegavalli, the Special Deputy Collector (Stamps), Tirunelveli, and imposed costs of Rs.10,000/- upon her. The respondents have been directed to report compliance also.

6. The second respondent has filed the counter affidavit stating the following facts:-

1. The appellant purchased the property, jointly with Kandaswamy and Karruppasamy in R.S.No.46/1 in Uttamapandiyakulam Village, Tirunelveli District, totally to an extent of 14 acres and 37.5 cents. The sale deeds presented were registered in the Office of the third respondent in Document Nos.853 and 854 of 2013. The appellant valued the property at Rs.23.15 per sq.mt., in respect of Document No.853/2013 and Rs.49.38 in respect of Document No.854/2013.
2. Thereafter, the document was referred to second respondent under Section 47 (A) of the Indian Stamp Act, for determination of the market value; the second respondent inspected both the lands on 25.11.2014 along with Special Tahsildar (Stamps) Tirunelveli and the agent of the appellant; the second respondent, by the order dated 13.12.2014, determined the market value at Rs.900/- per sq.mt., on the ground that the property is situated in a prime locality and the residential area.
3. The appellant preferred an appeal before the first respondent under Section 47 (A)(5) of the Act, and based upon the grounds raised by the appellant and Enquiry cum Inspection Report of the District Registrar, the first respondent confirmed the order of the second respondent.
4. As the value has been fixed based upon the Inspection and Enquiry Reports, it is valid, genuine and reasonable.
5. The enquiry officer reported that Santosh Nagar, Sarada Nagar, Ramesh Colony, Welcome Nagar and Suganth Nagar are situated around the subject land and therefore, the property in Survey No.46/1 has been classified as residential class I Type II.

7. The main contention raised by the learned counsel appearing for the appellant is that, the respondents did not follow the procedure prescribed under the Tamil Nadu Stamps (Prevention of Undervaluation of Instruments) Rules, 1968 and therefore, the order fixing the market value of the property is illegal and it is liable to be set-aside.

7.1. Raising specific contentions with reference to the illegalities, the learned counsel for the appellant relied upon the following decisions:

(i) Contending that, in the absence of relevant sale deed not being available, determination of market value in respect of an agricultural land should be followed in terms of Rule 5 of the Tamil Nadu Stamps (Prevention of Undervaluation of Instruments) Rules, 1968, the decision reported in AIR 1989 Madras 96 (R.Rajalakshmi v. Revenue Divisional Officer) is relied upon:-

" Rule 5 of the Tamil Nadu Stamp (Prevention of under-valuation of Instruments) Rules, 1968 to the extent to which it is relevant reads thus:

"Principles for determination of market value:

The Collector shall, as far as possible, have also regard to the following points in arriving at the provisional market value:

(a) In the case of lands:

(i) classification of the land as dry, manavari, wet and the like;

(ii) classification under various tarams in the settlement register and accounts;

(iii) the rate of revenue assessment for each classification;

(iv) other factors which influence the valuation of the land in question;

(v) points, if any, mentioned by the parties to the instrument or any other person which requires special consideration;

(vi) value of adjacent lands or lands in the vicinity;

(vii) average yield from the land, nearness to road and market, distance from village site, level of land, transport facilities available for irrigation such as tank, wells and pumpsets;

(viii) the nature of crops raised on the land.

Rule 5(b) relates to house sites and Rule 5(c) relates to buildings.

....

5. .... It is clear from Rule 5 that with reference to agricultural lands, the matters to be taken into account include the average yield from the land, nearness to road and market distance from village site, level of land, transport facilities, facilities available for irrigation and the nature of crops raised on the land in addition to the valuation of the adjacent lands. If there is no sale deed available to show the value of the adjacent lands in the vicinity, that cannot prevent the court from fixing the value on the basis of the other matters referred to in the rule. It is open to the petitioners to let in evidence with regard to the other matters mentioned in Rule 5(a)."

(ii) Contending that registration of documents by the Registrar precedes reference to the Collector and the Registrar cannot refuse registration and that the Registrar is expected to refer the documents under Section 47 (A) of the Indian Stamp Act, 1949, the decision reported in 2007 (5) CTC 737 (G.Karmegam v. The Joint Sub Registrar IV, Madurai) is relied upon:-

> "6. Registration of document is a sine qua 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."

(iii) Placing a contention that the onus is on the Revenue to show that the market value set forth in the document is not proved, the decision reported in 2009 (1) CTC 698 (Ezhilarasi and another Vs. The Inspector General of Registration, Santhome High Road, Chennai and others) is relied upon:-

> "11. On a reading of the provisions of the Indian Stamp Act and the Rules and the decisions of the Court as stated above, it is clear that the guideline value, which forms the main plank of the Department's contention in this case, is only a guiding factor to ascertain the market value prima facie, if there is a doubt that the market value has not been truly set forth in the instrument. It has been clearly stated by the Apex Court that guideline value is not a final authority on the market value of the property. The Department will have to go by the various parameters set down in the Rules for determination of the market

value if they have a reasonable belief that the market value of the property has not been truly set forth in the instrument. In other words the data land which is sought to be compared in this case should contain details which will throw light as to how the data land, its nature, extent and value is comparable to that of the property which is subject matter of registration. The onus is on the Department to establish that the market value of the property has not been truly set forth and the market value as claimed by the Department is contemporaneous to the document tendered for registration. In the present case, the main plank of the Department appears to be the guideline value and that too it is of the year 2000. The date of presentation in both the cases is of the year 1998. Therefore, taking the guideline value of the year 2000 may not be justified, in view of the Apex Court's decision in State of Rajasthan & others v. - Khandaka Jain Jewellers reported in 2008(1) CTC 60,. Further, the Department has proceeded on the guideline value, which is not final as held by the apex Court in R.Sai Bharathi vs. - J.Jayalalitha and others (2003 (4) L.W. 825) cited supra. It is only a prima facie material for determination of the true market value."

7.2. It is nowhere stated in the counter that before inspection of the property, summons were issued to the appellant giving opportunity to him to justify his claim that the value stated in the document is correct. It is stated in the counter that the agent of the appellant was present. Nothing further has been stated to show that what were the materials placed by the agent or objections raised by the agent or the request made by the agent, while noting the physical features of the property and while making assessment of the property.

7.3. In the Inspection report it is stated that, in the disputed property, 9 acres and 37 ½ cents lie as a contiguous zone and there are no houses in it and it is only a place shrouded with bushy thorns. It is also stated that there is no demarcation as house sites.

7.4. Under such circumstances, it is not known how the property could be treated as a house-site and stamp duty can be claimed fixing the value at Rs.900/- per sq.mt., (Rs.83.61 per sq.ft.,).

7.5. It is also not explained by the respondents how the property under dispute has been valued at Rs.900/- per sq.mt., when the valuation in the adjacent lands in Survey Nos.44, 45, 48 and 49 has been valued only at Rs.28/- per ***sq.mt.**, It is also relevant to point out that this valuation has been done only on 10.02.2016.

7.6. Except stating that the property is situated in the prime locality and it is a residential area, no other reason has been stated by the respondents. These reasons could be applicable to the adjacent lands also, which are in Survey Nos.44, 45, 48 and 49, where the properties have been valued at Rs.28/- per ***sq.mt.**, Therefore, the impugned order is arbitrary and the value has been fixed without taking note of the factors which had to be taken into account, in accordance with Rule 5 of the said Rules.

8. In view of the above, the order, dated 03.03.2016, passed by the first respondent, in his proceedings in Pa.Mu.No.9228/N-5/2015, confirming the order of the second respondent passed in his proceedings in Mu.Sa.X1/1937/13 and Mu.Sa.X1/1938/13, dated 30.12.2014 and 21.07.2014, are set-aside.

8.1. The matter is remitted back to the second respondent with directions to: (a) take into account the value fixed in respect of Survey Nos.44, 45, 48 and 49; (b) also take into account Document Nos.69 and 70 of 2016, registered on 10.02.2016, each for a sum of Rs.32,200/-; (c) follow Rule 5 of the said Rules, and (d) follow the dictum laid down in the judgments referred to supra and (e) to fix the value within a period of two weeks from the date of receipt of a copy of this judgment.

8.2. This Civil Miscellaneous Appeal is allowed. No costs.

8.3. Since this Court has set-aside the impugned orders, the amounts deposited by the appellant at 30% (as per the interim direction of this Court), viz., Rs.6,77,576/- in respect of Document No.853 and Rs.3,61,425/-, in respect of Document No.854, shall be refunded to the appellant herein or shall be adjusted towards the stamp duty payable by the appellant, if any.

***Corrected As per order dated**
07/06/2017 in CMA.No.1539 of 2016 and
CMP.No.18040 of 2016.

sd/-
Assistant Registrar(CS VI)

Sd/-
Asst.Registrar (CS VIII)

/true copy/

Sub Asst. Registrar

srk

To

1. Tamil Nadu Chief Controlling Revenue Authority and Inspector General of Registration, Chennai 600 028

2. The Special Deputy Collector of Stamps, Tirunelveli

3. The Sub-Registrar, Burkit Mahanagaram, Palayamkottai Taluk, Tirunelveli

4. The Section Officer, V.R.Section, High Court, Madras

To be Substituted the order already despatched on 02/06/17

+1cc to Mr.S.Haja Mohideen Histhi,Advocate sr.***40452**

C.M.A.No.1539 of 2016

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