

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.03.2017

CORAM:

THE HON'BLE MR. JUSTICE D. KRISHNAKUMAR

CRP. (NPD) No.357 of 2017 & C.M.P. No.1590 of 2017

The Sub Registrar
Sub-Registrar Office
Mailam, Villupuram District.

Petitioner

vs.

1.Natarajan
2.Thirunavukarasu
3.Poongothai
4.Minor Lokesh
5.Minor Keerthana

Respondents

(R4 and R5 rep by Guardian/Mother Poongothai)

Civil Revision Petition filed under Section 115 of Civil Procedure Code seeking to set aside the order and decretal order dated 28.08.2014 made in E.A.No.18 of 2014 in E.P.No.13 of 2013 in O.P.No.15/2008 on the file of Principal District Judge, Villupuram.

For petitioner	Mr.T.Jayaramaraj
	Government Advocate
For R1	Mr.R.Parthasarathy

ORDER

This civil revision petition has been filed to set aside the order and decretal order dated 28.08.2014 made in E.A.No.18 of 2014 in E.P.No.13 of 2013 in O.P.No.15/2008 on the file of the Principal District Court, Villupuram.

2. According to the petitioner, the first respondent herein has filed a suit for specific performance in O.S. No.15 of 2008 before the Principal District Court, Villupuram, seeking a direction to the second respondent herein and one Shankar (who has since died and whose legal heirs have been arrayed as respondents 3 to 5 herein) to execute the sale deed in favour of the first respondent/plaintiff and also to execute the sale deed on behalf of the defendants in favour of the plaintiff for Rs.16 lakhs and cause registration of the same alternatively, to direct the defendants to pay Rs.17,45,625/- to the first respondent/plaintiff with subsequent interest at 9% per annum till realisation. The said suit was decreed on 19.10.2009, pursuant to which, the first respondent/plaintiff has filed an Execution Petition in E.P.No.13 of 2013 and also E.A.No.18 of 2014 in the aforesaid suit. As directed by the Principal District Judge, Villupuram, the sale deed has been presented for registration of the property, which is the subject matter of the suit. The petitioner, though not a party to the suit, has registered the sale deed on 01.03.2014 as per the direction of the learned Principal District Judge, Villupuram and assigned Doc.No.1215 of 2014 to the same.

3. The petitioner, coming to the conclusion that there is difference in payment of the stamp duty as per the guidelines, referred the document under

Section 47-A of the Indian Stamp Act to the Special Deputy Collector, Villupuram, for determination of the market value of the property. The said 47-A application is still pending with the Special Deputy Collector. In the mean time, the first respondent/plaintiff has filed E.A.No.18 of 2014 in E.P.No.13 of 2013 seeking release of the sale deed. In spite of counter affidavit having been filed by the petitioner herein, the Court below has allowed the said application by directing the petitioner herein to return the sale deed bearing document no.1215 of 2014 dated 01.03.2014 without making any demand for the additional stamp payment on the registration of the sale deed to the first respondent/plaintiff. Aggrieved by the said order, the petitioner has preferred this civil revision petition before this Court.

4. The learned counsel for the first respondent/plaintiff would submit that the suit for specific performance has been decreed by the Court below and therefore, the petitioner cannot insist upon payment of the market value of the subject matter of the property as decided by this Court.

5. However, the said issue cannot be decided at this stage since the petitioner has referred the document under Section 47-A of the Indian Stamp Act to the Special Deputy Collector and the same is pending. In the light of the decision of this Court in **M.Ponnusamy & 42 others vs. The District Collector, Erode & others [1999 (2) L.W. 231]**, which has been confirmed by

a Division Bench of this Court in the **District Collector, Erode & others v. M. Ponnusamy [(2001) 2 CTC 449]**, the petitioner cannot have any power to withhold the document.

6. Therefore, in the light of the guidelines issued by this Court in the judgments referred to above, this Court is inclined to modify the order passed by the trial Court in the aforesaid application, as under:

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, and 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 under Sections 54, 55 of the Registration Act, 1908, in the Register of indexes as to the pendency of proceedings under Section 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 the deficit stamp duty according to law.

iv) Till such proceedings reach 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 stamp 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.

vi) Any difference amount of the deficit stamp duty will be subject to the outcome of the adjudication made under Section 47-A of the Indian Stamp Act, now pending before the Special Deputy Collector, Villupuram.

vii) The petitioner is directed to co-operate in the adjudication proceedings pending under Section 47-A of the Indian Stamp Act before the authority concerned.

This Civil Revision Petition is partly allowed with the above directions.

No costs. Consequently, connected miscellaneous petition is closed.

09.03.2017

gms

To

The Principal District Judge, Villupuram.

D.KRISHNAKUMAR, J.

gms

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