IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.10.2017

CORAM

THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

C.M.A.NO.674 OF 2014
AND M.P.NO.1 OF 2014

M/s.Rallan Tanning (P) Limited,
No.14, Rutland Gate,
4th Street,
Chennai - 600 006. ... Appellant

Vs.

1.The Chief Controlling Revenue Authority /
The Inspector General of Registration,
Office of the Inspector General of Registration,
No.120, Santhome High Road,
Chennai - 600 028.

2.District Revenue Officer (Stamps),
5th Floor, District Collector's Office,
Singaravelar Maligai
No.32, Rajaji Salai,
Chennai - 600 001.

3.Sub Registrar
Office of the Sub Registrar,
T.Nagar at Saidapet,
Chennai - 600 015. ... Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 47 of the Indian Stamps Act, 1899, to set aside the order of the first respondent dated 24.12.2013 passed in the proceedings in reference Pa.Mu.No.20385/Uoo1/09 and direct the first respondent to issue orders to the second and third respondent to refund the differential stamp duty already collected pursuant to the proceedings under Section 47 A (1) of the Act on the rectification deed dated 03.08.2007 registered as document No.1850/2007.

For Appellant : Mr.T.V.Ramanujan
Senior Advocate for M/s.A.Satyaseelan

For Respondents : Mr.M.Venugopal
Special Government Pleader (C.S)

J U D G M E N T

Aggrieved over the order dated 24.12.2013, passed by the first respondent / Chief Controlling Revenue Authority/Inspector General of Registration, the appellant has filed this appeal.

2. The appellant purchased the land measuring about four grounds with a building thereon and the market value of the property is Rs.10.00 crores. They have paid a sum of Rs.80,00,000/- towards stamp duty. Thereafter, when they entered into family settlement, they came across an error in linear measurement. Instead of typing the measurement as 144 feet on the Northern side, it was mentioned as 144 feet on Eastern and Western side. Similarly, instead of showing 68 feet and 8 inches on the Eastern and Western Side, it was shown as 68 feet and 8 inches in the Northern and Southern Side. The extent remained the same and only typographical error was sought to be rectified by way of rectification deed. However, the registering authority had collected differential duty on the market value of the sale deed bearing number 968 of 2006 dated 17.04.2006. The appellant has paid the differential duty for a sum of Rs.2,03,440/- and got the rectification deed registered on 03.08.2007. Thereafter, on 06.08.2007, sale deed was executed for the same property fixing the market value as Rs.12,20,00,000/- and the stamp duty paid was Rs.97,60,060/- and registration charges were paid at Rs.1,22,068/-. The 2nd respondent issued notice under Rule 4 of the Tamil Nadu Stamp (Prevention of under valuation of instrument) Rules, 1968, for fixing the market value of the property covered under the rectification deed registered as document number 1850 of 2007 and demanded the differential stamp duty of Rs.2,33,600/- and registration charges of Rs.29,200/- and the appellant has also paid the same as demanded.

3. While the matter stood thus, the first respondent herein by proceedings dated 23.09.2010, issued notice to the appellant under Section 47-A(6) of the Act to determine the market value of the property by exercising his power for suo-motu revision. Inspite of the contention that the rectification deed cannot be construed as a sale deed and the authority cannot enhance the amount suo-motu and demand the stamp duty on the basis of the subsequent document, the first respondent by proceedings dated 24.12.2013 has fixed the market value at Rs.12,000/- per sq.ft and demanded a sum of Rs.13,82,400/-

towards differential duty and Rs.1,72,800/- towards deficit of registration charges, totally a sum of Rs.15,55,200/-. The present appeal has been filed against the order of the first respondent dated 24.12.2013.

4. Admittedly, the sale deed was registered on 17.04.2006 and the registering authority has accepted the valuation and registered the document. The document was also released to the purchaser. Thereafter, while registering the rectification deed, the stamp duty for differential market value was collected.

5. According to Mr.T.V.Ramanujan, learned Senior Counsel appearing for the appellant, this Court in the case of P.Uthamaraj Vs. District Registrar Chennai, South Chennai and others reported in (2010) 1 MLJ 246, has clearly found that it is not open to the registering authority to reopen the original sale for the purpose of fresh assessment of value as on the date of rectification and to impose the stamp duty and to recover the differential stamp duty from the petitioner. The case on hand is also identical. In that case, the linear measurement east to west 63 feet and north to south 100 feet was wrongly stated in the original document. While relying on Section 47-B of the Indian Stamp Act, it was held that the authorities cannot collect the stamp duty if there is no difference in the extent of the property. The relevant paragraph of the above-said judgment is extracted hereunder:-

> "15. At the risk of repetition, it is made clear that if by way of rectification deed, the extent is going to be increased, certainly for the difference in extent, the registering authority is entitled to charge the stamp duty under Schedule I. But, it is not open to the registering authority to reopon the original sale that took place in the year 2003 for the purpose of fresh assessment of value as on the date of rectification of typographical error and by imposing stamp duty on the rectification deed and to seek to recover the difference of stamp duty from the petitioner. Inasmuch as the registering authority at the time of presentation of document for registration in the year 2003 did not raise any objection under Section 47-A of the Act, it is not open to the respondents to raise the dispute regarding valuation now."

6. The stamp duty can be collected only for the excess extent for which the stamp duty was omitted to be paid. But, while registering the rectification deed, it is not open to the registering authority to reopen the original sale that took place in the year 2006.

7. From the observation made in the above judgment, it is clear that the first respondent cannot initiate action under Section 47-A(6) of the Act against registration of rectification deed. If at all the first respondent intends to exercise his discretionary power under the Act, it can be exercised only against the slae deed registered and not against the rectification deed. Secondly, the rectification deed, which is under challenge now, does not expand the extent of the property nor invite any difference in valuation. In such circumstances, as held by this Court, it is not open to the respondents to raise the dispute regarding valuation on the basis of the rectification deed. Thirdly, the power under Section 47-A(6) of the Act can be exercised within five years from the date of the order passed under sub-section 2 or sub-section 3 of Section 47-A. In the absence of any proceedings with regard to the registration of sale deed initiated by the District Collector or District Revenue Officer, the first respondent cannot initiate proceedings under Section 47-A(6) of the Act, much less, after a period of five years. Therefore, the impugned order is without any cause of action and jurisdiction.

8. From the perusal of the impugned order, it is seen that after giving a personal hearing, the first respondent has passed the order and redetermined the value at Rs.12,000/- per sq.ft. But the order does not speak about the basis on which the value was arrived at.

9. Rule 11-A of the Tamil Nadu Stamps (Prevention of Undervaluation of Instruments) Rules, 1968, certain mandatory procedures are laid down, which reads as under:-

> "11-A. Decision of the appellate authority. - The appellate authority may, for the purpose of deciding an appeal,-
>
> (a) call for any, information or record from any public office, officer or authority under the Government or any local authority;

(b) examine and record statements from any member of the public officer of authority under the Government or the local authority; and

(c) inspect the property after due notice to the parties concerned."

10. The first respondent is expected to comply with the mandatory requirements and principles of natural justice. But whereas in the instant case, the first respondent has drastically failed to follow the statutory provisions in arriving at his decision to redetermine the value. The decision of the first respondent is contrary to the judgment of this Court in P.Uthamaraj's case (cited supra). In such circumstances, the impugned order is not sustainable in law.

11. Accordingly, the order dated 24.12.2013 passed by the first respondent in the proceedings in reference Pa.Mu.No.20385/Uoo1/09 is hereby set aside and the Civil Miscellaneous Appeal is allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS-vii)

//True Copy//

Sub Assistant Registrar

asi/tk

To

1.The Chief Controlling Revenue Authority /
The Inspector General of Registration,
Office of the Inspector General of Registration,
No.120, Santhome High Road,
Chennai - 600 028.

2.The District Revenue Officer (Stamps),
5th Floor, District Collector's Office,
Singaravelar Maligai
No.32, Rajaji Salai,
Chennai - 600 001.

3.The Sub Registrar
Office of the Sub Registrar,
T.Nagar at Saidapet,
Chennai - 600 015.

+1cc to Mr.A.SATHYASEELAN, Advocate, S.R.No. 74686
+1cc to the Government Pleader, S.R.No. 74261

C.M.A.No.674 of 2014
and M.P.No.1 of 2014

GJ(CO)
TR(01/02/2018)