IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.01.2017

CORAM

THE HON'BLE MR.SANJAY KISHAN KAUL, CHIEF JUSTICE
and
THE HON'BLE MR.JUSTICE M.SUNDAR

O.S.A.No.122 of 2010

S.Martin ... Appellant

Vs

The Official Liquidator,
High Court, Madras,
As liquidator of M/s.Kaveri Engineering Industries Ltd.,
(in Liquidation) ... Respondent

Appeal filed under Order XXXVI, Rule 11 of Original Side Rules read with Clause 15 of Letters Patent against the order dated 18.01.2010 in Company Application No.1825 of 2009 in Company Petition No.120 of 1997 on the file of this Court.

For Appellant : Mr.K.M.Vijayan
Senior Counsel
for M/s.K.M.Vijayan Associates

For Respondent : Mr.B.Dhanaraj

JUDGMENT

(Judgment of the Court was delivered by The Hon'ble Chief Justice)

The sale certificate in question in pursuance to the Court auction has already been handed over by the Official Liquidator to the appellant as per the interim directions. The question whether such a sale certificate is required to be stamped has been discussed by the Division Bench of the Punjab & Haryana High Court in M/s.Ferrous Alloy Forgings Pvt. Ltd. v. State of Punjab and others, reported in MANU/PH/3311/2013 = 2014 (1) RCR (Civil) 1029 [that judgment is authored by one of us - Sanjay Kishan Kaul, Chief Justice). The relevant discussion in this behalf is as under:-

> "6. As regards legal principles, reliance is sought to be placed on Article 18 read with Article 23 of the Indian Stamp Act, 1899 (hereinafter

referred to as "the Stamp Act") which provides for the same duties to be charged in respect of certificate of sale granted to a purchaser of any property sold by public auction by a Civil or Revenue Court, or Collector or other Revenue-officer as was chargeable on a conveyance for a consideration equal to the amount of the purchase money. The submission, thus, is that the sale certificate may or may not be compulsorily registrable but is not exempted from the provisions of the Stamp Act. It is also stated that the requisite duty has already been paid of Rs. 13,50,020/-.

7. We may note that it is in terms of order dated 17.9.2001 that the petitioner was permitted to deposit the full stamp duty without prejudice to its rights as may be finally determined by the Court as per its request.

8. Insofar as the requirement of registration is concerned, there is again no doubt that such a sale certificate is not required to be registered in view of Section 17(2)(xii) of the Registration Act. The said Section falls in Part-3 of the Registration Act dealing with registrable documents. Section 17 refers to documents of which registration is compulsory. Sub-section (2) provides that nothing in clauses (b) and (c) of sub-section (1) would apply to the nature of documents set out thereafter and in Clause (xii) it is specifically stated "any certificate of sale granted to the purchaser of any property sold by public auction by a Civil or Revenue-officer". Thus, the legal provision itself is absolutely clear. It is also not in dispute that the sale certificate has to be issued under Order XXI, Rule 94 of the said Code.

9. In view of the aforesaid, the controversy revolves around the interplay of the Registration and Stamp Acts, i.e., though a Sale Certificate is undoubtedly not compulsorily registrable, whether it is mandatory for the auction purchaser to deposit the stamp duty for the sale certificate to be issued to it in view of the provisions of the Stamp Act.

10. We now proceed to analyze the judicial view in view of this aspect referred to by learned

counsel for the petitioner. In Smt. Shanti Devi L. Singh vs. Tax Recovery Officer and others, AIR 1991 Supreme Court 1880, it was held that since a certificate of sale itself is not a compulsorily registrable document in view of the provisions of Section 17(2)(xii) of the Registration Act, the transfer of title in favour of purchaser as revenue sale is not vitiated by non-registration of the certificate. The copy of the certificate thus filed in Book-I with the Sub Registrar contains all the relevant details and all that a Sub Registrar is required to do is to file a copy of the certificate in Book-I and no more. He does not have to copy out the certificate or make any other entries in Book-I. However, whether any stamp duty or municipal transfer fee is payable in respect of original certificate of sale was a question left open. The Court while dealing with the plea that even if the certificate of registration is sought to be presented for registration the Sub Registrar has no jurisdiction to refuse registration on the ground that document is insufficiently stamped, observed that such a situation has not arisen as yet and it is unnecessary to anticipate it and decide the point.

11. In Municipal Corporation of Delhi vs. Pramod Kumar Gupta, AIR 1991 Supreme Court 401, it has been held that a title to the property put on auction sale passes under law when the sale is held. The owners and certain other interested persons are afforded opportunity under the Code to make a prayer for setting aside the sale on enumerated grounds and, after all such matters are disposed of without disturbing the sale, the sale is confirmed under Rule 92 of Order XXI of the said Code. The stage for issuing a certificate of sale arises only thereafter under Rule 94, Order XXI of the said Code. Thus, it was manifest that the title passes under the auction-sale by force of law and the transfer becomes final when an order under Rule 92 confirming it is made. By the Certificate issued under Rule 94, the Court is formally declaring the effect of the same and is not extinguishing or creating title, the object of issuance of such certificate being to avoid any controversy with respect to identity of the property sold and of the purchaser thereof as also the date when the sale became absolute. The use of past tense in the rules stating that the sale "became" absolute was held to

be consistent with this interpretation and the certificate was, thus, held to be not an instrument of sale so as to attract duty under Section 147 of the Delhi Municipal Corporation Act. We may note that under Section 147 of the Delhi Municipal Corporation Act, duty has been provided qua an instrument of sale of immovable property.

12. A reference has also been made to the judgment of the learned single Judge of the Karnataka High Court in M/s. Thomson Plantations (India) Pvt. Ltd. vs. The Senior Sub-Registrar Madikeri and another, 2006 (1) Kant LJ 403 holding that a Sub Registrar cannot demand purchaser to pay the stamp duty when a copy of the sale certificate has been sent by the Recovery Officer only for the purpose of filing in Book-I, as required under Section 89(4) of the Registration Act. The said provision, for reference, reads as under:-

> "89. Copies of certain orders, certificates and instruments to be sent to registering officers and filed.-
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> (1) to (3) ... ...
>
> (4) Every Revenue-officer granting a certificate of sale to the purchaser of immovable property sold by public auction shall send a copy of the certificate to the registering officer within the local limits of whose jurisdiction the whole or any part of the immovable property comprised in the certificate is situate, and such officer shall file the copy in his Book No. 1."

13. A reference may also be made to B. Arvind Kumar vs. Government of India & Ors., JT 2007 (8) SC 602. It was held that a property sold by public auction in pursuance to an order of the Court and the bid being accepted and sale confirmed, the sale becomes absolute and the title vests in the purchaser. A sale certificate is issued to purchaser only when the sale becomes absolute and the sale certificate is, thus, merely the evidence of such title and does not require registration under Section 17(2)(xii) of the Registration Act.

14. We may notice, on the other hand, that the learned counsel for the respondents referred to the judgment of the Supreme Court in State of Uttaranchal and Ors. vs. M/s. Khurana Brothers, 2010 (14) SCC 334 where it was held that in case of contract of sale for crude resin, the document by

which immovable property is transferred is a conveyance under Section 2(10) of the Stamp Act. Such a contract for sale is, thus, chargeable to stamp duty under Article 23.

15. On consideration of the legal proposition emerging aforesaid in the facts of the present case, we are of the view that the occasion for affixation of stamp duty on the sale certificate really does not arise as all that the petitioner was demanding was the issuance of the sale certificate. The Registry of the Court was only required to send the copy of this sale certificate to the Sub Registrar as per the mandate contained in Section 89(4) of the Registration Act and nothing more or nothing less. As to whether the petitioner thereafter gets the sale certificate stamped or not would be responsibility of the petitioner. The document undoubtedly is not compulsorily registrable. If the petitioner seeks to use the document for any purpose and that forum is of the view that it is not stamped which it ought to be, the question of impounding it and referring it to Collector of stamps could arise. This is not the responsibility of the Registry of the Court which was only required to issue a sale certificate and the rest had to be left to the petitioner. In fact, this is in consonance with the view expressed in Smt. Shanti Devi L. Singh's case (supra) where second question was left unaddressed because it did not really arise in the case. In fact, it is not for the Sub Registrar even to demand stamp duty when a copy of the sale certificate has been sent to it for purpose of filing in Book-I, as aforesaid.

16. Thus, we are of the view that the Company Court and the Registrar went beyond what was the requirement on the auction being completed and the sale certificate being issued, i.e., to give the original sale certificate to the petitioner and send copy under Section 89(4) of the Registration Act to the Sub Registrar leaving the rest for the best judgment of the petitioner.”

2. The learned counsel for the respondent/Official Liquidator sought to draw our attention to the judgment of the learned Single Judge of this Court in Company Application No.1928 of 2009, decided on 23.12.2009 (In Re: The Official Liquidator, High Court, Madras). On our query as to where the

aforesaid subject matter is discussed, the learned counsel drew our attention to paragraphs 46 and 59 of the said judgment. However, the discussion in paragraph 46 pertains to the presentation of the certificate of sale before the Registrar for registration and the requirement of paying the stamp duty at that stage. The observations in paragraph 59 that the stamp duty would thus have to be paid are in that context.

3. We may note that in another opinion of the learned Single Judge of this Court in W.P.No.17833 of 2009, decided on 07.09.2009 (M/s.Shree Vijayalakshmi Charitable Trust, Registered Trust, rep. by its Trustee Mr.A.Senthil Kumar, No.107-A, Sen Gupta Street, Ram Nagar, Coimbatore-641 009 v. The Sub Registrar, Raja Street, P.Puliampaty, Mettupalayam Taluk, Erode District), the view taken is contrary to the view taken in the aforesaid judgment and in consonance with the Division Bench judgment of the Punjab & Haryana High Court.

4. We are, thus, of the view that since we are adopting the view in M/s.Ferrous Alloy Forgings Pvt. Ltd. case (supra), where the issue was discussed in detail, the impugned order to that extent is set aside and the appeal accordingly allowed, leaving the parties to bear their own costs.

5. The original sale certificate having been handed over to the appellant, a copy of the sale certificate be sent by the respondent under Section 89(4) of the Registration Act, 1908 to the Sub Registrar.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

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To

The Sub Assistant Registrar,
Original Side,
High Court, Madras.

Copy To : The Original Liquidator,
High Court, Madras.

+1cc to Mr.K.M.vijayan Associates, Advocate, S.R.No.3897

O.S.A.No.122 of 2010

MG(CO)
CA(30/01/2017)