BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 24.11.2017

CORAM:

THE HONOURABLE MR.JUSTICE M.VENUGOPAL
AND
THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

W.A(MD)No.1418 of 2017
and
C.M.P(MD)No.10625 of 2017
against
WP(MD)No.17195 of 2017

The Sub-Registrar,
Thuraiyur,
Thiruchirapalli District. ..Appellant/Respondent

.vs.

S.Mohammed Bilal ..Respondent/Writ Petitioner

PRAYER: Writ Appeal is filed under Clause 15 of Letters Patent, praying to set aside the order dated 21.09.2017 passed in W.P(MD)No.17195 of 2017.

Prayer in WP(MD). 17195/ 2017 :
Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Mandamus directing the respondent to release the sale deed dated 03.04.2017 registered as Document No.1196/17 on the file of the respondent in favour of the petitioner.

For Appellant :Mr.V.R.Shanmuganathan,
Special Government Pleader
For Respondent :Mr.A.Rahul

JUDGMENT
****

[Judgment of the Court was made by M.VENUGOPAL.,J.]

Heard both sides.

2. The Appellant/Petitioner has preferred the present intra-Court Appeal as an 'Aggrieved Person' as against the order dated 21.09.2017 in W.P(MD)No.17195 of 2017 passed by the Learned Single Judge.

3. Earlier, the Learned Single Judge while passing the impugned order in W.P(MD)No.17195 of 2017 (filed by the Respondent/Petitioner) on 21.09.2017 at Paragraph No.7 had observed the following:

> “7.In the result, the Writ Petition is allowed with the following conditions:
>
> (i)The Registering Authority while releasing the document shall make necessary endorsement on the original document to the effect that the proceedings under Sections 47-A of the Act are pending;
>
> (ii) The Registering Authority shall make necessary entries in the Register maintained regarding the pendency of 47-A proceedings in respect of the document, which is subject matter of the registration, so as to reflect the same in the Encumbrance Certificate for the benefit of the purchasers;
>
> (iii) Pending final decision, in respect of the valuation under Section 47-A(1, as per Section 47-A (4), there shall be a charge over the properties in favour of the Government in respect of the unpaid value of the Stamp Duty;
>
> (iv) After the entire proceedings under Section 47-A are completed, on production of the original document by the petitioner, the Registering Authority shall make necessary endorsement removing the earlier endorsement clearly stating that the entire amount of Stamp Duty under the document has been paid in full and return the same; and
>
> (v) After such endorsement, the Registration Authority shall make necessary entry as to the completion of 47-A proceedings in the Register maintained by them so as to reflect the same in the Encumbrance Certificate.”

4. The Learned Special Government Pleader for the Appellant submits that one Punithavathi had executed a registered sale deed dated 03.04.2017 to and in favour of the Respondent/Writ Petitioner (vide document No.1196 of 2017) and the said property has 'R.C.C. Constructions', which require field inspection for its valuation and further, the Appellant/Sub-Registrar, Thuraiyur, Thiruchirapalli District, required the Assistant Engineer, Registration Department, Madurai to cause/make an inspection. But, the said Engineer had stated that he visited the subject matter of the property for conducting inspection on 05.06.2017 and on 04.09.2017 and in fact, he was prevented from doing the inspection work. Therefore, the Appellant had informed the Respondent by means of proceedings dated 07.09.2017 to the effect

that after inspection of building, in accordance with law, steps would be taken to release the document subject to the action to be initiated under Law, if situation warrants or if there is a need to that effect.

5. The Learned Special Government Pleader for the Appellant takes a emphatic plea that a conjoined reading of Section 47-A(1) of the Indian Stamp Act, 1899 with Rule 7(4) of the Tamil Nadu Stamp (Prevention of Undervaluation of Instruments) Rules, 1968, provides that a Collector shall after collecting the deficit stamp duty and interest under Section 47-A of the Act, gives certificate by an endorsement on the instrument and the same will substantiate the legal position that the original document has to be referred to the Collector for an action under Section 47-A(1) of the Act.

6. The Learned Special Government Pleader brings it to the notice of this Court that as per Section 35 of the Indian Stamp Act, 1899, any instrument not duly stamped is an inadmissible evidence and if an instrument for which dues/stamp duty was not paid and action has been initiated under Section 47(A)(1) of the Indian Stamp Act, the same is to be returned to the Registrar before collecting deficit duty etc.

7. The Learned Special Government Pleader for the Appellant proceeds to point out that an instrument, which is not duly stamped may be used for obtaining loan from lending Institutions and for conveying the underlying property, which may result in cheating of lending Institutions or the subsequent purchaser.

8. The Learned Special Government Pleader contends that there is no provision in the Indian Stamp Act, 1899, to return a document pending action under Section 47-A(1) of the Act. Furthermore, it is projected on the side of the Appellant that there is no such provision in the Act, for 'Midway Return' and the same is against Law. To put succinctly, the Learned Special Government Pleader for the Appellant projects a legal argument that till proceedings under Section 47-A of the Indian Stamp Act are completed, the Authorities are entitled to retain the original document.

9. Per contra, it is the submission of the Learned Counsel for the Respondent/Petitioner that the Respondent/Petitioner is ready and willing to permit the Appellant to depute a responsible Officer from the Registration Department, Madurai to make/cause an inspection of the subject property for the purpose of valuation and if it is found that the Respondent/Petitioner is to pay any deficit stamp duty, then, the Respondent/Writ Petitioner is ready and willing to pay/remit the same upon intimation from the Appellant by means of writing.

10. It is to be pertinently pointed out that stamp duty is to be determined on the basis of the value as on the date of document and not when the concerned Authority/Collector cause an enquiry into the subject matter in issue.

11. In fact, the Collector is to follow the procedure specified while assessing the value of the subject property covered by an instrument and levy stamp duty in a just, fair, independent, impartial and dispassionate manner.

12. As a matter of fact, the jurisdiction of Collector under Section 47-A(2) of the Indian Stamp Act, 1899, is not nullified by reason of a time limit envisaged under Rule 7 of Tamil Nadu Prevention of Undervaluation of Instruments Rules, 1968.

13. In reality, Section 47-A(3) of the Indian Stamp Act, 1899, postulates that the Collector for the purpose of this sub-section, may suo motu or otherwise etc., call for and the examine the instrument for the purpose of satisfying himself as to the correctness of the market value of the property, which is the subject matter of instrument and if after such examination, he has reason to believe that the market value of the property has not been truly set forth in such instrument, he has to take further action. If the Authority to the instrument does not produce the original instrument for examination, the Collector cannot proceed further.

14. Unless there is an undervaluation of the subject matter with an intention to evade proper payment of stamp duty, the concerned Authorities cannot levy such a heavy stamp duty on the concerned person in regard to the document in a given case.

15. In this connection, it is not out of place for this Court to make a pertinent mention that the Respondent/Writ Petitioner at Paragraph No.3 of the writ affidavit had among other things mentioned as under:

> “Even I informed the Respondent my willingness to pay if there is any deficit in stamp duty....”

16. Considering the fact that the Respondent/Petitioner has come out with a categorical plea that he is ready and willing to permit the responsible Officer of the Appellant's side to cause an inspection of the subject property and further, he is ready to remit any deficit stamp duty after the valuation made by the concerned Authority of the Appellant, this Court without precipitating the matter any further, as a matter of prudence and based on Equity and Fair Play, without going into the merits of the matter and also not expressing any opinion one way of other,

simpliciter, directs the Appellant to depute a responsible Officer from the Registration Department, Madurai, to make an inspection of the subject property, within a period of two weeks from the date of receipt of a copy of this order and thereafter, the Appellant shall send an intimation in regard to the proper and correct valuation of the property made by the concerned Authority and in this regard, the Appellant shall send a written information/intimation to the Respondent/Petitioner and soon after the receipt of intimation or information in writing from the Appellant, the Respondent/Petitioner, shall within the time specified in the said intimation/notice, pay the deficit stamp duty if any before the concerned Authority without fail. Soon after the payment of requisite stamp duty if any, the Appellant/Respondent without any loss of further time, shall return the sale deed to the Respondent/Petitioner after taking necessary endorsement/acknowledgment from him in the manner known to Law and in accordance with necessary Rules.

17. With the above said Direction(s)/Observation(s), this Writ Appeal stands disposed of. No Costs. Consequently, connected Civil Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(C.O.)

/True Copy/

Sub Assistant Registrar.

To
The Sub-Registrar,
Thuraiyur,
Thiruchirapalli District.

+1CC to Mr.K.R.Krishnan, Advocate, SR.No. 89499
+1CC to the Special Government Pleader SR.No.89709

JUDGMENT MADE IN
W.A(MD)No.1418 of 2017
24.11.2017

pm
AM/SKN RSK/SAR 1/08.12.2017/5P/4C