IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 09.01.2018
Delivered on : 24.04.2018

CORAM:

THE HON'BLE MR.JUSTICE K.K.SASIDHARAN
AND
THE HON'BLE MR.JUSTICE P.VELMURUGAN

W.A Nos.1310 to 1313 of 2013

1.The Inspector General of Registration
Santhome High Road, Chennai - 600 028.

2.The Sub-Registrar,
Sub-Registrar's Office,
Gomangalam, Tirupur District. ...Appellants in all Appeals

Vs

Sri Velayuthaswamy Spinning Mills (P) Ltd.,
No.207, Mangalam Road,
Karuvampalayam, Tirupur - 641 604.
Rep. by its Director P.S.Veluswamy ...Respondent in W.A.No.1310/2013

Sivaraj Spinning Mills (P) Ltd.,
No.207, Mangalam Road,
Karuvampalayam, Tirupur - 641 604.
Rep. by its Director P.S.Veluswamy ...Respondent in W.A.No.1311/2013

Sri Shanmugavel Mills (P) Ltd.,
No.207, Mangalam Road,
Karuvampalayam, Tirupur - 641 604.
Rep. by its Managing Director P.S.Veluswamy ...Respondent in W.A.No.1312/2013

Sri Shanmugavel Mills (P) Ltd.,
No.207, Mangalam Road,
Karuvampalayam, Tirupur - 641 604.
Rep. by its Managing Director P.S.Veluswamy ...Respondent in W.A.No.1313/2013

Prayer:- Writ Appeals filed under Clause 15 of the Letters Patent against order dated 01.03.2013 in W.P.Nos.4434, 4435, 13652 and 13653 of 2009 respectively.

W.P.No. 4434/2009:

Writ Petition filed under Article 226 of the constitution of India, calling for the proceedings of the first respondent made in No.367/E3/2009 dated 23.1.2009 and quash the said proceedings of the first respondent dated 23.1.2009 and consequently direct the respondents to refund the stamp duty of Rs.43 20 000/- and also registration charges of Rs.5 40 000/- paid by the petitioners under protest towards the value of the windmills.

W.P. No. 4435/2009:

Writ Petition filed under Article 226 of the constitution of India calling for the proceedings of the first respondent made in No.368/C3/2009 dated 23.1.2009 and quash the said proceedings of the first respondent dated 23.1.2009 and consequently direct the respondents to refund the stamp duty of Rs.32 40 000/- and also registration charges of Rs.4 05 000/- paid by the petitioners under protest towards the value of the windmills.

W.P. 13652/2009:

Writ Petition filed under Article 226 of the constitution of India calling for the proceedings of the first respondent made in No.369/C.3/2009 dated 18.03.2009 and quash the said proceedings of the first respondent dated 18.03.2009 and consequently direct the respondents to refund the stamp duty Rs.11 60 000/- and also registration charges of Rs.1 45 000/- (totaling to Rs.13 05 000/-) paid by the petitioners under protest towards the value of the windmill.

W.P.No. 13653/2009:

Writ Petition filed under Article 226 of the constitution of India calling for the proceedings of the first respondent made in No.369/C.3/2009 dated 18.03.2009 and quash the said proceedings of the first respondent dated 18.03.2009 and consequently direct the respondents to refund the stamp duty Rs.11 60 000/- and also registration charges of Rs.1 45 000/- (totaling to Rs.13 05 000/-) paid by the petitioners under protest towards the value of the windmill.

For Appellants : Mr.VijayNarayanan
Advocate General
Assisted by Mrs.A.SriJayanthi
Spl.Govt.Pleader

For Respondents : T.R.Rajagopalan
Senior Counsel for
Ms.Veena Suresh

C O M M O N J U D G M E N T

K.K. SASIDHARAN,J.

Introductory

Whether a wind mill sold as a running out along with the immovable property, where the Wind Electric Generators were erected and shown as an item of property in the registered sale deed would fall within the definition "Immovable Property" for assessing the stamp duty, treating it as a "Conveyance" under Entry 23 of Schedule I of the Indian Stamp Act 1899 is the substantial issue raised in the intra court appeals, filed by the Inspector General of Registration, Government of Tamil Nadu.

Factual Background to the Litigation

2. The respondent in the respective appeals (hereinafter referred to as "the respondents") are sister concerns based at Tirupur. The respondents purchased 4 Windmills erected by M/s.Vishal Export Overseas in various villages in Udumalpet Taluk, Coimbatore District. The respondents purchased the windmills along with the immovable property. The respondents made payment to the windmills and obtained receipt. The respondents prepared Sale Deeds relating to the respective immovable property indicating the land value. However, in the Schedule to the documents, windmills were also shown as the transferred property. Similarly, in the signed statement given under the Stamp Act, the respondents have indicated the value of windmills. The Sub-Registrar therefore directed the respondents to pay the Stamp Duty taking into account the total value of the transfer. The respondents paid the Stamp Duty and got the documents registered. Thereafter, the respondents submitted petitions for refund of the excess amount on the ground that windmill is only a movable property and therefore, there is no liability to pay Stamp duty for the value shown for the windmills. The petitions were rejected. The related writ petitions were allowed by the learned single Judge by giving a finding that the windmill is a movable property and therefore, Stamp Duty is not payable on its value. The common order passed by the Writ Court is the subject matter of the appeals.

Submissions

3a) The learned Advocate General by placing reliance on Section 2(6) of the Registration Act, 1908, Section 3(4) of the Transfer of Property Act, Entry 23 of the Schedule 2 to the Stamp Act and Section 3 of the said Act, contended that windmill is permanently embedded in the earth and therefore, Stamp Duty is leviable on its sale value. It was contended that the windmill and immovable property were sold together. The fact that two agreements were executed, one for windmill alone and another for immovable property does not matter much. Since the value of the mill is included in the document, and windmill was shown as a transferred item, stamp duty was correctly levied by the Sub-Registrar.

b) The learned Senior Counsel for the respondents contended that windmill is only a movable property. It is not permanently attached to the property for the beneficial enjoyment of the immovable property. The respondents initially cleared the loan taken by the vendor for establishing the windmills. Thereafter, the lands were purchased. The two transactions were altogether different. According to the learned Senior Counsel, the fact that the windmills were shown in the Schedule to the Sale Deeds relating to the land would not make it an immovable property.

Discussion

4. There were four writ petitions before the Writ Court challenging the order passed by the Inspector General of Registration. The vendor was one and the same in all the documents of sale executed in favour of the respondents. The purchasers are also the sister concerns. The learned single Judge, taking into account the common facts involved in all the writ petitions took W.P.No.4434 of 2009 as the lead case. We are also taking the facts of W.P.No.4434 of 2009 corresponding to W.A.No.1310 of 2013.

The Lead Case
W.A.No.1310 of 2013

5. The respondents in this appeal purchased the windmills erected and operated by M/s.Vishal Exports Overseas Limited, Ahmedabad. The value of the windmill was paid at the first instance, and the respondent obtained a Sale Deed. Thereafter, the respondents paid the land value and produced the sale document for registration. In the Sale Deed, the windmill was shown in the Schedule along with the immovable property. Similarly, in the valuation statement, the cost of windmill was included in the total value of the transaction. The respondents paid the Stamp Duty without protest. The documents were registered. The respondents filed petitions for refund before

the Director General of Registration on the ground that windmill is only a movable property and as such, the Sub-Registrar illegally collected the Stamp Duty notwithstanding the protest. The petitions were rejected.

6. The Sale Deed relating to the immovable property contains a recital that it was sold with windmill machineries with right for transportation/movement of cranes and heavy machineries, vehicles etc., The value of the windmill was shown in the statement by the respondents.

7. It is the contention of the respondents that windmill is a movable property and therefore, there is no liability to pay Stamp Duty.

The Statutory Provisions

8. Section 3 of the Transfer of Property Act contains the meaning for "attached to the earth". The provision reads thus:

"attached to the earth" means-

(a) rooted in the earth, as in the case of trees and shrubs;

(b) imbedded in the earth, as in the case of walls or buildings; or

(c) attached to what is so imbedded for the permanent beneficial enjoyment of that to which it is attached;

9. Section 2(6) of the Registration Act, 1908 gives an inclusive definition to immovable property. It reads thus:

> "(b) "immovable property" includes land, buildings, hereditary allowance, rights to ways, lights, ferries, fisheries or any other benefit to arise out of land, and things attached to the earth, or permanently fastened to anything which is attached to the earth, but not standing timber, growing, crops and grass;"

10. The question as to whether a movable property was permanently attached or annexed to the immovable property is essentially a question of fact. It is so because there is no definition given to the term movable property in the Transfer of Property Act. There is no fixed guideline to arrive at a conclusion whether a particular movable property if attached to the immovable property would become an immovable property.

11. In case, the owner of the land for the beneficial enjoyment of the land erected a windmill and constructs a building to house the plant, it would certainly be an immovable property.

12. The establishment of a windmill requires fixing the windmill machinery to the earth. The erection of windmill is through a process. Erection is not a temporary phenomena.

There should be a small structure for the windmill station. The possibility of removing the windmill and the related machinery imbedded in the earth, later would be of no consequence. Such possible act is not a relevant factor to decide the issue.

The Decided Cases on the Point

13. In Mohamed Ibrahim v. N.C.F.T Trading Company [AIR 1944 MAD 492], a Division Bench of this Court held that if a thing is imbedded in the earth or attached to what is so imbedded for the permanent beneficial enjoyment of that to which it is attached, then, it is part of the immovable property. The Division Bench said:

> "... So far as the question of registration is concerned, the Registration Act and the Transfer of Property Act are in pari materia and it will therefore be wrong to construe the definition of "immovable property" in the one Act as being different from that in the other, in the absence of words clearly pointing to a distinction. It would not be correct to dissect and analyse the definition given by the Registration Act for the purpose of giving it a wider scope than what is expressed in the definition contained in the Transfer of Property Act. The first part of the definition in S.2(9), Registration Act implies that what is really movable property may become immovable property by being directly attached to the earth. The second part indicates that though the attachment is not direct, still if the movable property is fastened to something which is directly attached to the earth, it will be immovable property for the purpose of the Registration Act. The Transfer of Property Act contains a definition of "things attached to the earth", but not of "things permanently fastened to anything which is attached to the earth". Clause (c) of the latter definition which refers to a mediate and not a direct attachment is substantially what is referred to in the second part of the definition in the Registration Act. Accordingly, for the purpose of determining whether a movable attached to immovable property is itself immovable property or not the inquiry should be not whether the attachment is direct or indirect but what is the nature of the attachment and what its object and purpose. The degree and nature of the attachment is no doubt a consideration but only a minor consideration. The more important consideration is the object of the annexation which is a question of fact to be determined by the circumstances in each case. If

a thing is imbedded in the earth or attached to what is so imbedded for the permanent beneficial enjoyment of that to which it is attached, then it is part of the immovable property. If the attachment is merely for the beneficial enjoyment of the chattel itself, then it remains a chattel, even though fixed for the time being so that it may be enjoyed. The question must in each case depend on the intention of annexation. The intention may be express or implied from the circumstances. In the absence however of proof one way or the other the intention to be attributed is that of a person acting from motives of self interest... "

14. In South Indian Bank Ltd., by its General Manager, M.G.P.Nambiar v. Krishna Chettiar and Bror. by its partner V.K.Palaniappan and others [1975 (2) MLJ 431], the Division Bench indicated that the onus is on the person, who alleges that though the movable property is annexed to land, it was never intended to be the part of land. The Division Bench said:

"12. In so far as the first question is concerned, it is a vexed one. Movable property has not been defined in the T.P.Act. If some light at all is thrown in the General Classes Act, movable property is that which is not immovable property. There is no decisive and final test or guidelines to earmark property such as machinery, etc., found in a building as immovable property or movable property. The English maxim 'quicquid plantature solo, solo credit'' does not apply to India. Thus, the difficult question as to whether movable properties which are fixed to the earth as an annexation to the land often depends upon the mode of annexation and primarily on the intention of the parties and other relevant surrounding circumstances, in each particular case. It is often presumed that if an owner of machinery which could be annexed to the earth, so annexes it, with his own immovable property in connection with his trade or business, then it is said to assume the character of immovable property. Equally, a prima facie presumption, but not a sure one, is raised in the case of a tenant or a person not owning the immovable property but causing such annexation of movable property, such as machinery etc., to be made to the premises as such, which is to the effect that such annexed property is movable property, because the tenant or a person having only a leasehold interest in

> the immovable property is often free to remove his movable property, such as, machinery etc. But, in the ultimate analysis, if the intention of either of the owner or the tenant in making such annexation of movable property to immovable property is to permanently fix it along with the earth or the said immovable property, then it becomes part and parcel of it. Cases may arise where an article or machinery may be very firmly fixed to the land, but, yet the surrounding circumstances may be such as to show that it was never intended to be a part of the land. Thus, it reduces itself to a question of fact and a matter of proof. The onus is on the person, who alleges that the particular article was always intended to retain the character of movable property. He has to establish it. It ultimately depends upon the intention of the parties. Such intention on the part of either the owner or the tenant, to treat such machinery fixed to the earth as movable property can sometimes be inferred by their voluntary treatment of such property as belonging to one or the other species of property and by their conduct."

15. The recitals in the Sale Deeds clearly indicates that windmill machineries were erected by attaching it to the earth, and it was part of the immovable property. The respondents included the windmills as an item of transferred asset along with the immovable property. The respondents wanted a statutory recognition to the sale of windmills without paying required Stamp Duty.

16. The respondents notwithstanding the fact that windmill was shown in the schedule to each of the documents; wanted this Court to look into other documents for arriving at a conclusion that windmill was not part of the Sale Deed. The Court has to see only the Sale Deed presented by the party. It is not permissible to verify other collateral transactions for the purpose of fixing the proper stamp duty.

17. The windmill has no existence without the immovable property. The machineries for the windmill should be attached to the earth. It should be an attachment of a permanent nature as otherwise the machineries would be washed out by the wind.

18. The sale in question was a composite one relating to an immovable property. The fact that the respondents valued the windmill and its machineries separately and paid the value also separately would not make any difference. It was a sale of immovable property which includes the land and windmill. The

Sub-Registrar therefore correctly levied the stamp duty.

19. The order passed by the learned single Judge is legally and factually unsustainable. The common order is therefore set aside. The writ petitions are dismissed.

20. For the reasons set out above, we allow the intra court appeals. No costs.

s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

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To

1.The Inspector General of Registration
Santhome High Road, Chennai - 600 028.

2.The Sub-Registrar,
Sub-Registrar's Office,
Gomangalam, Tirupur District.

+1 CC to Govt. Pleader sr 30741.
+4 CCs to Mr.P. Veena Suresh, Advocate sr 30669, 30670, 30764, 30669.

W.A Nos.1310 to 1313 of 2013

PPA(CO)
SP(10/05/2018)