IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.02.2018

CORAM:

THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

C.M.A.NO.1740 OF 2013

K.C.Ponnusamy ... Appellant

Vs.

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

2.The Special Deputy Collector (Stamps)
Salem, Namakkal, Dharmapuri and
Krishnagiri Districts,
Salem.

3.Joint - II Sub Registrar
Joint - II Sub Registrar Office
Krishnagiri. ... Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 47-A (10) of the Indian Stamp Act, 1899, read with Rule 9(5)(a) of the Tamil Nadu Stamp (Prevention of Undervaluation of Instruments) Rules, 1968, to call for records and set aside the order dated 24.02.2011 made in Pa.Mu.No.4501/N2/2009 on the file of the first respondent herein, who confirmed the order dated 01.11.2008 made in S.R.No.936/KGI/2007 on the file of the second respondent herein.

For Appellant : Mr.P.M.Duraiswamy

For Respondents : Mr.M.Venkadesh Kumar
Government Advocate (CS)

J U D G M E N T

Aggrieved over the order passed by the first respondent dated 24.02.2011 under Section 47-A(5) of the Indian Stamp Act, 1899, the appellant is before this Court.

2. The appellant filed a suit for specific performance in O.S.No.334 of 2005 before the District Munsif Court, Krishnagiri. The District Munsif Court, Krishnagiri, decreed the suit and directed execution of the sale deed by the defendants. Accordingly, the sale deed was presented with the

value shown in the plaint. The third respondent, Sub Registrar, had difference of opinion on the value fixed by the Court. The Sub Registrar, referred the matter for proper valuation to the second respondent under Section 47-A(1) of the Indian Stamp Act, 1899 (shortly "the Act"). The second respondent has not considered the objections raised by the appellant, but went on to redetermine the value of the property. Against the order of the second respondent, the appellant preferred an appeal to the first respondent, which was decided on 24.02.2011. The said order is under challenge in this Civil Miscellaneous Appeal.

3. The learned counsel for the appellant would contend that the valuation of the suit was made before the Court in accordance with the Suits Valuation Act, 1887. If there is difference of opinion with regard to the value of the property, the Sub Registrar shall refer it back to the Court concerned and get the correct and proper value of the property for registering the document.

4. In support of his contention, the learned counsel for the appellant would rely on a judgment of the Hon'ble Supreme Court in ADDITIONAL DISTRICT SUB-REGISTRAR SILIGURI VS. PAWAN KUMAR VERMA AND OTHERS [Civil Appeal No.4167 of 2013 dated 01.05.2013]. In para 15 of the said judgment, the Hon'ble Supreme Court has observed as under:

> "15. The Suits Valuation Act, 1887 and The Indian Stamp Act, 1899 operate in different fields. However, going by the scheme of the Act and Rules as amended by West Bengal, we are of the view that it will only be appropriate that in such situations where the registering authority has any difference of opinion as to assessment on the stamp duty of the instrument presented for registration on the orders of the court, it will only be appropriate that Registrar makes a back reference to the court concerned and the court undertakes a fresh exercise after affording an opportunity of hearing to the registering authority with regard to the proper value of the instrument for registration. The registering authority cannot be compelled to follow invariably the value fixed by the court for the purpose of suit valuation.

5. A reading of above said judgment would go to show that the Registering Authority cannot be compelled to follow invariably the value fixed by the Court for the purpose of suit valuation. But, it is mandated that in the cases of difference of opinion as to the assessment of stamp duty for

the instrument presented for registration, it is appropriate for the Registrar to refer it back to the Court and the Court while refixing the value of the property afresh, afford an opportunity to the registering authority. Therefore, it can be inferred that it is not open to the Sub Registrar to refer it under Section 47-A(1) of the Indian Stamp Act for valuation without the orders of the Civil Court concerned.

6. In the instant case, the matter is not referred back to the Court. But the respondents have proceeded on in the usual manner, without applying their mind to the extraordinary circumstances. Even assuming that the procedures have to be adopted under the Indian Stamp Act, it is expected that the authorities shall follow the mandatory requirements of the statutory provisions of Indian Stamp Act.

7. Rule 11-A of the Tamil Nadu Stamp (Prevention of Undervaluation of Instruments) Rules, 1968, laid down the procedures to be adopted by the appellate authority while deciding the appeal. Rule 11-A of the Tamil Nadu (Prevention of Under Valuation of Instruments) Rules, 1968, 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."

8. The first respondent, while deciding the appeal, must have conducted inspection after giving notice to the parties concerned. But the first respondent in violation of the statutory rules, had caused it to be done by somebody else. Such delegation of power is not contemplated in the Act.

9. This Court has repeatedly held that the District Registrar is not an authority under the Indian Stamp Act, but an Officer under the Registration Act. The District Registrar has no role to play in redetermination of the market value of the property and at the most, he can refer it for proper valuation to the authorities under the Indian Stamp Act.

10. In similar circumstances, this Court in its judgment in S.SANTHI VS. THE CHIEF REVENUE CONTROLLING AUTHORITY & INSPECTOR GENERAL OF REGISTRATION, CHENNAI AND TWO OTHERS [C.M.A.NO.2820 OF 2012 DATED 05.06.2015] has held as follows:-

"17. The Authority conferred with certain functions under a statute has to carry out the same on its own such function and cannot delegate the same to another in the absence any contemplation for such delegation under the Act. In the present case, under rule 4 (3) (c) and rule 11-A of the rules, 2nd respondent-Collector and the first respondent Inspector General of Registration respectively, have to inspect the property and there is no enabling provision under the rules or under the Act to delegate such power. Therefore, inspections by other officers at the behest of the respondents vitiate the entire proceedings.

18. The failure on the part of the 2nd respondent to pass a final order within 3 months from the date of Form-I notice as mandated under rule 7 of the rules vitiates the entire proceedings. Form - I notice was issued on 17.05.2005 and the final order was passed on 05.12.2006, after 1 1/2 years, i.e., after 3 months and hence the entire proceedings are vitiated.

19. The impugned order has been passed by the first respondent purely based on inspection reports of the District Registrar/Deputy Thasildar, who are not authorised under the Act and hence the said inspection reports are not materials collected by the authorities, entitled under the Act. Hence, the proceedings of the second respondent and first respondent are vitiated."

11. Whereas, the first respondent, relying on the report of the District Registrar, had redetermined the market value. While doing so, he has failed to furnish a copy of the report filed by the District Registrar to the appellant. There is no answer to the objection raised by the appellant that the matter has to be referred back to the Court and thay shall not adopt the usual procedure. Without discussing the objections raised by the appellant and recording reasons for rejecting the same, the first respondent, in a mechanical manner, has passed the order impugned in this appeal. The order passed by the first respondent, on the face of it, is not sustainable for the violation of principles of natural justice, statutory provisions and not referring it back to the Court for proper assessment of the market value of the property.

12. Therefore, the order dated 24.02.2011 passed in the Proceedings No.Pa.Mu.No.4501/N2/2009, by the first respondent is not sustainable in law and accordingly, stands set aside. The third respondent is directed to refer the matter to the concerned Court with a report of valuation on the date of registration and get the correct value fixed by the Court and thereafter, proceed in accordance with law. The Civil Court shall decide the proper value in accordance with law, as to whether from the date of agreement or from the date of the decree, and as per the judgment of the Hon'ble Supreme Court in Civil Appeal No.4167 of 2013, dated 01.05.2013.

13. The Civil Miscellaneous Appeal is ordered in the above terms. No costs.

Sd/-
Assistant Registrar(CS-IX)

//True Copy//

Sub Assistant Registrar

TK
To

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

2.The Special Deputy Collector (Stamps)
Salem, Namakkal, Dharmapuri and
Krishnagiri Districts, Salem.

3.The Joint - II Sub Registrar
Joint - II Sub Registrar Office
Krishnagiri.

4. The Section Officer, VR Section,
High Court, Madras.

+ 1 cc to Mr.Special Government Pleader Sr.9928
+ 1 cc to Mr.P.M. Duraiswamy, Advocate Sr.9816

C.M.A.NO.1740 OF 2013

NRJK(CO)
EU(03/04/2018)