IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.04.2018

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THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM

W.P.No.34065 of 2013
& MP.No.1 of 2013

A.Jothi Ramalingam ...Petitioner

Vs.

1.The District Collector,
Krishnagiri District,
Krishnagiri.

2.The District Registrar,
Officer of the District Registrar,
Salem Road,
Krishnagiri,
Tamilnadu.

3.The Sub Registrar,
Pochampalli,
Dharmapuri District. ... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified mandamus to call for the records pertaining to the records pertaining to the orders passed by the second respondent bearing Ref. No.5050/2013/A1 dated 08.11.2013 and quash the same and further direct the third respondent to register the rectification deed bearing No.P9/2013 without demanding any additional stamp duty on the basis of the revised market value calculated as on the date of the presentation of the rectification deed.

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For Petitioner : Mr.R.Rajesh Kumar
For RR1 to 3 : Mr.B.Anand, G.A.

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O R D E R

Heard Mr. R.Rajesh Kumar, learned counsel appearing for the petitioner and Mr.B.Anand, learned Government Advocate, who accepts notice on behalf of the respondents 1 to 3.

2. The petitioner has filed this writ petition for issuance of a certiorarified mandamus and to quash the order of the second respondent dated 08.11.2013, passed in Ref. No.5050/2013/A1 dated 08.11.2013.

3. The case of the petitioner is that he purchased the property measuring to an extent of 2205 sq. ft in S.Nos.94/1A, 94/2B, through a registered Sale Deed dated 17.10.1996, inadvertently, S.No.94/1A was only mentioned in the said document and S.No.94/2B was left out. Hence, the petitioner approached his vendor and he also agreed to execute a Rectification Deed and the same was registered on 18.03.2013. The grievance of the petitioner is that when there was no change in the total extent of the property and when the market value of the land comprised in two survey numbers were the same, the demand made by the third respondent for payment of Rs.28,902/- and registration charges of Rs.3945/-, totally Rs.32,846/- is illegal.

4. The second respondent has filed a counter stating that the Rectification Deed shall be treated as a Deed of conveyance and it is chargeable under Section 47-B of the Indian Stamp Act 1899.

5. The learned counsel for the petitioner submitted that the issue involved in this writ petition is squarely covered by the decision of this Court reported in W.P.No.24473 of 2010 dated 07.06.2011 in the case of (J.Thirukumaran Vs. The District Collector, Kancheepuram District, Kancheepuram and 2 others), wherein, the learned Single Judge of this Court, while following the decision of the unreported judgment made in W.P.No.11413 of 1989 dated 03.07.1998, has held that when the extent, the boundaries, the consideration, are not changed and only when the mistake that had crept into the deed in respect of the survey number is sought to be changed, the respondents have no right to seek payment of additional stamp duty. Paragraph no.8 of the order dated 07.06.2011, reads as under:

> 8.With reference to the demand for payment of difference in stamp duty, he also placed reliance upon an unreported judgment of this Court in W.P.No.11413 of 1989 filed against the department more or less in an identical circumstance. This Court by a final order, dated 3.7.1998 had accepted the contentions of the

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petitioners. In that judgment, when a rectification deed was presented for altering the survey number, a similar demand was made. This Court held that it is only a misdescription of the property which was sought to be rectified and that the law does not require to levy stamp duty on the rectification deed as a fresh sale deed. The following passage found in paragraph 5 of the said judgment may be usefully extracted below, which reads as follows:

> "5.I have perused the documents and I find that the contention of the petitioner is entitled to acceptance. The total extent purchased under the document is one acre. The original survey number given for the entire extent of one acre was S.No.215. However, it would appear that while the revenue authorities measured the property for the purpose of giving patta to the writ petitioner, it was discovered that the entire one acre extent did not lie in S.No.215, though a major portion, namely, 71 cents lay in the said survey number and the balance extent of 29 cents lay in S.No.214/1B1, which also belonged to the writ petitioner's vendor. As already stated, the extent, the boundaries, the consideration, are not changed. Only a mistake that had crept into the deed in respect of the survey number was sought to be rectified by introducing another survey number for the balance extent of 29 cents, thus, making up a total of one acre, as having been sold to the writ petitioner, by his vendor. It was only a misdescription of property, which was sought to be rectified. The authorities had not acted legally in seeking to levy stamp duty on the rectification deed as a fresh sale deed. There is an error apparent on the face of the record. "

6. The learned Government Advocate appearing for the respondents submitted that as per Circular No. 40756/N1/2014-3 dated 05.09.2014 issued by the Inspector General of Registration, the third respondent is entitled to demand stamp duty based on the market value of the rectification deed.

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7. In the case on hand, it is not in dispute that there is no change in the extent or boundaries and the petitioner has presented the rectification deed only to include the land in S.No.94/2B. In the light of the above referred decision of this Court, this Court is of the opinion that writ petitioner succeeds in the writ petition. Accordingly, the writ petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

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To

1.The District Collector,
Krishnagiri District,
Krishnagiri.

2.The District Registrar,
Officer of the District Registrar,
Salem Road,
Krishnagiri,
Tamilnadu.

3.The Sub Registrar,
Pochampalli,
Dharmapuri District.

+1cc to Mr.R.RAJESH KUMAR, Advocate, S.R.No. 27065
+1cc to the Government Pleader, S.R.No. 27660

W.P.No.34065 of 2013

SVI(CO)
TR(28/04/2018)

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