IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	28/08/2019
Delivered on	16/09/2019

CORAM:

THE HONOURABLE MR. JUSTICE K.KALYANASUNDARAM

W.P.Nos.10501 & 10502 of 2011 &
connected miscellaneous petitions

P.Swaminathan ... Petitioner in
W.P.No.10501 of 2011

R.Duraisamy ... Petitioner in
W.P.No.10502 of 2011

Vs

1.The Inspector General
of Registration,
Chennai - 4.

2.The Joint Sub-Registrar No.II,
Namakkal. ... Respondents in both W.Ps'

Prayer in both Writ Petitions:- These Writ Petitions are filed under Article 226 of the Constitution of India, seeking for a Writ of Certiorarified Mandamus, to call for the records of the second respondent with reference to his letter dated 15.12.2010 in Na.Ka.Nos.7965 & 7964/A1/2010 and quash the same and direct the second respondent to register and return the final decree dated 22.02.2010 made in O.S.Nos.110 & 114 of 2009 respectively.

For Petitioner in
both Writ Petitions : Mr.C.Jagadish

For Respondents in
both Writ Petitions :Mr.P.P.Purushothaman
Government Advocate

C O M M O N O R D E R

These Writ Petitions have been filed for issuance of Writ of Certiorarified Mandamus to call for the records of the second respondent with reference to his letter dated 15.12.2010 in Na.Ka.Nos.7965 & 7964/A1/2010 and quash the same and direct the respondents to register and return the final decree, dated 22.02.2010 passed in O.S.Nos.110 & 114 of 2009.

2. The petitioner in W.P.No.10501 of 2011 would state that he purchased 6/11th share in 25 properties, which have been set out in paragraph No.2 of the affidavit through registered sale deeds between 2001 and 2004 along with the co-purchasers. It is further stated that likewise his wife and co-purchasers' wifes have purchased 5/11th share of the lands in Rasipuram, Namakkal.

3. The petitioner in W.P.No.10502 of 2011 would state that he purchased 1/11th share in two properties, vide sale deeds dated 23.07.2003 & 07.12.2001 and he obtained 1/55th share in an extent of 1050 sq.ft. in T.S.No.9, 10/1, 11/2; 1/55th share in 5668 sq.ft in T.S.No.11/1A and another 1/55th share in 2.20 3/4 cent land in T.S.No.11/1A as described in para 2 of the affidavit under a registered settlement deed dated 29.09.2009.

4. It is alleged that thereafter dispute arose over the enjoyment of the shares and hence, Suits in O.S.Nos.110 & 114 of 2009 were filed before the District Munsiff, Namakkal, seeking partition and separate possession of their respective shares. According to the petitioners, the matters entered in compromise and Final Decrees were passed in terms of Memo of Compromise, dated 22.02.2010. Final Decrees were also engrossed on required Non Judicial stamp papers.

5. As per the Final Decree in O.S.No.110 of 2009, the defendants in the suit were alloted 'A' Schedule property and the petitioners and other plaintiffs were allotted 'B' schedule properties and in terms of the Final Decree passed in O.S.No.114 of 2009, the defendants were paid a sum of Rs.24,00,000/- towards their share in one item in the suit property and the petitioner along with other plaintiffs were alloted with the entire property.

6. The Final Decrees presented before the second respondent for registration were kept pending and the second respondent, by his letter dated 15.02.2010, informed the petitioners that after payment of stamp duty for the face value of the documents, value of the building and guideline value for the land would be determined, for which 8% stamp duty and 1% registration fee have to be paid.

7. The said order dated 15.02.2010 has been assailed in these Writ Petitions mainly contending that the respondents are bound by the civil Court Decree and no provision in the Stamp Act authorizes the second respondent to refuse to register the document demanding payment of deficit stamp duty.

8. A common counter affidavit has been filed by the respondents contending that the Decrees of the Civil Court were impounded under Section 33 of the Indian Stamp Act, since they were not duly stamped and referred them to the District Registrar. It is further stated that in order to avoid stamp duty, the petitioners and the other defendants filed fictitious suits, claiming right more than what they are entitled to. The District Registrar, Namakkal, treated it as conveyance as there is reciprocal transfer of properties between the parties and a new right is created and the decision of the District Registrar is an appealable under Section 56(1) of the Stamp Act. It is also stated that the necessary party has not been impleaded.

9. Mr.C.Jagadish, learned counsel for the petitioners would urge that once the competent Civil Court has passed a Decree, the first respondent cannot sit in judgment over the same and decide as to whether the document is a compromise decree for partition or not. The second respondent cannot question the nature of document and refuse to register the same on the ground that it was not duly stamped and he has no power to impound the document under Section 33 of the Indian Stamp Act. It is the submission of the learned counsel that the civil Court Decree cannot be described as deed of conveyance and payment of registration fee of 1% would suffice to register the documents. The learned counsel in support of his contentions has relied upon the unreported judgment of this Court in W.P.Nos.6737 & 7281 of 2010, dated 02.11.2010 and the circular issued by the first respondent, dated 26.10.2002.

10. Per contra, Mr.P.P.Purushothaman, learned Government Advocate contended that the suits were filed with a view to evade payment of stamp duty, and the Decrees were obtained by playing fraud. According to the learned Government Advocate, the instrument is to be treated as conveyance and it could be registered only after payment of stamp duty on the market value of property.

11. Heard the learned counsel on either side and perused the materials available on record.

12. It is not disputed that the Civil Suits in O.S.Nos.110 & 114 of 2009 were instituted by the petitioners along with others for partition and separate possession. Eventually, the suits were decreed on 22.02.2010, in view of the compromise reached between the parties.

13. Chapter 3 of the Registration Act deals with registrable documents. Section 17 (1) of Registration Act, describes the documents which are mandatory registrable. Section 17(2)(vi) of Registration Act says that any Decree or Order of a Court, except a Decree or order expressed to be made on a compromise and comprising the immovable property other than that which is subject matter of the suit of the proceeding, is not compulsorily registrable under Section 17 (1) of Registration Act. In the instant case, the petitioners presented the Decrees made in O.S.Nos.110 & 114 of 2009 for registration. Reading of the above provisions make it clear that a Decree is not a compulsorily registrable document.

14. It is the case of the petitioners that the civil Court Decree only recognizes the pre-existing right of the parties and they did not create any right in the immovable property and their pre-existing right have been declared by means of civil Court Decree. The Circular, dated 26.10.2002, clarifies the position that the civil Court Decree need not suffer stamp duty and it could be registered on payment of registration fee at the rate of 1% of the suit value under Section 78 of the Registration Act.

15. The Full Bench of this Court in the case of The Chief Controlling Revenue Authority, Board of Revenue, Madras vs. K. Manjunatha Rai [AIR 1977 Mad 10 (FB)], has held that the Revenue is not empowered to go beyond the recitals and terms of the documents presented before it, on the ground that the object of transaction was something different from that of the documents. In Ramchandra Vishwanath Ghaisas and Ors. vs. The State of Maharashtra [AIR 1981 Bom 164], the Full Bench of Bombay High Court while considering the power of the Authorities under Section 33 of the Stamp Act to impound the document for not duly stamped, held that no provision in the Indian Stamp Act or the Bombay Stamp Act empowering the Sub Registrars to make enquiry into the market value of the property and to refuse registration on the ground of failure to pay stamp duty of the market value of the property.

16. The Full Bench of this Court in Board of Revenue, Madras Chief Controlling Revenue Authority, Madras vs. N. Narasimhan and Ors. [AIR 1961 Mad 504 (FB)], has held that there is no legal impediment to a party selecting and adopting a particular form of transaction to minimize the expenses of the stamp duty. The above decisions would make it clear that the second respondent has no authority to refuse to register the documents on the sole ground of non-payment of stamp duty under Article 23 of Schedule I of the Indian Stamp Act.

17. When an identical issue came up for consideration, the learned Single Judge in the unreported judgment in W.P.Nos.6737 & 7281 of 2010, dated 02.11.2010, observed that the respondents cannot doubt the genuineness and veracity of the documents once a final decree is validly passed by a competent Civil Court. Relevant paras are extracted hereunder:-

> "9. It is an admitted fact that the final decree in pursuant to the compromise has been passed, engrossed on the stamp paper and after paying the requisite stamp duty, the decree was presented for registration. The impugned order proceeds on the footing that the document in question has been referred to the first respondent to ascertain the nature of the document. The steps taken by the respondents would indicate that they are mainly concerned with the evasion of stamp duty on the part of the respective writ petitioners by virtue of entering into compromise decree with the defendants. It is the stand taken by the respondents that they are doing so in order to prevent the revenue loss to the Government. Though attempts made by the respondents appear to be genuine under the existing provisions of the Indian Stamp Act, the respondents cannot doubt the genuineness and veracity of the document, once a final decree is validly passed by a court of competent jurisdiction.
>
> 10. In such view of the matter, the respective writ petitioners are entitled to succeed and the writ petitions stand allowed. The second respondent is directed to consider and register the final decree passed in O.S.Nos.503 of 2008 and 499 of 2008 respectively, if the documents are otherwise in order, and register the same and return it to the respective writ petitioners. The 2nd respondent shall do that exercise within a period of three weeks from the date of receipt

of a copy of this order. However, there will be no order as to costs. The connected miscellaneous petitions are closed.”

18. In the light of the principles laid down in the decisions referred supra, in the considered opinion of this Court, the petitioners are entitled to succeed in these Writ Petitions. In such view of the matter, both the Writ Petitions are allowed. The second respondent is directed to consider and register the final decrees passed in O.S.Nos.110 & 114 of 2009 respectively, if the documents are otherwise in order, and register the same and return them to the respective writ petitioners. The 2nd respondent shall do that exercise within a period of three weeks from the date of receipt of a copy of this order. However, there shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

r n s
To

1.The Inspector General
of Registration,
Chennai - 4.

2.The Joint Sub-Registrar No.II,
Namakkal.

+1cc to Mr.N.C.Ashok kumar , Advocate SR.No. 79503
+1 cc to Government Pleader Sr.No. 80213

W.P.Nos.10501 & 10502 of 2011 &
connected miscellaneous petitions

A.SK(04/11/2019)