IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.09.2020

CORAM :

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

Writ Petition No.10367 of 2020
and W.M.P.Nos.12606 & 12607 of 2020

1.S.Albert Royen

2.Amala Rathi Royen ...Petitioners

-Vs-

1 The Inspector General of Registration
No.100 Santhome High Road
Santhome Chennai 600 028.

2 The District Registrar (Administration)
Central Chennai District
Royapettai Chennai 600 014.

3 The Sub - Registrar
Sub - Registrar Office Mylapore Santhome
High Road Chennai 600 028. ….Respondents

Prayer : Writ Petition under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus calling for the records relating to the proceedings in PM.No.18536631/ P1/2017 dated 06/06/2018 on the file of the 1st respondent quash the same and further direct the 3rd respondent to register and release the Rectification deed pending as Document No.P.201600 (143/2016) in Connection with the Sale Deed in Document No.2939 /2013 dated 08/10/2013.

For Petitioner : Mr.V.Ravi

For Respondent : Mr.T.M.Pappiah,
Special Government Pleader

O R D E R

On consent given by either side, the main writ petition itself has been taken up for final hearing.

2. The subject matter of challenge in the present writ petition pertains to the order passed by the first respondent on 06.06.2018 and for a consequential direction to the third respondent to register the Rectification Deed and release the same in favour of the petitioners.

3. The petitioners purchased the subject property through a Registered Sale Deed dated 08.10.2013 and the document was registered on the file of the third respondent as Document No.2939 of 2013. The petitioners later realised that some mistakes had crept in while describing the boundaries and measurements thereof. The petitioners therefore wanted to rectify these mistakes through a Rectification Deed dated 03.08.2016. When this document was presented for registration before the third respondent, the document was kept as a pending document and the petitioners were directed to pay extra stamp duty calculated as per the guideline value as on 03.08.2016. The petitioner was directed to pay a sum of Rs.4,54,200/- as extra stamp duty. The petitioners made a representation before the second respondent and the second respondent through proceedings dated 27.02.2017 directed the petitioners to pay a sum of Rs.4,54,200/-towards deficit stamp duty and Rs.1800/- towards fine. Aggrieved by the said order, the petitioners filed an appeal before the first respondent. The first respondent confirmed the order passed by the second respondent through the impugned order dated 06.06.2018.

4. The learned counsel for the petitioners submitted that the Rectification Deed did not change the Survey Number or the extent of the property and it merely sought to rectify the mistakes that had crept in while describing the boundaries and the measurements thereto. The learned counsel further submitted that Section 47B will not apply to the facts of the present case since there is no additional stamp duty payable by the petitioners by virtue of the fact that the extent of the property remains to be the same. The learned counsel further submitted that the petitioners have already paid the stamp duty of nearly Rs.40 Lakhs when the original Sale Deed was registered and therefore there is absolutely no justification on the part of the respondents to demand for additional stamp duty and fine and therefore the orders passed by the second respondent and as

confirmed by the first respondent requires interference of this Court.

5. Mr.T.M.Pappiah, learned Special Government Pleader appearing on behalf of the respondents submitted that a close scrutiny of the original Sale Deed and the Rectification Deed would show that there is a complete change in the boundary and the measurements thereto and thereby there is a difference in the extent of the measurement while describing the boundary. The learned counsel further submitted that a Rectification Deed will merely correct certain minor errors that crept into a document and it cannot go to the extent of changing the boundaries and the measurements thereto. The learned Special Government Pleader therefore submitted that since the Rectification Deed impacts the very nature of the right and title over the property, the respondents are perfectly right in bringing it within the definition of Section 2(14) of the Indian Stamp Act. Therefore, the third respondent was perfectly right in demanding additional stamp duty under Section 47B of the Indian Stamp Act. The learned Special Government Pleader sought for the dismissal of the writ petition.

6. This Court has carefully considered the submissions made on either side and the materials available on record.

7. The following tabular column will give a bird's eye view with regard to the boundary and the extent thereto in the title document, original Sale Deed and the Rectification Deed.

Description of the boundaries in the Parent Deed No.2411/07	Description of the boundaries in the Sale Deed dated 08.10.2013 (No.2939/13)	Description of the boundaries in the Rectification Deed dated 03.08.2016 (No.P.143/13)
வடக்கில் ° ரீ/சர்வே எண் 3710.4 ல் உள்ள சொத்து	ரீ/சர்வே எண் 3710/4 ல் உள்ள சொத்து	ரீ/சர்வே எண் 3710/4 ல் உள்ள சொத்து
தெற்கில் ° ரீ/சர்வே எண் 3709/19 ல் உள்ள சொத்து	ரீ/சர்வே எண் 3709/19 ல் உள்ள சொத்து	20”/0” அகல ரோடு
கிழக்கில் ° ரீ/சர்வே எண் 3709/1 ல் உள்ள சொத்து	ரீ/சர்வே எண் 3709/1 ல் உள்ள சொத்து	ரீ/சர்வே எண் 3709/1 ல் உள்ள சொத்து
மேற்கில் ° ரீ/சர்வே எண் 3709/39, 3709/38 / ல் உள்ள சொத்து	ரீ/சர்வே எண் 3709.39இ 3709/38- ல் உள்ள சொத்து	ரீ/சர்வே எண் 3709/39, 3709/38- ல் உள்ள சொத்து

Description of measurements of the four boundaries in the Parent Deed (No.2411/07)	Description of the measurements of the four boundaries in the Sale Deed dated 08.10.2013 (No.2939/13)	Description of the measurements of the four boundaries in the Rectification Deed dated 03.08.2016 (No.P.143/13)
வடக்கு தெற்காக கிழக்கு பக்கம் ° 77 அடி	77 அடி	77 அடி
வடக்கு தெற்காக மேற்கு பக்கம் ° 36 அடி	36 அடி	33 அடி + 17 அடி
கிழக்கு மேற்காக வடக்கு பக்கம் ° 61 அடி	61 அடி	40 அடி
கிழக்கு மேற்காக தெற்கு பக்கம் ° 87 அடி + 10 அடி	87 அடி + 10 அடி	62 அடி + 10 அடி

8. A close look at the proposed changes sought to be made by the petitioners in the Rectification Deed shows that there is no change in the Survey Number or in the total extent of the property. There is only a change in the dimension of the property. Insofar as the boundary description is concerned, there is only a change on the Southern side and all the other sides remain to be the same. When it comes to the measurements, the sum total of the entire change in measurements does not in

any way increase the extent of the total property. Therefore, the respondents were not right in coming to a conclusion that the change in the measurements with regard to the boundaries changes the extent of the property and thereby enhances the title over the property. There is a genuine mistake while describing the boundaries and the extent thereto and therefore the parties have rightly executed a Rectification Deed and presented it for registration.

9. This Court has categorically held that when the Rectification Deed does not seek to make any fresh transfer or add to the total extent and merely seek for rectification of a mistake, the same should not be subjected to any fresh assessment of stamp duty. Useful reference can be made to the judgment of this Court in "P.Uthamaraj -vs- The District Registrar Chennai South & Others" (2010) 1 M.L.J.246.

10. In view of the above discussion, this Court has no hesitation to interfere with the impugned order passed by the second respondent dated 27.03.2017 confirmed by the first respondent by order dated 06.06.2018 and the same is hereby quashed. The third respondent is directed to register the Rectification Deed dated 03.08.2016 and release the same to the petitioner within a period of four weeks from the date of receipt of a copy of this order. Whatever stamp duty requires to be paid for the Rectification Deed shall be paid by the petitioner.

11. In the result, this Writ Petition is allowed with the above directions. No costs. Consequently, connected miscellaneous petitions are closed.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

KST
To

1 The Inspector General of Registration
No.100 Santhome High Road
Santhome Chennai 600 028.

2 The District Registrar (Administration)
Central Chennai District
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3 The Sub - Registrar
Sub - Registrar Office Mylapore Santhome
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+1 CC to The Govt. Pleader sr 29105.

W.P.No.10367 of 2020

VSNII(CO)
SP(16/10/2020)