IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 24.02.2021

CORAM:

THE HON'BLE MRS.JUSTICE T.V.THAMILSELVI

C.M.A.No.1888 of 2006
and
M.P.No.1 of 2006

1.Venkat Panchapakesan (died)

2.Sandhya Panchapakesan
(2nd appellant brought on record as LR of the deceased 1st appellant viz., Venkat Panchapakesan vid. Court order dated 11.07.2018 made in CMP.Nos.11465 to 11467 of 2018 in CMA.1888/2006(SRTJ)

... Appellants

Vs.

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

2. The District Revenue Officer,(Stamps),
Collectorate Compound,
Coimbatore – 641 018.

3. The District Registrar,
Coimbatore.

4. The Joint Sub Registrar,
Coimbatore.

.. Respondents

PRAYER : Civil Miscellaneous Appeal is filed under Section 47-A of the Indian Stamps Act, pleased to set aside the order of the Chief Revenue Controlling Authority and the Inspector General of Registration, Santhome, Chennai in proceedings No.1863/U1/2006 dated 28.03.2006.

For Appellants : Mr.P.VijayRaghunath
for M/s. Sarvabhauman Associates

For Respondents : Mr.J.M.Pappaiah
Special Government Pleader

J U D G M E N T

The appellants herein preferred this appeal challenging the order of the Chief Revenue Controlling Authority and Inspector General of Registration, Chennai, in proceedings No.1863/U1/2006 dated 28.03.2006.

2. The respondents also contested the appeal.

3. The Substantial Questions of Law are as follows:

> "(i) The guideline value, contained in the Basic valuation Register, maintained by the Revenue Department or the Municipality for the purpose of collecting stamp duty, has no statutory base or force. It cannot form a foundation to determine the market value mentioned thereunder in instrument brought for registration.
>
> (ii) Evidence of bona fide sales between willing prudent vendor and prudent vendee of the lands acquired or situated near about that land possessing same or similar advantageous features would furnish basis to determine the market value."

4. Heard Mr.P.VijayRaghunath for M/s. Sarvabhauman Associates, learned counsel for the appellants and Mr.J.M.Pappaiah, learned Special Government Pleader for the respondents.

5. The fact of the case are that the appellants purchased a property on 14.02.2005 through the sale deed registered as Document No.558 of 2005 pertains to an extent of 8.125 sq.ft of land with building in New T.S.No.945, within the Coimbatore Municipal Corporation Limits. The access leading to the property from Race Course Road is only 20 feet in width and a private road. The said access is not a public access and does not have any amenity such as thar road, street lights, drainage, etc., As the property is situated on such a private road, having a width of only 20 feet, the said property cannot be exploited or developed commercially. The property is only a residential site and building situated in the property as partly Madras Terraced and partly R.C.C. Since the property situated in a private road and not abutting the Race Course main road. Therefore, the value of the property situated on and abutting Race Course Main road cannot be taken into consideration for fixing the value of the property. But, the respondents fixed at the rate of Rs.2,255/- per Sq.ft. and initiated proceeding under Indian Stamp Act under Section 47-(A) (6) is highly exorbitant one and without any basis. Therefore, he prayed to set aside the impugned notice issued by the authorities.

6. The learned Special Government Pleader for the respondents argued that based upon the guide line value prevailing at the time of the purchase made by the appellants, as well as considering the posh locality with surrounding of commercial building and apartments in the Race course road which is a prime locality of Coimbatore Town. The respondents demanded a sum of Rs.2,255/- per sq.ft. which is justifiable one and pray to dismiss the appeal as no merits.

7. To support his arguments , the appellant counsel submitted an additional typed set of papers attaching the sale deed along with sketch of the property concerned. On perusal of the sketch, it is seen that the property is situated 20 ft. deviation road from the Race Course road. So, the appellants sketch itself clearly proves that the property concerned, as per the sale deed is surrounded with four boundaries with the door No.109, Race Course Road. It is admitted fact that the Race Course is a posh locality of Coimbatore Town, it is inclusive of both commercial and apartment building with high potential area. But the learned counsel would contend that from Race Course Road, there is 20 ft. private path way leading to the property, thereby it will not fetch any commercial value. Further would submit that it is a private access without any amenity but the respondent without considering this aspect, initiated the proceedings under Section 47(A) of the Act and fixed a market value of Rs.2,255/- per sq.ft. is highly unreasonable. Further, he also submitted that based upon the market value of the property, the respondents have no right to demand enhanced stamp duty. For that aspect he relied the following Judgments.

(i). 2003 (4) CTC 565/2003 (10) SCC 352 “Dalip Singh and others v. Sikh Gurdwara Prabhandak committee and others” Civil Appeal No.7418 of 1993, decided on October 15, 2003 A.Sikh Gurdwaras Act, 1925 (Punjab Act 8 of 1925) -Ss.10(3) and 7(3) - Notification issued under S.10(3) servers as a conclusive proof that no claim was made in respect of any right, title or interest in any property specified in the list forming part of notification published under S.7(3) in respect of Gurdwara - But failure to produce the notification under S.10(3) by itself would not lead to the necessary conclusion that the properties were not of the Gurdwara but were private properties- Burden on the person who claimed the property as his private properties to prove his right, title and interest over the property - that having not been proved, this flaw cannot be got over by relying on the fact that notification under S.10(3) was not produced- Appellants' case that one B was owner of the property who had gifted the property to his son and wife (Respondents 2 and 3) from whom they had purchased the same, held on facts, not made out -SGPC's application under S.142 calling upon B to surrender possession of the land was earlier allowed by Judicial commission – B having no right, title and interest over the land, transfer thereof in favour of his son and wife were not binding-Revenue records showing B as cultivator of the land is not sufficient to prove that occupancy right or title to the land vested in B- Revenue records were consistent with the fact that B must have been in possession of the property as an employee or manager of the Gurdwara – Held, it was proved by satisfactory evidence that the property belonged to the Sikh Gurdwara and appellants failed to prove that their predecessors- in-interest namely Respondents 2 and 3 acquired any title from B-"

(ii) 1997(2)LW 579

"(Indian) Stamp Act, S.47-A(3) (as amended in Tamil Nadu) – Determining of market value powers of the Registrar – Scope.

Deed of conveyance presented for registration persuant to decree for specific performance-Direction for paying stamp duty on market value, as on date the document is executed, whether legal absence of any material to show fraudulent evasion of stamp duty or lack of banafides-Power under S.47-A cannot be invoked."

(iii) 2010(6) CTC 35

Indian Stamp Act, 1899 (2 of 1899), Section 47-A – Determination of Market value -Reference to Income Tax Attachment proceedings- Relevancy – Held, in arriving at market value, Registering Authority should indicate basis for arriving at particular value- Except for relying on document produced by Appellant, Registering Authority has not relied on any other document – Mere general impression by itself cannot be ground for assumption of jurisdiction under Section 47-A to hold that value stated in document is untrue – Reference to Income Tax Attachment proceedings by itself does not justify value arrived by parties- Market value is not determined by guideline value – Full Bench decision in Sakthi & Co. v.Shree Desigachary, 2006(2) CTC 433".

(iv) 2009(2) CTC 12/2009(1) CTC 305

"Indian Stamp Act, 1899 (2 of 1899),

Section 47-A - Applicability of, to sale deeds executed by Government Agency to and in favour of allottees - Exercise of Powers under Section 47-A can be resorted to if there is under -valuation of subject matter with fraudulent intention to evade proper payment of stamp duty - Government did not have any material to conclude that market value of property conveyed to allottees was higher than one recited in deed executed by Government Agency- Order quashing demand notices calling for additional stamp duty and consequential refusal to release sale deeds until payment of such additional stamp duty upheld - Case law discussed."

(v) 2004(1) CTC 187

"Indian Stamp Act, 1860, Section 47-A - Payment of Stamp duty on market value of land - Whether can be demanded on the basis of future use of land - Whether can be demanded on the basis of future use of land - Whether this section can be invoked in such cases for making reference as to stamp duty payable - Agricultural lands purchased for being used for industrial purposes for storing industrial effluents- Whether stamp duty can be demanded future usage of land as industrial lands and house sites - Whether failure to pay stamp duty on basis of future use would attract provisions of this Section- Agricultural lands were purchased under various deed of conveyance and stamp duty paid for market value as declared by executants - Registering authority satisfied himself that stamp duty has been paid as per guideling value, completed registration and released sale deeds - subsequently registering authority made reference on the basis that lands are going to be used for industrial purposes and they have to be valued as house sites - Special Deputy Collector (Stamps) assessed market value on that basis and purchaser was directed to pay deficit stamp duty - Purchaser preferred appeal and Appellate Authority allowed appeal filed by purchaser and set aside order - Registering Authority filed revision petition to High Court - Revision was held not maintainable as original authority is not person that market value of land has to be valued as on date of deed of conveyance and does not depend upon future or intended user of land by purchaser."

8. Based upon all these referred citations, the appellants counsel argued that the market value of the land has to be valued as on date of deed of conveyance with existing

feature of the property concerned and does not depend upon the future development, user of land by the purchaser. But on perusal of these authorities, reported in 2010 (6)CTC 305 concerned, it relates to a cultivation land, which is totally unrelated to the property concerned in the instant case. Another authority 1997 (2) LW 579 is case arising out of pursuant to the decree for specific performance where the party evaded the payment of proper stamp duty with fraudulent intention, so Register invoke Section 47(A) which is totally irrelavant to the facts of the case in hand. The another authority 2010(6)CTC 35 which is arising out of income tax proceedings, in which, it is insisted that there must be a prima facie material should registering authority to fix the market value of the property being understood and in another authority 2009(2)CTC 12/2009(1) CTC 305 also insisted for material to conclude the market value of the property. In the instant case, the property concerned is not an agricultural land nor outside of the town. On the other hand, it is a building with site situated in the posh locality of Coimbatore Town.Therefore, the proposition laid down in the above citations not apply to the facts of this case.

9. As per the sale deed, the appellants purchased the property with old building, but entire property is surrounded with apartments and commercial building posh locality. The place and location of the property itself sufficient to conclude that it is a converted business area, even at the time of purchasing the property in the year 2005, therefore, based upon the prevailing market value of the property as well as commercial locality with future development the respondents fixed the market value of the property at Rs.2,255/- per sq. ft. which is justifiable one.

10. Accordingly, this Civil Miscellaneous Appeal is dismissed and the appellant is directed to make payment with interest excluding the pending litigation period, within a period of eight weeks from the date of receipt of a copy of the judgment. No Costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

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

2. The District Revenue Officer,(Stamps),
   Collectorate Compound,
   Coimbatore - 641 018.

3. The District Registrar,
   Coimbatore.

4. The Joint Sub Registrar,
   Coimbatore.

5. The Section Officer,
   V.R.Section,
   High Court, Madras.

+1cc to M/s.Sarvabhauman Associates, Advocate, S.R.No.11176

+1cc to the Government Pleader, S.R.No.11892

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and
M.P.No.1 of 2006

AD(CO)
SU(24/11/2021)