IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 16.03.2021

CORAM:

THE HONOURABLE MRS.JUSTICE T.V.THAMILSELVI

C.M.A.No.2000 of 2015
and M.P.No.1 of 2015

1.Madhu R.Balakrishnan
"Aakay" Lakshminada,
Kollam 691 130,
Office at Priya Products, KCXLII/2530,
Andambakkam Watd, Convent Road,
Kollam - 691 001.

2.M/s.Krishna Herbals,
Dr.B.A.Rajakrishnan,
Door KCX/1033, Asramon,
Kollam - 691 002. .. Petitioners/Petitioners

Vs.

1.The Inspector General/
The Chief Controlling Revenue Authority,
Chennai - 600 028.

2.The District Registrar,
Madras Central,
182, Bharathi Salai,
Royapettah, Chennai - 600 014.

3.The Sub Registrar,
Anna Nagar, Chennai - 600 040. .. Respondents/Respondents

PRAYER : Civil Miscellaneous Appeal is filed under Section 47 A (10) of Indian Stamp Act, against the order dated 26.05.2015, proceedings No.55845/P1/2014, on the file of the Inspector General of Registration and the Tamil Nadu Principal Revenue Controller, Chennai.

For Appellants : M/s.G.Indira and T.Sezhian

For Respondents : Mr.T.M.Pappiah,
Special Government Pleader
(for Registration)

J U D G M E N T

The appellants preferred this appeal challenging the order dated 26.05.2015, Proceedings No.55845/p1/2014 on the file of the Inspector General of Registration, Chennai and the Chief Controlling Revenue Authority, Chennai.

2. The learned Special Government Pleader appears on behalf of the respondents/Registration Department.

3. The appellants herein, who are the assignors through Document No.885/2011/Bk IV, assigns of the intellectual property rights along with goodwill to and in favour of the Assignee on payment of Rs.50,00,000/-. Accordingly, the Assignee has paid Rs.25,00,000/- towards assignment of Trade Mark and also paid Rs.25,00,000/- towards assignment of copy right to the Assignors. The document was engrossed on e-Stamp worth of Rs.1,50,000/- and presented for registration at the office of Sub-Registrar, Anna Nagar and the said registering office registered the document and returned the same to the appellants. Subsequently, the Department Audit raised an objection stating that this document is to be treated as a Conveyance chargeable to stamp duty at the rate 6% for the entire consideration amount of Rs.50,00,000/- as prescribed under Article 23(b) r/w G.O.Ms.No.11 CT & RE, dated 20.11.2003 and failure to levy so by the by the Registering Officer has resulted in loss of revenue to the tune of Rs.1,50,000/-. On the basis of this Audit objection, the District Registrar, Chennai Central issued certificate towards recovery of deficit stamp duty of Rs.1,50,000/- as prescribed under Section 33A(iii) of the Indian Stamp Act, 1899.

4. After due enquiry, the Appellate Authority concluded that execution of the said document has not mentioned the value of "Goodwill". though the same has been treated as subject matter of assignment by the recitals available in clause 3.1 at page 4 of the current document, which reads as under:

> "3.1 The Assignor agrees to assign all the intellectual property rights as detailed in Annexure 1 along with the goodwill associated with the same to the Assignee and the Assignee accepts the assignment from the assignor thereof in accordance with the covenants contained in the agreement".

In view of the above, the value of the said Goodwill has to be ascertained from the appellants and on their failure to produce the balance sheet or any other suitable evidence to substantiate the value of goodwill, action as contemplated under Section 64 of Indian Stamp Act has to be initiated. Accordingly, the Appeal was dismissed.

5. Aggrieved by that order, the appellants preferred an appeal before this Court on many grounds and one amongst the same is that the authority has failed to note that there cannot be a any market value for the intangible goodwill.

6. At the time of the arguments, the learned counsel for the appellants submits that after issuance of the notice, they gave the proper reply, but without considering their submissions, the Appellate Authority erroneously dismissed the claim. So, he preferred appeal before this forum.

7. Per contra, the learned Special Government Pleader appeared for the respondents submits that already the appellants exhausted their appeal remedy before the Chief Controlling Revenue Authority under whom the appeal can be preferred under Section 33(a) (iii) of Indian Stamp Act. So, thereby the appellants have no locus standi to file an appeal again before this forum under Section 47(A) (10) of Indian Stamp Act for the reason that the appellants were served with notice under Section 33(A) of the Indian Stamp Act, which empowers the authority to recover the deficit stamp duty.

8. But Section 47(A) of the Act can be invoked, if the registering officer appointed under the Registration Act, 1908, while registering any instrument of conveyance (exchange, gift, release of benami right or settlement) has reason to believe that the market value of the property, which is the subject matter of conveyance has not been truly set forth in the instrument, he may, after registering such instrument, refer the same to the Collector for determination of the market value of such property and the proper duty payable thereon.

9. So, Section 47(A) of the Act can be invoked, if the registering authority found that the market value of the property has not been truly set forth in the documents presented for registration. He would record reason and can demand the deficit stamp duty by issuing notice.

10. Based upon the above said provision of law, the learned Special Government Pleader submits that in the instant

case, the appellants were served with notice under Section 33 (A) (1) of the Act, which confers power upon the authority to impound the insufficiently stamped document, which is produced before him. A document which is not duly stamped cannot be looked into for any purpose including for collateral purpose. Therefore, the assignment deed was impounded by the authorities and to recover the deficit stamp duty, they issued notice under Section 33(A) (1) of the Act. Against which, the appellants preferred appeal under Section 33(A) (iii). Accordingly, they preferred an appeal before the Chief Controlling Revenue Authority and the appeal was also dismissed.

11. Hence, as rightly pointed out by the learned Special Government Pleader, the appellants already exhausted their appeal remedy before the Chief Controlling Revenue Authority.

12. The appellants erroneously approached this forum by way of filing civil miscellaneous appeal by invoking Section 47(A) of the Act, which is related to stamp fee collected with regard to immovable properties. Therefore, the appeal is not maintainable before this forum.

13. Accordingly, this appeal is dismissed. However, the petitioner is given liberty to file a writ petition in accordance with law. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS-VII)

//True copy//

Sub Assistant Registrar

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To

1.The Inspector General/
The Chief Controlling Revenue Authority,
Chennai - 600 028.

2.The District Registrar,
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182, Bharathi Salai,
Royapettah, Chennai - 600 014.

3.The Sub Registrar,
Anna Nagar, Chennai - 600 040.

+1cc to Ms.R.Meenal, Advocate SR.No.16873

+1cc to Government Pleader SR.No.17566

AAB(CO)
GMY(15/04/2021)