IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.11.2021

CORAM:

THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

W.P. No. 2233 of 2019
and
W.M.P.No.2489 of 2019

M/s.Balachandran Builders
A Company registered under the
Companies Act, 1956,
No.A-5, First Floor,
No.41, First Main Road,
Gandhi Nagar, Adyar,
Chennai - 600 020.
rep. by its Managing Director,
T.Srinivasan. ....Petitioner

Vs

1. The Sub Registrar
   Neelangarai,
   Chennai - 600 041.

2. The District Revenue Officer,
   (Stamps) Office of the District Collector,
   5th Floor, M.Singaravelar Building,
   No.32, Rajaji Salai,
   Chennai - 600 001.

3. Chief Revenue Control Officer,
   (Inspector General of Registration),
   Santhome, Chennai - 600 004.

4. The Special Tahsildar,
   (Stamps), Chennai - 600 001. ....Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, calling for the records pertaining to the impugned order passed by the third respondent in Na.Ka.No.35187/N1/2013 dated 12.11.2018, quash the same and consequently direct the respondents to return the petitioner's original Rectification Deed dated 19.08.2009 and registered as Document No.1589 of 2010 on the file of the first respondent.

For Petitioner : Mr.P.K.Rajagopal

For Respondents: Mr.A. Selvendran
Government Advocate

ORDER

The Writ Petition has been filed for issuance of Writ of Certiorarified Mandamus, calling for the records pertaining to the impugned order passed by the third respondent in Na.Ka.No.35187/N1/2013 dated 12.11.2018, quash the same and consequently direct the respondents to return the petitioner's original Rectification Deed dated 19.08.2009 and registered as Document No.1589 of 2010 on the file of the first respondent.

2. Heard Mr.P.K.Rajagopal, learned counsel appearing for the petitioner and Mr.A. Selvendran, learned Government Advocate appearing for the respondents.

3. The petitioner purchased the property by a sale deed dated 10.05.2005 registered vide Document No.4487 of 2005 on the file of the first respondent to an extent of 92.5 cents. The property situated at No.155, Sholinganallur Village, Tambaram Taluk, Kancheepuram District comprised in Old Survey No.575/10, New Survey Nos.575/10F, 575/10D2, 577/10E and 577/10C. The actual extent conveyed through the said sale deed was only 88.5 cents. However, by typographical error, it is stated as 92.5 cents in the sale deed. Therefore, a deed of rectification was made and registered as Document No.1589 of 2010 on the file of the first respondent. The only rectification was the reduction of the extent from 92.5 cents to 88.5cents. The deed of rectification is transferred by way of sale or otherwise any property whatsoever in favour of any party.

4. However, the second respondent issued Form-I under Rule 4 of the Tamil Nadu Stamps (Prevention of Undervaluation) Rules 1968 by the proceedings dated 10.10.2010. The petitioner had sent an explanation on 25.11.2010.Inspite of the same, the second respondent passed an order on 11.05.2012 under Section 47 (A)(1) of the Indian Stamps Act, determining that there is a deficit stamp fee payable by the petitioner at Rs.20,35,404/- . Aggrieved by the same, th petitioner filed an appeal before the first respondent on 09.07.2012. Pending appeal, a distraint order was served on the petitioner under Section 8 of the Revenue Recovery Act in Form No-I dated 12.06.2013. Therefore, it was challenged by the petitioner before this Court in W.P.No.18320 of 2013 and the same was allowed and this Court directed the Appellate Authority i.e., the third respondent herein, to consider the appeal filed by the petitioner dated 09.07.2012 and pass appropriate orders. As directed by this

Court, the third respondent rejected the appeal by an impugned order dated 12.11.2018 and held that the Rectification Deed concerned comes within the purview of Section 47B of the Stamp Act and the petitioner is liable to pay the amount determined by the second respondent herein.

5. The learned counsel appearing for the petitioner would submit that the Rectification Deed is nothing but to correct the mistake committed in the original Sale Deed with regard to the extent of the property instead of 88.5 cents erroneously mentioned as 92.5 cents. If the petitioner, by way of the Rectification Deed increased the extent of the property, definitely the petitioner is liable to pay the deficit stamp duty along with the registration fee. In the case on hand, the petitioner presented the Rectification Deed to correct the typographical error by reducing the extent of the property. Therefore, the petitioner is not liable to pay any deficit stamp duty as demanded by the second respondent under Section 47A of the Stamp Act, since the provisions is not applied to the case on hand. It is also contrary to the provisions of Section 47A and 47B of the Stamp Act.

6.In support of his contention, he relied upon the Judgments reported in 2001 (2) CTC 449 in the case of The District Collector, Erode District and others Vs. M.Ponnusamy and 2010 (1) MLJ 246 in the case of P.Uthamaraj Vs. The District Registrar, Chennai South and others. He also relied upon the Judgment of this Court in W.P.No.43976 of 2016, dated 23.12.2016 in the case of R.Ganesan Vs. The District Registrar and another.

7. The first respondent filed a counter stating that a deed of sale dated 10.05.2005 valued at Rs.16,53,530/- was presented for registration, thereby conveyed the property admeasuring 92.5 cents in favour of the petitioner in various survey numbers. It was referred before the second respondent under Section 47(A)(1) of the Indian Stamp Act, 1899, for determination of market value and collection of difference in stamp duty. The second respondent has determined the market value for 92.5 cents of land at Rs.23,39,200/- and collected the difference in stamp duty of Rs.54,836/- and the said document was released in favour of the petitioner.It is further revealed that the Rectification Deed is an instrument and hence shall be chargeable with the duty of the amount indicated in that schedule as the proper duty according to Section 3 of the Stamp Act. According to Section 47-B, where an instrument purports to rectify any error in the description of the purview of Section 47A, the difference in stamp duty is levied. As per the previous instrument falls within the purview of Section 47A and the same was dealt under Section 47A. Therefore, the rectification deed registered vide

document No.1589 of 2010 is chargeable to stamp duty under Section 47B.

8. It is further revealed that reading in conjunction of Sections 2(14), 3 and 47B of the Stamp Act, when any document by which any right is extinguished, it is an instrument with duty as indicated in the schedule. It does not exclude the document due to typographical error or otherwise. The learned counsel for the petitioner relied upon the Judgment reported in 2010 (1) MLJ 246 in the case of P.Uthamaraj Vs. The District Registrar, Chennai South and others, the relevant portion is extracted as follows :

> "15. At the risk of repetition, it is made clear that if by way of rectification deed, the extent is going to be increased, certainly for the difference in extent, the registering authority is entitled to charge the stamp duty under Schedule I. But, it is not open to the registering authority to reopen the original sale that took place in the year 2003 for the purpose of fresh assessment of value as on the date of rectification of typographical error and by imposing stamp duty on the rectification deed and to seek to recover the difference of stamp duty from the petitioner.Inasmuch as the registering authority at the time of presentation of document for registration in the year 2003 did not raise any objection under Section 47A of the Act, it is not open to the respondents to raise the dispute regarding valuation now.

9. Hence, it is clear that by way rectification deed, if the extent is going to be increased, certainly for the difference in extent, the registering authority is entitled to charge the stamp duty under Schedule I. But, it is not open to the registering authority to reopen the original sale that took place in the year 2005 for the purpose of fresh assessment of value as on the date of rectification of typographical error and by imposing stamp duty on the rectification deed. Admittedly, the petitioner presented the rectification deed to rectify the typographical error committed while executing the original sale deed of the year 2005. The extent of the property is now reduced to 88.5 cents from 92.5 cents comprised in Old Survey No.575/10, New Survey Nos.575/10F, 575/10D2, 577/10E and 577/10C situated at No.155, Sholinganallur Village, Tambaram Taluk, Kancheepuram District. Therefore, the respondents have no basis to demand the deficit stamp duty from the petitioner. Hence, the impugned order dated 12.11.2018 in Na.Ka.No.35187/N1/2013 passed by the third respondent cannot be sustained and it is set aside.

10. In the result, the Writ Petition stands allowed. The first respondent is directed to release the Rectification Deed dated 19.08.2009 registered vide document No.1589 of 2010 forthwith. Consequently, connected miscellaneous petition is closed. No costs.

Sd/-
Assistant Registrar(CS-IX)

//True Copy//

Sub Assistant Registrar

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To

1. The Sub Registrar
   Neelangarai, Chennai – 600 041.

2. The District Revenue Officer,
   (Stamps) Office of the District Collector,
   5th Floor, M.Singaravelar Building,
   No.32, Rajaji Salai, Chennai – 600 001.

3. Chief Revenue Control Officer,
   (Inspector General of Registration),
   Santhome, Chennai – 600 004.

4. The Special Tahsildar,
   (Stamps), Chennai – 600 001.

+1cc to M/s.P.K.Rajagopal, Advocate, S.R.No.58479

+1cc to the Government Pleader, S.R.No.58528

W.P. No. 2233 of 2019
and
W.M.P.No.2489 of 2019

RSI(CO)
RGA(09/12/2021)