

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 14.10.2020

DATE OF DECISION : 26.04.2021

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA

C.M.A.No.646 of 2015

E.Parvathi .. Appellant/Purchaaser

-vs-

1. The Tamil Nadu Chief Revenue Controlling
Officer and Inspector General of Registration
100, Santhome High Road
Chennai 600 028

2. The District Revenue Officer (Stamps)
Coimbatore

3. The Joint Sub Registrar-I
Gobichettipalayam
Erode District

.. Respondents/Authorities

Memorandum of Grounds of Civil Miscellaneous Appeal filed under Section 47-A(10) of the Indian Stamp Act, 1899 against the order dated 8.1.2015 made in Pa.Mu.No.30287/N2/2013 on the file of the Tamil Nadu Chief Revenue Controlling Officer and Inspector General of Registration, Chennai, confirming the order dated 7.6.2013 made in Mu.Pa.No.518/09 on the file of the District Revenue Officer (Stamps), Coimbatore.

For Appellant सत्यमेव जयते :: Mr.N.Manokaran

For Respondents :: Mr.T.M.Pappiah
Special Government Pleader

JUDGMENT

Heard learned counsel for the parties through video conferencing due to the Covid-19 pandemic.

2. This civil miscellaneous appeal is directed against the impugned order dated 8.1.2015 made in Pa.Mu.No.30287/N2/2013 passed by the Tamil Nadu Chief Revenue Controlling Officer and Inspector General of Registration, Chennai, confirming the order

dated 7.6.2013 made in Mu.Pa.No.518/09 passed by the District Revenue Officer (Stamps), Coimbatore, demanding the deficit stamp duty from the appellant.

3. Mr.N.Manokaran, learned counsel appearing for the appellant submitted that the land in question is an agricultural land, therefore, Rule 5(a) of the Tamil Nadu Stamp (Prevention of Undervaluation of Instruments) Rules, 1968 dealing with the principles for determination of market value of agricultural land should have been applied, whereas the first respondent, wrongly resorting to Rule 5(b) & (c) dealing with the principles for determination of market value of house sites and buildings, has determined the market value of the agricultural land. Explaining further, Mr.Manokaran argued that the revenue documents and other relevant factors would clinchingly point out that the land in question belonging to the appellant is only an agricultural land, because it was a cultivable land even on the date of registration of the same. While so, the decision taken by the Special Deputy Collector treating the property as commercial area and wrongly quantifying the stamp duty on square feet basis is meaningless and unacceptable. Continuing his arguments, Mr.Manokaran stated that the registering authority, namely, the Sub Registrar has accepted the true value set forth in the instrument and accordingly registered the document. Before accepting the said document for registration, no queries were raised about the value of the land, therefore, in the absence of any material on record to prove the fact that the Sub Registrar doubted the stamp value set forth in the instrument, it cannot be decided that the matter should be referred under Section 47-A. Moreover, the registering authority, while referring the matter under Section 47-A, should have released the original document with an endorsement therein that a reference under Section 47-A is pending in respect of the said instrument, which has not been done. Again assailing the impugned order passed by the first respondent, it was argued that the first respondent has erred in accepting the reasoning given by the second respondent, as it is contrary to the provisional assessment order dated 28.6.2012, because the second respondent quantified the deficit stamp duty even without any application of mind, inasmuch as neither the impugned order nor the provisional assessment order had indicated any subjective satisfaction for arriving at the value of Rs.15 lakhs per acre. Moreover, nowhere in the impugned order the objection raised by the appellant has been considered. Besides, the first respondent has wrongly accepted the bald and laconic order passed by the second respondent. Now the grievance of the appellant is that the land in question covered in S.F.Nos.11/1 & 11/ 3 having an extent of 2 acres, 8 cents situate in Lakkampatti Village was purchased on 13.3.2009. To prove the fact that it is an agricultural land, adangal extract for the fasli 1420 dated

6.1.2012 has been filed, to bring the case of the appellant under Rule 5(a) of the Tamil Nadu Stamp (Prevention of Undervaluation of Instruments) Rules, 1968. When the revenue record, namely, the adangal extract for the fasli 1420 dated 6.1.2012 clearly mentions that the land in question covered in S.F.Nos.11/1 & 11/3 having an extent of 2 acres, 8 cents situate in Lakkampatti Village has been an agricultural and cultivable land on the date of purchase on 13.3.2009 and also continued to be an agricultural land even till the year 2012, Rule 5(a) of the Tamil Nadu Stamp (Prevention of Undervaluation of Instruments) Rules, 1968 for the purpose of determining the stamp duty should be followed, he pleaded.

4. A brief counter affidavit has been filed by the respondents. Mr.T.M.Pappiah, learned Special Government Pleader appearing for the respondents submitted that the appellant had purchased an extent of 2 acres, 8 cents of land in S.F.Nos.11/1 & 11/3 situate in Lakkampatti village by way of a sale deed dated 13.3.2009. Upon the document being presented for registration, a stamp duty of Rs.16,000/- was paid fixing the land value at Rs.2,50,000/- and the same has also been admitted. But the averment of the appellant that her objection has not been considered by the second respondent, is denied as false. Paragraph-2 of the counter affidavit states that the lands are fertile lands capable of being grown with paddy and since the appellant had quoted a lesser value in the sale deed, the first respondent has fixed the value at Rs.15 lakhs per acre. Hence, no interference is called for, he pleaded.

5. Having heard learned counsel appearing for the parties, for deciding the issue raised in this appeal, it is relevant to extract Rule 5 of the Tamil Nadu Stamp (Prevention of Undervaluation of Instruments) Rules, 1968 as follows:-

"5. Principles for determination of market value.- The Collector shall, as far as possible, have also regard to the following points in arriving, at the provisional market value,

(a) In the case of lands -

(i) classification of the land as dry, manavari, wet and the like;

(ii) classification under various tarams in the settlement register and accounts;

(iii) the rate of revenue assessment for each classification;

(iv) other factors which influence the valuation of the land in question;

(v) points if any, mentioned by the parties to the Instrument or any other person which requires special consideration.;

(vi) value of adjacent lands or lands in the vicinity;

(vii) average yield from the land, nearness to road and market, distance from village site, level of land, transport facilities, facilities available for irrigation such as tank, wells and pumpsets.

(viii) The nature of crops raised on the land; and

(ix) The use of land, domestic, commercial, industrial or agricultural purposes and also the appreciation in value when an agricultural land is being converted to a residential, commercial or an industrial land.

(b) In the case of house sites -

(i) the general value of house sites in the locality;

(ii) nearness to roads, railway station, bus route;

(iii) nearness to market, shops and the like;

(iv) amenities available in the place like public offices, hospitals and educational institutions;

(v) development activities, industrial improvements in the vicinity;

(vi) land tax valuation of sites with reference to taxation records of the local authorities concerned;

(vii) any other features having a special bearing on the valuation of the site; and

(viii) any special feature of the case represented by the parties.

(c) In the case of buildings -

(i) type and structure;

(ii) locality in which constructed;

(iii) plinth area;

(iv) year of construction;

(v) kind of materials used;

(vi) rate of depreciation;

(vii) fluctuation in rates;

(viii) any other features that have bearing on the value;

(ix) property tax with reference to taxation records of local authority concerned;

(x) the purpose for which the building is being used and the income if any, by way of rent per annum secured on the building; and

(xi) any special feature of the case represented by the parties.

(d) Properties other than lands, house sites and buildings -

(i) The nature and condition of the property;

(ii) Purpose for which the property is being put to use; and

(iii) Any other special features having a bearing on the valuation of the property "

6. As per the above Rules, when the land in question was purchased by the appellant on 13.3.2009 and even four years thereafter, continues to be an agricultural land, Rule 5(a) of the Tamil Nadu Stamp (Prevention of Undervaluation of Instruments) Rules, 1968 alone will apply. This principle has been followed and directed to be followed by the various pronouncements of our High Court and also the Supreme Court. In the case of M.Chinnasamy v. The Chief Revenue Control Officer-cum-Inspector General of Registration and others, 2015 (2) MWN (Civil) 200, it has been held that the registering authority or appellate authority must consider the market value of property as on date of execution of instrument of conveyance and not even the date on which document is tendered for registration. Paragraphs 16 & 17 of the said judgment read as follows:-

"16. What is meant by market value, what is the market value for the purpose of 'Stamp Act' and how to determine the market value of the property are the relevant questions that arise for consideration.

17. The first and foremost question is what is the relevant date for fixing the market value of the property. The learned Counsel for the Appellant relied upon the decisions reported in Ezhilarasi v. I.G.of Registration, 2009 (1) CTC 698 : 2009 (5) MLJ 1501, wherein it has been held that the market value of property has to be determined, based on date when documents were tendered for registration. This decision is not in accordance with the provision of Section 47-A of the Indian Stamp Act, 1899. Under the explanation to Section 47-A, for the purpose of this Stamp Act, market value of any property shall be estimated to be the price which, in the opinion of the Collector or the Appellate Authority, as the case may be, such property would have fetched or would fetch, if sold in

the open market on the date of execution of the instrument of conveyance. Therefore, the Registering Authority or the Appellate Authority is expected to consider the market value of property as on the date of the execution of the instrument of conveyance and not even the date on which the document is tendered for registration."

7. In the light of the above, the impugned order failing to follow the principles dealing with the determination of market value, is liable to be set aside. Besides the impugned order passed by the first respondent is palpably wrong, because, when the land in question was purchased by the appellant on 13.3.2009, even four years thereafter it continued to be an agricultural land, therefore Rule 5(a) alone will have application, as indicated that has not been done, hence, it is unsustainable in law. Therefore, the impugned order is set aside and the civil miscellaneous appeal stands allowed. Consequently, M.P.No.1 of 2015 is closed. No costs.

Sd/-
Assistant Registrar (CS-III)

//True copy//

Sub Assistant Registrar

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To

1. The Tamil Nadu Chief Revenue Controlling
Officer and Inspector General of Registration
100, Santhome High Road
Chennai 600 004

2. The District Revenue Officer (Stamps)
Coimbatore

3. The Joint Sub Registrar-I
Gobichettipalayam
Erode District

+1cc to Mr.N.Manokaran, Advocate SR.No.25418

C.M.A.No.646 of 2015

RK (CO)
GMY (02/07/2021)