IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.03.2021

CORAM

THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM

C.M.A.No.2848 of 2016 and
C.M.P.No.20679 of 2016 and
C.M.P.No.7891 of 2017

M/s.Tunor Engineering Company,
No.3/A CMDA Layout,
Tass Industrial Estate,
SIDCO, Ambattur,Chennai 600 098
Rep by its Chief Executive Officer,
Mr.K.R.Binumon
… Appellant

Vs.

1.Tamil Nadu Chief Controlling
Revenue Authority cum Inspector,
General of Registration,
Santhome High Road, Chennai 600 028.

2.The District Revenue Officer (Stamps),
District Collectorate,
Rajaji Salai, Chennai - 1.

3.The Sub-Registrar,
Office of the Sub-Registrar, Ambattur,
Chennai. ... Respondents

Prayer : Civil Miscellaneous Appeal filed under Section 47-A(10) of Stamps Act, against the order dated 24.10.2016 made in proceedings Ref No.PA.MU.No.28253/N1/2016 on the file of the first respondent.

For Appellant : Mr.P.Seshadri for
Mr.N.Senthil Kumar

For Respondents: Mr.T.M.Pappiah, SGP

J U D G M E N T

The order passed by the first respondent in proceedings Ref No.PA.MU.No.28253/N1/2016, dated 24.10.2016, under Section 47(A)(5) of the Indian Stamp Act, is under challenge in the present civil miscellaneous appeal.

2. The learned counsel for the appellant vociferously contended that the manner in which the market value determined by the competent authority is improper and not in consonance with the principles laid down by the Courts. With reference to the documents relating to the subject property, the appellant registered the same on 14.10.2015 in document No.14281 of 2015. However, the subject property was the subject matter of a litigation i.e., a suit for specific performance. Thus, even before the institution of suit for specific performance, an agreement was entered into between the vendor and the purchaser.

3. The learned counsel for the appellant mainly contended that the document was executed based on the market value as per the agreement for sale which was the subject matter of the suit for specific performance. There is no infirmity in the matter of valuation adopted by the appellant for registering the said document. The learned counsel is of the opinion that the date of presentation of the instrument cannot be taken for the purpose of determining the market value and the date of agreement for sale between the parties must be taken into consideration for determining the market value. However, it is contended that the delay in presentation of the sale deed not at the instance of the appellant, but, due to the suit for specific performance which was pending before the competent Civil Court. Thus, the market value assessed by the appellant in the sale deed is in accordance with the provisions of the Stamp Act and a reference made by the authorities under Section 47(A) of the Indian Stamp Act, is perverse and liable to be scraped.

4. The learned counsel for the appellant made a submission that the date of agreement between the parties must be the criteria for determination of the market value and not the presentation of the sale deed before the Registrar concerned. In the present case, absolutely, there is no fault on the side of the appellant. The agreement was entered into between the parties. Unfortunately, a suit for specific performance was filed and the litigation caused efflux of time, for which, the appellant cannot be penalised.

5. The contention of the appellant is that the proposition in this regard, submitted by the appellant before the first respondent is not at all considered and the judgments cited were also not considered in its real spirit. Thus, the order passed by the first respondent is liable to be set aside.

6. There is no lack of bonafides on the part of the parties and no willful undervaluation or fraudulent intention to evade the payment of stamp duty and there is nothing on record to show that the consideration shown in the document registered is

undervalued. At the time of entering into an agreement for sale, the value of the suit property was only Rs.1000/- per Sq.ft, whereas, the vendee has agreed to pay a sum of Rs.1458.33/- per Sq.ft, which was much higher than the prevailing market value, at that point of time.

7. The learned counsel for the appellant contended that in the absence of any motive or lack of bonafides and when the agreement was admittedly executed between the parties, long prior to the presentation of sale deed and the institution of the suit for specific performance was also established before the authorities competent, there is no reason whatsoever to make a reference under Section 47(A) of the Indian Stamp Act and the entire exercise done by the authorities are not in consonance with the principles of law.

8. Mr.T.M.Pappiah, learned Special Government Pleader appearing for the respondents disputed the said contention by stating that the agreement for sale entered between the private parties which was not registered, cannot have relevancy as far as the presentation of the instrument before the competent authorities under the Registration Act. What is relevant is that the date of presentation of the document before the authority and based on such presentation, the market value is to be assessed by the authorities competent with reference to the guidelines value. Thus, there is no infirmity as such in respect of the doubt raised by the authorities regarding undervaluation of the document presented by the appellant.

9. It is contented that the unregistered agreement which was a subject matter of the suit for specific performance, is no way connected with the Indian Stamp Act which is independent and the stamp duty is to be levied based on the market value determined under the provisions of the Act, as on the date of the presentation of the instrument and not in respect of the agreement for sale or any other understanding or the memorandum between the private parties which is no way connected with the provisions of the Indian Stamp Act.

10. The issue to be considered in the lis involved is that whether the unregistered sale agreement entered into between the parties regarding the sale of an immovable property, can be considered as an acceptable document for the purpose of determination of the stamp duty under the Indian Stamp Act. Let us consider Section 47 (A) of the Indian Stamp Act which reads as under:

> "47-A. Instruments of conveyance, etc., undervalued how to be dealt with.-If the registering officer appointed under the Registration Act, 1908 (Central Act XVI of 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 of which is the subject matter of conveyance [exchange, gift, release of benami right or settlement], 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.”

11. The very spirit of the provision explicitly provides that “while registering any instrument of conveyance” which denotes that the day of presentation is to be considered for the purpose of determination of market value and certainly, not any other unregistered document if at all entered into between the parties to the document which is presented before the competent authority under the Registration Act. Make it more clear that the parties may enter into a sale agreement or memorandum of understanding etc., at any point of time at their wish and at their choice, they may sign those documents as per the dates fixed by them. Even there is a possibility of preparing antedated unregistered sale agreement and there is a possibility of misrepresentation of facts with reference to the unregistered documents. However, those documents cannot be linked with the instruments which are all presented before the competent authority under the Registration Act and in the event of considering those unregistered agreement etc., for determination of the market value, then the very purpose and object of the Indian Stamp Act is defeated and further, absolutely there is no relevancy with reference to those unregistered sale agreement in connection with the instruments presented before the competent authority under the Registration Act.

12. Thus, this Court has no doubt in its mind regarding the determination of market value with reference to the document which is presented before the competent authority. For all purposes, the date of presentation must be a point for determination of market value for the purpose of payment of stamp duty and certainly not the date of any unregistered sale agreement between the parties. Even the registered agreement of sale cannot have any relevancy as far as the presentation of sale deed is concerned. Even, in case, the sale agreement is registered, that cannot be cited as a point for the purpose of determination of market value for the purpose of levying stamp duty for a sale deed which is presented at a later point of time.

13. At the outset, the date of presentation of any instrument before the competent authority would be the date on which the market value of the property is to be fixed and if the

authority as on that date, the document was undervalued, then, he has got every power under the statute to invoke Section 47(A) of the act for determination of market value by the competent authority.

14. The facts in respect of the appeal on hand reveals that the appellant mainly contended that the date of agreement for sale must be taken into consideration for the purpose of determination of market value. As there was no lack of bonafides on the part of the appellant, this Court is of the opinion that the lack of bonafides or genuinity in respect of an unregistered sale deed would not arise at all. After all the agreement for sale was between the parties, the said agreement for sale was no way connected with the registering authorities. Thus, the date of agreement for sale shall not have any relevancy as far as the presentation of the document before the competent authority under the provisions of the statute.

15. This being the principles to be adopted, this Court is of the opinion that the very ground raised in this regard deserves no merit consideration. Considering the order impugned dated 24.10.2016, passed by the first respondent, the grounds raised in this regard by the appellant was considered by the first respondent in support of the point that the date of presentation is to be taken into consideration for determination of market value. The Inspector General of Registration relied on the judgment in the case of the State of Rajasthan & Ors Vs. M/s. Khandaka Jain Jewellers in Appeal (Civil) No. 5273 of 2007 of the Hon'ble Supreme Court of India which reads as under:

> "in respect of the adoption of value for the purpose of stamp duty in the case of execution of sale deeds in pursuance of specific performance that the Collector shall determine the valuation of he instrument on the basis of the market value of the property at the date when the document was tendered by the respondent for registration, and the respondent shall pay the stamp duty charges and surcharge, if any, as assessed by the Collector as per the provisions of the Act."

16. As far as the registered release deeds and unregistered sale agreements are concerned, it is needless to state that those agreements for sale cannot have any sanctity with reference to the provisions of the Indian Stamp Act and the determination of the market value is to be done with reference to the provisions of the Indian Stamp Act, taking into consideration the date of presentation of the instrument before the competent authority under the provisions of the Act.

17. This being the factum, the first respondent through the District Revenue Officer, Stamps, conducted an enquiry and found the market value of the subject property would be Rs.5000/- per Sq.ft. However, the first respondent has granted some concession to the appellant and fixed a sum of Rs.4300/- per Sq.ft. When the first respondent himself has extended some concession in determination of the market value. Thus, no further concession or determination is required and the first respondent has acted in consonance with the principles and in accordance with the provisions of the Indian Stamp Act and there is no infirmity as such.

18. Thus, the order passed by the first respondent in proceedings Ref No.PA.MU.No.28253/N1/2016, dated 24.10.2016, under Section 47(A)(5) of the Indian Stamp Act, stands confirmed. C.M.A.No.2848 of 2016, stands dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

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To

1.Tamil Nadu Chief Controlling
Revenue Authority cum Inspector
General of Registration,
Santhome High Road, Chennai 600 028.

2.The District Revenue Officer (Stamps),
District Collectorate,
Rajaji Salai, Chennai - 1.

3.The Sub-Registrar,
Office of the Sub-Registrar,
Ambattur, Chennai.

+2cc to Mr.N.Senthil Kumar, Advocate Sr.19102
+1cc to the Government Pleader Sr.19360

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