IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.09.2021

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THE HONOURABLE MR.JUSTICE T.RAJA

AND
THE HONOURABLE MRS.JUSTICE T.V.THAMILSELVI

W.A.Nos.570 and 571 of 2014

1. The Inspector General of Registration,
   100, Santhome High Road,
   Chennai - 4.

2. The Registrar,
   Cuddalore District.

3. The Sub-Registrar,
   Vadalur.

.. Appellants in both appeals

Versus

D.B.Prakashchand Jain .. Respondent in W.A.No.570/14

R.Ramesh .. Respondent in W.A.No.571/14

Common Prayer: Writ Appeals have been filed under Section 15 of Letter of Patent against the common order dated 24.02.2014 passed in W.P.Nos.26318 and 25268 of 2012 by the learned Single Judge.

W.P. Common Prayer:-
Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus to call for the records of the first respondent relating to order O.Mu.No.10390/02/2012 dated 20.04.2012 and quash the samd and direct the third respondent to complete the registration of document bearing P.Nos.26 of 2011 to 37 of 2011 and P.Nos.20 of 2011 to 37 of 2011 respectively.

For Appellants : Mr.T.Arunkumar, GA

For Respondent in both appeals : Mr.S.R.Raghunathan

JUDGMENT

(Judgment of the Court was delivered by T.RAJA, J.)

The official respondents/Registration Department have filed this appeal challenging the impugned order passed by the learned Single Judge in W.P.No.26318 of 2012, dated 24.02.2014, by which, learned Single Judge, while allowing the writ petition, held that the Sale Certificate issued by the Mumbai Debts Recovery Tribunal does not require registration and thereby directed the authorities to complete the registration of documents presented for registration.

2. When the matter is taken up, Mr.S.R.Raghunathan, learned counsel for the writ petitioner/respondent herein fairly stated that although the writ petitioner succeeded before the Writ Court, since the appeal has been filed by the department, pending appeal, in order to settle the issue, the writ petitioners have deposited the entire stamp duty to the tune of Rs.27,60,190/- in the form of Fixed Deposit in Axis Bank and ICICI Bank favouring the Registrar General of this Court on 23.02.2018 as per the order passed by this Court on 20.09.2017.

3. Mr.T.Arunkumar, learned Government Advocate, appearing for the Registration Department/appellants herein, placing reliance on a Full Bench decision of our Court in the case of Dr.R.Thiagarajan Vs. the Inspecor General of Registration, Santhome, Chennai - 4 and two others [2019 (4) CTC 839] submitted that the Sale Certificate issued by the authorized officer of the bank is liable for stamp duty under Article 18-C read with Article 23 of Schedule 1 of the Indian Stamp Act and in the event of under valuation of the property, the Registering Authority is entitled to proceed in accordance with Section 47-A of the Indian Stamp Act.

4. In the above said decision, it is seen that the writ petitioner therein purchased the property through public auction conducted by the authorized officer of the Bank under SARFAESI Act. While presenting Sale Certificate issued by the Bank for registration, the Registering Authority insisted to pay the stamp duty as per the guideline value of the property and not on the sale consideration mentioned in sale certificate and therefore, learned Single Judge having found conflicting decisions of the Division Bench, referred the matter for consideration of the Full Bench. The Hon'ble Full Bench, while answering the reference, held that if the stamp duty is not paid for the Sale Certificate and registered under law, then it is only a still born child and does not confer any right to the

purchaser. When the Sale Certificate is not properly stamped and registered, it is a void document and no right would vest upon the person concerned based on the same. For better appreciation, paragraph Nos.21 to 26 are extracted below:-

> 21. In the unreported judgment of this Court dated 21.08.2017 made in W.A.(MD) No. 3 of 2017 [cited supra], the Division Bench of this Court held that the Authorised Officer appointed by the bank in the proceedings initiated under SARFAESI Act, is not a Civil or Revenue Court, Collector or Revenue Officer and he is an officer of the bank, which lend money to the borrowers, acts as an Authorized Officer, only for the purpose of bringing the property for sale. In other words, such officers merely replace the secured creditors. The Division Bench further observed that at best the Authorized Officer cannot be termed as Civil or Revenue Court, Collector or Revenue Officer. Observing so, the Division Bench held that notice issued under Section 47-A of the Indian Stamp Act, claiming stamp duty on the market value of the property is proper.
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> 22. The Sale Certificate issued by the Authorised Officer of the bank cannot be agnated with the Sale Certificate issued by a Civil or Revenue Court. The nomenclature given to the document issued by the Authorized Officer would be irrelevant for exemption from payment of stamp duty and the same will not be covered under Article 18-C Schedule 1 of the Stamp Act. Therefore, the Sale Certificate issued by one who is neither Civil or Revenue Officer would not fall under Section 17(2)(xii) of the Registration Act and the Sale Certificate issued by the Authorized Officer is liable for stamp duty on the market value as per Article 18-C read with Article 23 of Schedule 1 of the Stamp Act.
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> 23. If proper stamp duty is not paid for the said Sale Certificate and registered as required under law, then it is only a still born child and does not confer any right to the petitioner whatsoever. When the Sale Certificate is not properly stamped and registered, it is a void document and no right would vest upon the petitioner based on the same. As per Section 47-A of the Stamp Act, if the Registering Authority 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 the said property and the proper duty payable thereon.

24. As already stated, the Sale Certificate issued by the Authorized Officer of the bank requires registration as well as stamp duty under Article 18-C read with Article 23 of Schedule 1 of the Stamp Act.

25. In the case of the property being under-valued, then, the Registering Authority is entitled to refer the matter to the Collector under Section 47-A of the Stamp Act. Therefore, in respect of the Sale Certificate issued by the Authorized Officer of the bank, Section 47-A of the Stamp Act is applicable.

26. To summarize, our answer to the question referred to the Full Bench is as follows:—

We are of the considered view that the Sale Certificate issued by the Authorized Officer of the bank is liable for stamp duty under Article 18-C read with Article 23 of Schedule 1 of the Indian Stamp Act. In the event of under-valuation of the property, which is the subject matter of the Sale Certificate, the Registering Officer is entitled to proceed in accordance with Section 47-A of the Indian Stamp Act. Hence, we agree with the proposition laid down by the Division Bench of this Court in the unreported judgment of this Court dated 21.08.2017 made in W.A.(MD) No. 3 of 2017 [cited supra] and, with respect, we are not agreeing with the view taken in the judgment reported in 2015 (1) CTC 526 [cited supra].

5. Following the above said Full Bench decision, a Division Bench in which one of us (TRJ) was a party, in W.A.No.1017 of 2012, dated 28.07.2021 (M/s.Shree Vijayalakshmi Charitable Trust, Coimbatore, Vs. the Sub-Registrar, Mettupalayam, Coimbatore District) held that the Sale Certificate issued by the official liquidator on behalf of the company in liquidation cannot get exempted from payment of stamp duty at the time of registration.

6. In the case on hand, the writ petitioner/D.B.Prakashchand Jain in W.P.No.23618 of 2012 had purchased the property in

question through the public auction conducted by the Mumbai Debts Recovery Tribunal-I and thereby he was issued with the Sale Certificate dated 26.10.2004. Thereafter, on the basis of the Sale Certificate dated 26.10.2004, he executed several Settlement Deeds dated 14.12.2011 in favour of his son, besides executing a Sale Deed dated 12.12.2011 in favour of the writ petitioner/R.Ramesh in W.P.No.25268 of 2012. When both Settlement Deeds and Sale Deed were presented for registration, the Inspector General of Registration vide proceedings dated 20.04.2012 directed the Sub-Registrar, Vadalur, to impound the Sale Certificate and thereafter collect the deficit stamp duty. Thus, it is at this stage, the writ petitioners came to this Court by filing W.P.Nos.23618 of 25268 of 2012 with a prayer to direct the Sub-Registrar, Vadalur, to complete the registration of documents presented by them.

7. Be that as it may, now, since the writ petitioners have deposited a sum of Rs.27,60,190/- towards the stamp duty, favouring Registrar General of this Court on 23.02.2018 in Axis Bank and ICICI Bank, the writ appeals are allowed. In view of a decision of the Hon'ble Full Bench of this Court in Dr.R.Thiagarajan's case (cited supra) holding that if the Sale Certificate is not properly stamped, then it is a void document and no right would vest upon the person concerned based on the same, the common impugned order passed by the learned Single Judge holding that the Sale Certificate dated 26.10.2004 does not require registration is set aside. Consequently, the appellants/Registration Department are permitted to withdraw the entire Fixed Deposit amount deposited on 23.02.2018 in Axis Bank and ICICI Bank favouring Registrar General of this Court, along with accrued interest therein, forthwith, and within a period of two weeks thereafter, Sale Certificate dated 26.10.2004 of the writ petitioners shall be stamped and returned to them. No Costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS-V)

//True Copy//

Sub Assistant Registrar

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To

1. The Inspector General of Registration,
   100, Santhome High Road,
   Chennai - 4.

2. The Registrar,
   Cuddalore District.

3. The Sub-Registrar,
   Vadalur.

Copy to:
The Registrar General,
High Court, Madras.

+1cc to M/s.S.R.Raghunathan Advocate, S.R.No.47249

+1cc to the Government Pleader, S.R.No.47566

W.A.Nos.570 and 571 of 2014

BP(CO)
SU(10/11/2021)