



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment Reserved on : 06.01.2022

Judgment Pronounced on : 28.01.2022

CORAM :

THE HON'BLE MR.JUSTICE T.RAJA
AND

THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

C.M.A.No.1836 of 2005

1.Vodafone Idea Limited

having its registered office at
Suman Tower, Plot No.18, Sector - 11
Gandhinagar, Gujarat - 382011.

**1st Appellant as per amended cause title vide
Court order, dated 17.12.2019 made in
C.M.P.No.26316 of 2019 in C.M.A.No.1836 of 2005
(NKKJ & PVJ)

2.M/s.Hindusthan Infrastructure Projects
& Engineering Private Limited
#642, 4th Main, II Stage, Indira Nagar,
Banglore - 560038.
Represented by it's Director,
Mr.K.Venkataram Gowda.

*Cause title accepted vide order of Court,
dated 27.06.2005 made in C.M.P.No.9931 of 2005

... Appellants

Versus

1.The Inspector General of Registration,
Tamilnadu Principal Revenue Controller,
Chennai - 600028.

2.The District Revenue Officer (Stamps),
Collectorate Compound,
State Bank Road,
Coimbatore - 600018.



3. The Joint Sub-Registrar,
O/o. The District Registrar,
Coimbatore.

... Respondents

Prayer : Civil Miscellaneous Appeal has been filed under Section 47-A (10) of the Indian Stamp Act, 1898 against the order of the Inspector General of Registration, Tamilnadu Principal Revenue Controller, Chennai for Document No.987 of 2002 made in No.403679/N2/2003, dated 27.04.2005.

For Appellant No.1 : Mr.N.Suryanarayan

For Appellant No.2 : Mr.A.R.L.Sundaresan
Senior Counsel for
Mr.Sanjeev Kumar for
M/s.Ojas Law Firm

For R1 to R3 : Mr.J.Ravindran,
Additional Advocate General
Assisted by Mr.P.Sathish,
Assistant Government Pleader

JUDGMENT

(Judgment of this Court made by Mr.Justice D.Bharatha
Chakaravarthy)

The Appeal :

This is an appeal filed under Section 47-A(10) of the Indian Stamps Act, 1898 by the appellants against the order of the first respondent, namely the Inspector General of Registration, Tamilnadu - Principal Revenue Controller, Chennai, dated 27.04.2005, bearing reference No.40369/No.2/2003, in respect of document No.987/02, whereby, the first respondent had partly dismissed the appeal filed by the appellants against the order of the District Revenue Officer (Stamps), Coimbatore, dated 26.03.2003, bearing reference No.5975/Co/02, thereby, imposing an additional stamp duty of Rs.9,15,83,421/- to be paid along with further interest at the rate of 2% per month from the date of order till date of payment.

Brief Facts Leading to the Appeal :

2. On 26.03.2002, the first appellant (originally known as M/s.B.P.L Mobile Cellular Limited, thereafter having merged, and



presently Vodafone Idea Limited), which was the owner of the property, being the land ad-measuring 19870 Sq.ft, situate in T.S.No.598, Anuparpalayam village, ward No.5, New No.7, Coimbatore town, Coimbatore Taluk, Coimbatore together with the buildings and structures standing thereon, sold to and in favour of the second appellant (originally R.A.G Constructions and Real Estates Private Limited and since merged and now known as M/s.Hindusthan Infrastructure Projects and Engineering Private Limited) for a sale consideration of Rs.3,50,00,000/- (Rupees Three crores fifty lakhs only).

3. The said sale deed was presented for registration before the Joint Sub-Registrar - I, Coimbatore. After the said document was presented for registration, the Joint Sub-Registrar - I, Coimbatore, after considering the sale deed, issued a notice on 31.07.2002, bearing reference No.12099/U2/2002, in respect of the said document No.987/2002, thereby, finding that in respect of the extent of land sold, there is an under valuation and sum of Rs.31,86,651/- is payable as additional stamp duty in respect thereof; and as per the value determined by the Assistant Executive Engineer, in respect of the buildings and structures, there is an under valuation of the superstructures and an additional sum of Rs.50,76,077/- has to be paid as additional stamp duty, thus totaling to Rs.82,62,728/-; This apart, the document transfers an ongoing concern on 'as is where is basis' along with the plant and machinery and therefore, the plant and machinery should also be valued and since the plant and machinery are of the value of Rs.65,21,52,883/-, as per the judgment of the Hon'ble Supreme Court in Civil Appeal No.5929 of 1997 dated 03.01.1999 and the consequent circular issued by the first respondent in Order No.51389/C5/2001, dated 02.11.2001, additional stamp duty has to be paid on the said plant and machinery also and therefore, determined a sum of Rs.9,13,01,407/- as additional stamp duty. Therefore, the Sub-Registrar, by the said notice, demanded a total additional stamp duty of Rs.10,17,00,998/-. Since the payment was not made, and the Registering Authority had reasons to believe that the sale deed is undervalued, the matter was referred to the appropriate authority, namely, the District Revenue Officer(Stamps), Coimbatore, the second respondent herein, for an inquiry as per Section 47-A (1) of the Stamp Act, 1899.

4. On 25.03.2003, the second respondent herein issued a show cause notice to the appellants herein enclosing an inspection



report, thereby, claiming additional stamp duty and registration charges on the ground that, (i) the land cost is undervalued and the land extent is incorrectly calculated; (ii) the building is undervalued; (iii) and the plant and machinery is not included in the valuation and therefore, claiming a total additional stamp duty of Rs.9,15,83,421/-, over and above, the stamp duty of Rs.43,50,000/- already paid by the appellants.

5. Both the appellants submitted their detailed reply, dated nil, to the said notice and also produced a list of 25 documents in support of their explanation. It was categorically claimed that it was only a sale of immovable property and was not sale of business in 'as is where is' condition. The plant and machinery are continued to be owned by the vendor and the vendor is only continuing the business by using its own plant and machinery. However, rejecting the submissions made on behalf of the purchaser as well as the vendor, by an order, dated 25.06.2003, bearing reference No.MP/5975/C/02, the District Revenue Officer (Stamps), Coimbatore, passed an order directing the appellants to pay the additional stamp duty of Rs.9,15,83,421/-, as per Section 41-A(5) with further interest at the rate of 2% per month.

6. Aggrieved by the same, the appellants herein filed an appeal under Section 47-A(5) of Indian Stamp Act before the first respondent herein. The primary contention is that the plant and machinery were never sold or purchased and it continued to be in the ownership of the first appellant and the sale was one of the sale of immovable property simplicitor and the vendor after selling the immovable property alone, was still in the occupation of the property, as a tenant and continued his business. During the course of the appeal, the appellants accepted the value of Rs.1,600/- per Sq.ft, in respect of a land and therefore, the Appellate authority confirmed the findings in respect of the claim of additional value in respect of the land. In respect of the building value, the first respondent/appellate authority rejected the claim of the appellants and valued the building at Rs.4,25,96,663/-. As far as the plant and machinery are concerned, the first respondent held that the appellants had registered a rectification deed stating that the plant and machinery are not sold, therefore, it is clear that it was sold under the original document, namely the sale deed. Further, the appellate authority held that the clause in the original sale deed "TOGETHER WITH all the things permanently attached thereto or



standing thereon" would clearly mean the plant and machinery attached to the building and therefore, held that the judgment of the Hon'ble Supreme Court in C.A.No.5929 of 1991, dated 03.12.1999 and Circular No.51389/C5/2001, dated 02.11.2001 are applicable for 'as is where is' transfer of business selling plant and machinery along with the property. After deleting the value of the computers and printers, the rest of the plant and machinery was valued at Rs.60,87,75,000/- and the appellants were directed to pay the balance stamp duty on the said sum of Rs.60,87,75,000/- with interest at the rate of 2% per month. Aggrieved by the Order, the present appeal is filed before this Court under 47-A (10) of the Indian Stamp Act, 1898.

The Submissions :

7. Heard Mr.A.R.L.Sundaresan, learned Senior Counsel appearing on behalf of the appellants and Mr.J.Ravindran, learned Additional Advocate General, appearing on behalf of the respondents. The learned Senior Counsel would submit that it was never the intention of the parties to sell the plant and machinery. This was clear from the overwhelming documents, which were produced by the appellants, before the authorities. Firstly, the sale deed itself does not in any manner state or indicate that it is a sale of an ongoing business in an 'as is where is' condition, but is only a sale of immovable property alone. A perusal of the sale deed and the Annexure- I-A forming part of the sale deed would clearly demonstrate that there was no sale of plant and machinery by the subject matter sale deed. This apart, to make things abundantly clear, a rectification deed was entered into and registered on 26.02.2003 making it expressly clear of the non-existent fact also, therefore, plant and machinery cannot be valued at Rs.66,50,99,221/-, hence, it is highly illogical and it is absurd on the part of the authorities to contend that such high value of the plant and machinery were sold in the subject matter sale deed, in which, the total sale consideration itself would only Rs.3,50,00,000/-. The stamp duty now claimed as under valuation is thrice the total sale consideration itself.

8. As a matter of fact, the copy of the Form-37, which was filed before the income tax authorities for getting clearance, which was mandatory at the relevant point of time would clearly and without any doubt make this fact clear as the relevant column No.3.(iii) as follows:-

"3.(iii) Plant and Machinery : Nil"



Further, the balance sheet of the first appellant vendor, which is certified by the auditor and filed before the Registrar of Companies, clearly shows the plant and machinery as the assets of the vendor/ first appellant alone. This apart, on 08.04.2002, immediately after the sale, the first vendor and the second vendor entered into a lease agreement, by which, the first appellant, after selling the immovable property to the second appellant, continued in the property as a tenant carrying on its own business.

9. The learned Senior Counsel also took this Court through the Registered Lease deed, thereafter, entered into in the year 2015 on 25.08.2015 between the first and second appellants to verify the fact that all alone the first appellant continued to be as tenant under the second appellant and carried on its own business. He would draw the attention of this Court to the annual accounts report of both appellants, whereby, also it is clear that the plant and machinery was not sold to the second appellant.

10. This apart, by referring to a series of documents, relating to the licensing of the business, the learned Senior Counsel would point out that initially itself, the license to run business was granted only to the first appellant and till date, the license given by the TRAI and other authorities are only in the name of the first appellant. As a matter of fact, on 16.02.2015, queries were addressed under Right to Information Act to which exact information is given on 26.12.2015 by the Department of Telecommunication, in and by which, it is made clear that it is the first appellant, who was issued the license to run business within the city of Coimbatore on 12.12.1995 and the license continued to be with the first appellant and the business is run only by the first appellant and not by the second appellant.

11. According to the Learned Senior Counsel, when all these overwhelming documents are on record and are filed before the original authority as well as the appellate authority, the respondents simply ignored the same and erroneously mulcted a huge sum of additional stamp duty on the appellants. The appellants are accepting the higher value fixed for the land and building. By their erroneous interpretation, the respondents are trying to change the ownership of the business itself. The respondents' authorities cannot effect a transaction contrary to the intention of the parties only for



WEB COPY

the sake of collecting additional stamp duty on an honest transaction. Therefore, he would pray that this is a fit case that this Court should interfere and set aside the demand of the additional stamp duty and in respect of the plant and machinery alone.

12. Per contra, Mr.J.Ravindran, learned Additional Advocate General, appearing on behalf of the respondents would submit that all the other documents relied upon by the Learned Senior Counsel for the appellants are as self-serving documents and need not to be taken into account. It is his submission that as far as the matter of claim of stamp duty is concerned, it should be determined only on the basis of and on considering the concerned document alone, i.e., the Sale deed, dated 26.03.2002 alone. A perusal of the said sale deed clearly establishes that the immovable property, namely the land and building is transferred by the first appellant to the second appellant together with all the things permanently attached thereon which makes it abundantly clear that the business itself is sold as an ongoing concern on an 'as is where is' basis and therefore, the authorities have rightly interpreted the document and levied the additional stamp duty, which is in respect of plant and machinery also.

13. Secondly, the learned Additional Advocate General would submit that the very purpose of rectification is to rectify some error or undo something which is there in the original document. Therefore, when the parties have registered a rectification deed on 26.02.2003 stating that they have not sold the plant and machinery, it would confirm the fact that the plant and machinery is actually sold under the original sale deed. He would submit that the conduct of parties in registering the rectification deed, that too, interdicting in the course and process of inspection so as to undo the entire effort of the statutory authorities would itself demonstrate the sinister designs of appellants to undervalue the document.

14. He would further submit that the conduct of the appellants, whereby, the property, which was purchased by the first appellant vendor in the year 1996, for a sale consideration of Rs.6,00,00,000/- is sold for only a sum of Rs.3,50,00,000/- in the year 2002, considering the escalation of price in the city of Coimbatore, during the said period would picturize the actual intention of the appellants herein to hoodwink the Government and evade payment of stamp duty.



15. He would submit that as a matter of fact the appellate authority has rightly given rebate of the value of the computer and printers, which are movables and fixed the value in respect of the plant and machinery which are embedded to earth alone. The judgment of the Hon'ble Supreme Court of India and the consequent circular issued by the department implementing the judgment is very clear and categorical. The parties in this case are attempting to escape from the payment of the actual stamp duty by not valuing the major and important component of plant and machinery embedded to the property, when the entire premises is being sold and taken over by the purchaser.

16. He would further submit that the copies of the lease deeds are a matter between the appellants themselves and they can very well create the self-serving documents and can keep the license in whatever name. It will not be the concern of the revenue and it is the duty of the revenue to go by the document and document alone for the purpose of valuation and the additional value has been determined by following the due process of law, after affording opportunity to the appellants and therefore, the orders of the statutory authorities, being perfectly in order, need not be interfered with by this Court and the appeal deserves to be dismissed.

The points for consideration :

17. We have considered the rival submissions made on behalf of the parties and the materials on record including orders passed by the original and appellate authority. Upon consideration thereof, the following questions arise in this appeal for consideration:

(i) Whether or not the Sale deed, dated 26.03.2002 transfers the ongoing business on 'as is where is' condition along with plant and machinery?

(ii) What is the scope of rectification deed and whether the entering of the rectification deed for clarifying a fact would mean the existence of the same in the original document?

(iii) Whether the intention of the parties is to sell the plant and machinery and whether it can be



ascertained from the other documents and circumstances also?

Question No.1:

18. As far as the subject matter document, namely Sale deed, dated 26.03.2002 is concerned, it clearly states that it is for a sale consideration of Rs.3,50,00,000/-. The vendor, the first appellant is thereby conveying the schedule mentioned property to the purchaser. The schedule clearly describes the land and building alone. The Annexure- I-A describes the structures which are sold and the value of the building and the electrical installation etc., which are sold. Therefore, on a perusal of the sale deed, it can by no way be concluded that it is a sale of ongoing business on an 'as is where is' condition with plant and machinery. The sale deed contains this usual covenant of transfer which reads as follows:-

"The VENDOR doth hereby sell, grant, transfer, convey and assign absolutely to and unto the PURCHASER all that piece and parcel of immoveable property bearing Plot No.7 (Part) and 8, forming part of Survey No.598, the land measuring 19870 Square feet and the building measuring 24365 Square feet situate at Annupparpalayam Village, Ward No.5 (New No.71, Coimbatore Town, Coimbatore Taluk, Coimbatore more particularly described in the schedule hereunder written TOGETHERWITH all the things permanently attached thereto or standing thereon and all the privileges, easements, profits, advantages, rights and appurtenances whatsoever to the said property or any part thereof belonging or anywise appertaining thereto AND ALL the estate, right, title, interest, use, possession, benefit, claim and demand whatsoever at law or otherwise of the VENDOR to the Schedule Property hereby conveyed and every part thereof or appurtenant thereto AND ALL the right, title and interest claim and equities whatsoever of the VENDOR into and upon the same TO HAVE AND TO HOLD the same unto and to the use and benefit of the PURCHASER absolutely and forever and free of all encumbrances."

(emphasis supplied)



19. Every recital in the sale deed make it clear that the vendor is selling only the schedule property namely, the immovable property alone the meaning of the above clause could only be that the permanent fixtures to the building such as doors, windows and other fixtures relating to the immovable property are being sold and not the business or plant and machinery relating to the business. The above recital is only an express statement of what is conveyed with the immovable property as per Section 8 of the Transfer of Properties Act. As far as plant and machinaries are concerned, in the matter of Duncans Industries Ltd Vs. State of U.P. And Others¹, the Supreme Court of India held as follows :

Para 8: "... The question whether a machinery which is embedded in the ear this movable property or an immovable property, depends upon the facts and circumstances of each case. Primarily the court will have to take into consideration the intention of the parties (sic party) when it decided to embed the machinery, whether such embedment was intended to be temporary or permanent.

Para 10 : .. A perusal of clauses 10,11 and 13 of the said deed show that it is the fertilizer factory which the vendor had agreed to transfer along with its business as a going concern and to complete the same the conveyance deed in question was being executed. There is implicit reference to the sale of fertilizer factory as a going concern in the conveyance deed itself. That apart, the inclusion of Schedule III to the conveyance deed wherein a plan delineating the various machinaries comprising of the fertilizer factory is appended"

Thus, the judgment of the Hon'ble Supreme Court of India and the circular, mentioned supra, apply to a case where a factory or an industry is sold and the major component of such factories like boilers, conveying facilities and such other machinery,

¹MANU/SC/0757/1999



WEB

which may be the permanent fixtures only form part of the major consideration, but, however, the parties cannot escape liability by showing the same as plant and machinery and the immovable property to consist only of the shell/shed alone and escape payment of actual stamp duty. It is only in that context when a business is sold the plant and machinery which are embedded on the earth is also directed to be a part of the immovable property for the purpose of valuation. But, in the instant case, there is absolutely nothing whatsoever in the document to show that there is a sale of business. Therefore, when there is no sale of business at all there is no question of any presumption of the plant and machinery either being part of the sale or being part of the immovable property. This apart, lease deed would show that the building was let out by M/s.R.A.G. Constructions and Real Estates Private Limited to M/s.B.P.L. Cellular Limited, Coimbatore, who is occupying the property only as a tenant. Even the Annual Report of M/s.B.P.L. Cellular Limited for the years 200-2003 and 2003-2004 duly certified as true copies would show that depreciation is still claimed for those equipments by M/s.B.P.L. Cellular Private Limited and without those equipments, they cannot carry on the business. Besides, the Income Tax - Form 37, rectification deed and the rental deed would clearly prove the claim of the appellant that they have not purchased plants and machinery, however, without any contra evidence, the Registering authority were totally wrong to say that the second appellants are the owners of the plants and machinery. We answer the question accordingly.

Question No.2:

20. In this case, after the inspections were carried out and when the authorities were in the process of issuing show cause notice in Form-II, just before the issue of Form-II notice on 25.03.2003, the appellants entered into deed of rectification and registered the same on 24.02.2003, the said rectification document apart from correcting some mistakes as to the measurements in the land, also states as follows:-

"WHEREAS the above mistakes came to the knowledge of the PURCHASER now and the PURCHASER requested the VENDOR to correct the same. Furthermore the PURCHASER herein requested the VENDOR to make it clear that the plant and machinery, Cellular Micro Tower, Interiors, Computer systems, peripherals, air conditioners, wall paneling, false ceiling and other



WEB COPY

movables found in the property described in the Schedule 'A' and 'B' are not conveyed to the PURCHASER and that they absolutely belong to the VENDOR who are continuing their business in the property sold as tenant on rental basis. Whereas THE PURCHASER also requested the VENDOR to prepare and attach a site plan mentioning therein sectionwise and total measurement of the land therein in respect of the property sold.

... ..

3) The VENDOR herein categorically and clearly declares that the plants and machinery Cellular Microwave Tower, interiors, Computer systems, peripherarals, air conditioners, wall paneling false ceiling and other movables belong to the VENDOR only and were not sold to the PURCHASER at any point of time. They form an essential and integral part of the cellular business carried on by the VENDOR in the property sold herein on a rental basis."

(Empahsis Supplied)

21. Now, therefore, the contention of the learned Additional Advocate General that the rectification deed can be entered into only for the purpose of undoing or modifying of something which is contained in the original deed and therefore, his submission that once parties declared that they are not selling the plant and machinery by way of rectification deed, it should be inferred that they actually sold plant and machinery by the original deed, are far fetched, hence, we cannot accept such a submission. Whenever the rectification deed includes any additional property on which the duty is not charged, the rectification deed will be charged as if it were a sale deed as per Section 47-B of the Act. Thus, the scope of rectification deed may differ in every case. Rectification deed can be for rectification of mistake or on an inadvertent error or even clarifying the original document. Apart from correcting an error or removal of defect, Rectification deed can also remove 'imperfection' in the earlier document. The Hon'ble Supreme Court of India, in Assistant Commercial Taxes Officer Vs. Makkad



WEB COPY

Plastic Agencies², while considering the meaning of 'Rectification' under the Sales Tax Act, held in paragraph 14, that

"Rectification implies the correction of an error or a removal of defects or imperfections. It implies an error, mistake or defect, which after rectification is made right" (emphasis supplied)

Thus, when the rectification deed also mentions that the plant and machinery are not sold, it only clarifies the imperfection and the contention of the revenue that there has been a sale of plant and machinery which is running contra to the rectification deed is wholly misconceived and illogical as the mistake of fact can be always rectified, by moving rectification deed with consent of both parties. Therefore, we answer the question accordingly.

Question No.3:

22. The Hon'ble Supreme Court of India, even in the Duncans' case above had in para 8, held thus :

"..... The Court consider the said question will have to take into consideration the intention of parties which embedded the machinery and also the intention of the parties who intend alienating that machinery."

(emphasis supplied)

A reading Section 47-A (1) of the Act, would make it clear that the reference shall be made at the Collector if the registering authority has 'reason to believe' that the instrument does not set forth the true value of the subject matter. Rule 3.3 of the Tamilnadu Stamps (Prevention of Undervaluation of Instruments) Rules, 1968 provides that __

'The Registering Officer, may, for the purpose of finding out whether the market value has been correctly furnished in the instrument, make such enquiries as he deem fit. He may elicit from the parties

² 2011 4 SCC 750



concerned any information bearing on the subject and call for and examine any records kept with any public officer.'

WEB COPY

23. Therefore, it is clear, that the intention of the parties as to what formed part of the sale, ought to be inquired into. It is incorrect on the part of the registration authority, to contend that the other documents even filed before Public Authorities, namely, Balance Sheets before the Registrar of Companies, Form 27 before the Income Tax Authorities could not even be looked into. The documents produced by the appellants before the respondents, including information from the Public Information Officer under the Right to Information act, all categorically demonstrate that there was no sale of the ongoing business in 'as is where is' condition with the plant and machinery and that the sale is only relating to the immovable property and that the first appellant is still the owner of those plant and machinery and is running its own business, even as on the date, in the same premises as the tenant of the second appellant and the question is answered accordingly.

The Order :

24. Therefore;

(i) The impugned order of the second respondent, dated 26.03.2003 and the first respondent, dated 27.04.2005 are set aside in as much as they demand the additional stamp duty on the plant and machinery, valued at Rs.60,87,75,000/-;

(ii) As undertaken by the appellants, they are directed to pay additional stamp duty on the land and building, demanded under the impugned orders, with the interest at the rate of 2% per month, from the date of the order of the original authority till the date of payment, excluding the pendency of this proceedings, in any event, within a period of four weeks from today;

(iii) There will be no order as to costs.



WEB COPY

26. The Civil Miscellaneous Appeal is allowed accordingly.
Consequently, C.M.P.Nos.20265 of 2005 and 447 of 2021 are closed.

SD/-
ASSISTANT REGISTRAR

// TRUE COPY //

SUB ASSISTANT REGISTRAR

grs
To

1.The Inspector General of Registration,
Tamilnadu Principal Revenue Controller,
Chennai - 600028.

2.The District Revenue Officer (Stamps),
Collectorate Compound,
State Bank Road,
Coimbatore - 600018.

3.The Joint Sub-Registrar,
O/o. The District Registrar,
Coimbatore.

+3cc to M/s.OJAS Law firm, Advocate Sr.5049
+1cc to the Government Pleader Sr.5650

C.M.A.No.1836 of 2005

kv[co]
srg 03/03/2022