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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11 / 04 / 2022

CORAM:

THE HON'BLE MR.JUSTICE M.GOVINDARAJ

WP NO.9295 OF 2010

1.Dr.S.Rangarajan
2.Rukmani Santhanam

3.Thomas Rajan
4.Sujatha Thomas
both residing at No.901, Silver Cascade,
Mt.Mary Road, Bandra,
Mumbai - 400 050.
Both represented by their Power of Attorney
Agent K.Ravi ... Petitioners

Vs.

1.The Chief Controlling Revenue Authority
and Inspector General of Registration
Tamil Nadu
No.100, Santhome High Road,
Santhome, Chennai - 600 028.

2.The Sub-Registrar
Periamet
1103, Poonamallee High Road,
Periamet, Chennai - 600 003. ... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus, calling for the records of the proceedings of the first respondent in the order D.Dis.No.15636/P1/2009 dated 08.02.2010 confirming the order No.I 2/08 dated 29.01.2009 of the second respondent and quash the same and consequently direct the respondents to register and release the Deed of Rectification dated 10.11.2008 assigned pending registration No.50 of 2008 in the Office of the second respondent to the petitioners without levying any further stamp duty, registration fee or penalty.

For Petitioner : Mr.P.J.George

For Respondents: Mr.M.Rajendran
Additional Government Pleader

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ORDER

The first petitioner Dr.S.Rangarajan purchased the property in R.S.No.143/61, Block No.11, Egmore Village, Nungambakkam Taluk, Chennai, by virtue of two registered Documents of Sale, bearing Registration Nos.1092 and 1094 of 1971 dated 26.03.1971.

2.The second petitioner Rukmani Santhanam got the property in R.S.No.143/60, Block No.11, Egmore Village, Nungambakkam Taluk, Chennai, by virtue of a Settlement Deed bearing Document No.66/2006 dated 12.01.2006.

3.Thus, it is clear that Dr.S.Rangarajan is the owner of the property situate in R.S.No.143/61 and Rukmani Santhanam is the owner of the property situate in R.S.No.143/60. The derivation of title was by two different modes. In the case of Dr.S.Rangarajan, the conveyance of the property was by registered Deed of Sale. In the case of Rukmani Santhanam she got the property through a registered Deed of Settlement. The first transaction of sale by the first petitioner was on 26.03.1971 and the second transaction viz., Deed of Settlement was on 12.01.2006. Both these transactions do not have any connection.

4.It is pertinent to note that both of them have given Power of Attorney to one Mehul H. Doshi. The said Power of Attorney entered into a Developers Agreement with both the first and second petitioner.

5.The third and fourth petitioners are the intended purchasers of the Flats developed by the Power of Attorney Mehul H. Doshi. The said Power of Attorney is supposed to convey 2555/7600 UDS in S.No.143/61. In other words, he must have conveyed the UDS from the property owned by Dr.S.Rangarajan in S.No.143/61. Whereas, by a registered Deed of Sale bearing No.24/2008 dated 04.01.2008, sold 2555/7600 UDS in S.No.143/60. This means, he sold the property of Rukmani Santhanam instead of selling the property of Dr.S.Rangarajan.

6.Now that, the third and fourth petitioners have to get a conveyance of 2555/7600 UDS in R.S.No.143/61. This, they want to achieve by registering a Rectification Deed. This 2555/7600 UDS in S.No.143/61 is sought to be rectified by substituting the property which was already conveyed in

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R.S.No.143/60. The original owner Dr.S.Rangarajan was described as a "Vendor" in the Rectification Deed and the owner of the property in S.No.143/60 which has already been conveyed was described as a "Confirming Party".

7.The respondents, considering the conveyance of a new property that is to say 2555/7600 UDS of land in R.S.No.143/61 have demanded stamp duty treating this Rectification Deed as a conveyance.

8.According to the petitioners, it was a clerical error. Instead of selling 2555/7600 UDS from R.S.No.143/61, it was typed as R.S.No.143/60 and instead of showing the Vendor as "Dr.S.Rangarajan", it was shown as "Rukmani Santhanam". The mix up which had happened while typing the Deed can be rectified.

9.The learned counsel for the petitioners would rely on Section 47-B of the Indian Stamp Act, 1899 and contend that it is only a clerical error and it can be corrected in view of the above said provision. He would further contend that the Rectification Deed should be read conjointly with the Principal Deed of Sale and the third and fourth petitioners who have already suffered stamp duty for conveyance of the property should not be charged the stamp duty again and it will amount to double payment.

10.The learned Additional Government Pleader would contend that the property conveyed is entirely a new property and the Vendor is a new party. Therefore, there cannot be a Rectification Deed and it shall be construed as a fresh sale. Hence, the order impugned does not warrant any interference.

11.Heard the submissions made on either side and perused the materials available on record.

12.From the perusal of the materials, it is noted that the first petitioner Dr.S.Rangarajan, purchased the property by virtue of a registered Deed of Sale dated 26.03.1971 in R.S.No.143/61, which is described as "A" Schedule in the Rectification Deed. The second petitioner Rukmani Santhanam got the property in R.S.No.143/60 by a registered Deed of Settlement dated 12.01.2006, which is described as "B" Schedule. By virtue of a registered Deed of Sale bearing Registration No.24/2008 dated 04.01.2008, the said Rukmani Santhanam through her Power of Attorney sold 2555/7600 UDS in R.S.No.143/60. This sale is a valid sale in so far as Rukmani Santhanam is concerned. The first petitioner, cannot have a say in respect of the sale made

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vide Document No.24/2008 dated 04.01.2008. Now that the third and fourth petitioners have purchased the Flat within 2555/7600 UDS in R.S.No.143/61. But the UDS sold to them by Rukmani Santhanam through her Power of Attorney was in R.S.No.143/60.

13.The purchase of UDS in R.S.No.143/60 does not get affected. It is a valid sale. They want to purchase 2555/7600 UDS in R.S.No.143/61 and they have to purchase it from Dr.S.Rangarajan. The same shall be through a Deed of Conveyance to which stamp duty is charged.

14.Now that, all the petitioners joined together and changed the property as well as the Vendor in the guise of rectification. The respondents have rightly found that when a new party is introduced to sell a new property, then it shall be construed as a conveyance under Section 23 of the Indian Stamp Act, 1899. In this Rectification Deed, the property which is sought to be conveyed is R.S.No.143/61. If the said Vendor namely, Rukmani Santhanam in Sale Deed No.24/2008 dated 04.01.2008 is the owner of the property, the survey number may be rectified. But, she is not the owner. She cannot convey the property which she does not own, much less, she need not be a Confirming Party for the sale of property in R.S.No.143/61. By adding the Rukmani Santhanam as a Confirming Party, as stated earlier, the sale of UDS in R.S.No.143/60 will not be affected. In other words, it cannot be reconveyed. The sale of the UDS in R.S.No.143/60 is a concluded contract. If at all the parties want to recall the same, it can be done only through reconveyance. But, it cannot be substituted with other property. In that view of the matter, the sale of 2555/7600 UDS in R.S.No.143/61 by Dr.S.Rangarajan is concerned, it is an independent transaction and it has nothing to do with sale of the property in R.S.No.143/60 made by Rukmani Santhanam through the same Power of Attorney.

15.Hence, the stand taken by the respondents that the sale of 2555/7600 UDS in R.S.No.143/61 by Dr.S.Rangarajan, the first petitioner herein is entirely an independent transaction and it would amount to a fresh conveyance and thereby, it attracts stamp duty under Section 23 of the Indian Stamp Act, 1899 is very much legal and correct. The petitioners cannot swap the Vendor and swap the properties as well. For the sale of the property in R.S.No.143/61 by its owner Dr.S.Rangarajan, the first petitioner herein, the third and fourth petitioners have to suffer stamp duty, it cannot be substituted in the place of conveyance of wrong property by its owner. Therefore, the order passed by the first respondent in D.Dis.No.15636/P1/009 dated

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08.02.2010 confirming the order of the second respondent in Order No.I 2/08 dated 29.01.2009 is confirmed and it does not require any interference.

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16.11.In fine, the writ petition merits no consideration and accordingly, stands dismissed. No costs.

Sd/-
Assistant Registrar(CS-III)

//True copy//

Sub Assistant Registrar

TK

To

1.The Chief Controlling Revenue Authority
and Inspector General of Registration
Tamil Nadu
No.100, Santhome High Road,
Santhome, Chennai - 600 028.

2.The Sub-Registrar
Periamet
1103, Poonamallee High Road,
Periamet, Chennai - 600 003.

+1cc to Mr.P.J.George, Advocate SR.No.25221

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AJS(CO)
GMY(01/06/2022)

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