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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.06.2023

CORAM

THE HON'BLE MR.SANJAY V.GANGAPURWALA, CHIEF JUSTICE

AND

THE HON'BLE MR.JUSTICE P.D.AUDIKESAVALU

W.A.No.917 of 2023

1.The Sub Registrar,
Neelangarai, Chennai-600 041.

2.The District Revenue Officer (Stamps),
Office of the District Collector,
5th Floor, M Singaravelar Building,
No.32, Rajaji Salai, Chennai-600 001.

3.The Chief Revenue Control Officer,
(Inspector General of Registration)
Santhome, Chennai-600 004.

4.The Special Tahsildar (Stamps),
Chennai-600 001. .. Appellants

Vs

M/s.Balachandra Builders,
A Company registered under the
Companies Act, 1956
No.A-5, First Floor, No.41, First Main Road,
Gandhi Nagar, Adyar, Chennai-600 020
rep. by its Managing Director T.Srinivasan .. Respondent

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Prayer: Appeal filed under Clause 15 of the Letters Patent against the order of the learned Single Judge dated 12.11.2021 made in W.P.No.2233 of 2019.

For the Appellants : Mr.Haja Nazirudeen
Addl. Advocate General
assisted by
Mr.P.Muthukumar
State Government Pleader

For the Respondent : Mr.S.Thangavel

JUDGMENT
(Delivered by the Hon'ble Chief Justice)

Heard Mr.Haja Nazirudeen, learned Additional Advocate General along with Mr.P.Muthukumar, learned State Government Pleader for the appellants and Mr.S.Thangavel, learned counsel for the respondent.

2. The appellants assail the order passed by the learned Single Judge, thereby allowing the writ petition filed by the present respondent and directing the first appellant herein to release the rectification deed dated 19.8.2009 registered vide Document

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No.1589 of 2010 forthwith.

3. Under the rectification deed dated 19.8.2009, the respondent wanted to rectify the area. The area was reduced in the rectification deed than the original instrument, but the boundaries remain the same.

4. Learned Additional Advocate General for the appellants strenuously contended that the learned Single Judge while delivering the judgment did not consider sub-section (14) of Section 2 of the Indian Stamp Act, 1899 in its correct perspective. The said provision states that every document, by which any right or liability is, or purports to be, created, transferred, limited, extended, extinguished or recorded, is included under the definition "instrument". Section 47-B of the Indian Stamp Act, 1899 could not be attracted in the present case. The survey was conducted and, therefore, the document i.e. the rectification deed was impounded.

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5. We have also heard learned counsel for the respondent.

6. Section 47-B of the Indian Stamp Act, 1899, amended by Tamil Nadu Act 38 of 1987, reads thus:

> *"**47-B. Stamp duty chargeable for instrument of rectification.-** Where a instrument purports to rectify any error in the description of property as set out in any previous instrument falling within the purview of section 47-A, then, the amount of duty chargeable in such instrument of rectification shall be the amount chargeable on it under Schedule I less the amount of duty, if any, already paid in respect of such previous instrument."*

7. It is a fact that boundaries and the consideration amount did not change. The area was reduced from 92.5 cents to 88.5 cents. It appears that a mistake had cropped up in conveying the property to the extent of 92.5 cents, which ought to be 88.5 cents. The stamp duty, it appears, is already paid for an area admeasuring 92.5 cents while registering the original instrument of sale.

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8. Section 47-B of the Indian Stamp Act, 1899, as re-produced supra, admits of no ambiguity. The language of Section 47-B is absolutely clear and does not admit of any other interpretation than the fact that the amount of duty chargeable for instrument of rectification shall be the amount chargeable on it under Schedule I less the amount of duty, if any, already paid in respect of such previous instrument.

9. It is not disputed that the stamp duty was already paid on the previous instrument, albeit for more area. In the rectification deed, the area was reduced, the boundaries remain the same. The description of the property also remains the same. It cannot be a matter of debate that the stamp duty on an area of 88.5 cents would be less than the stamp duty leviable on 92.5 cents. The respondent has already paid higher stamp duty while registering the initial document.

10. In the light of the above, the learned Single Judge has not committed any error while passing the impugned order.

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11. The writ appeal, as such, is dismissed. The appellants shall comply the order of the learned Single Judge within a period of fifteen days from today. There will be no order as to costs. Consequently, C.M.P.No.9177 of 2023 is closed.

(S.V.G., CJ.) (P.D.A., J.)
15.06.2023

Index : Yes/No
Neutral Citation : Yes/No
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THE HON'BLE CHIEF JUSTICE
AND
P.D.AUDIKESAVALU, J.

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