IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 28.07.2023
Pronounced on : 03.08.2023

CORAM :

THE HONOURABLE MR. JUSTICE SUNDER MOHAN

C.M.A.No.1239 of 2023 and
C.M.P.No.12103 of 2023

M/s.Kesar Textile Park India Pvt. Ltd.,
Rep. By its Director
Mr.Rameshchandra Nandlal Bhattad
Behind India Coffee House, Gokulpeth
Nagpur – 440 010. ...Appellant/Appellant

Versus

1.The Chief Controlling Revenue Authority,
(Inspector of General of Registration, Tamil Nadu)
100, Santhome High Road,
Chennai – 600 028.

2.The District Revenue Officer (Stamps)
The Office of the District Collector
Coimbatore – 18.

3.The District Registrar
Tiruppur District.

4.The Sub Registrar
Moolanur, Tiruppur District.

PRAYER : Civil Miscellaneous Appeal filed under Section 47 – A (10) of the Indian Stamp Act, against the proceedings of the Chief Controlling Revenue Authority (Inspector General of Registration, Tamil Nadu) made in Na.Ka.No.39589/N2/2019 dated 11.04.2023.

For Appellant : Mr.AR.L.Sundaresan
Senior Counsel for
M/s.C.Ramesh

For Respondents : Mr.P.Harish
Government Advocate for
R1 to R4

J U D G M E N T

The above appeal challenges the Order passed by the first respondent bearing Reference No.Na.Ka.No.39589/N2/2019 dated 11.04.2023.

2.The brief facts leading to the filing of the above appeal are as follows:-

(a) The appellant/petitioner purchased land and building comprised in G.S.No.1352 measuring 7.23 Acres (2.92.5 Hectares) situated in Moolanur Village, Dharapuram Taluk, Tirrupur District, by Sale Deed dated 10.12.2010, registered as Doc.No.4310 of 2010 on the file of the

Office of Sub Registrar, Moolanur. The appellant paid stamp duty. As demanded by the Sub Registrar and they also paid an additional stamp duty of Rs.9,16,836/- (Rupees Nine Lakhs Sixteen Thousand Eight Hundred and Thirty Six only).

(b) Since the Sub Registrar of Moolanur did not hand over the documents, the appellant filed W.P.No.10291 of 2011 before this Court. This Court, by an order dated 21.04.2011 directed the Sub Registrar to hand over the Sale Deed to the petitioner subject to proceedings, if any, under Section 47-A of the Indian Stamp Act, 1899. The Sub Registrar found that the Sale executed in favour of the appellant was not only in respect of the land and the building but also included the machinery. Therefore, he recommended action under Section 47 A(1) of the Stamp Act, 1899, to the District Registrar, Stamps. Stating that no action was taken thereafter, the appellant had written a letter to the second respondent/District Revenue Officer (Stamps) herein on 25.04.2015 seeking details of the action taken. Since no reply was sent, he sent another reminder on 01.02.2018. Thereafter, he filed an application under the Right to Information Act on 19.11.2018 seeking information with regard to the status of the Proceedings. On coming to know that an order was passed on 27.08.2014, the appellant filed another application on

22.01.2019 under the Right to Information Act requesting a copy of the Order dated 27.08.2014. The 3rd Respondent/District Registrar (Administration) replied enclosing a copy of the Order dated 27.08.2014. In the said Order, the 2nd respondent held that the Sale was not only in respect of the land and building but also in respect of the machinery to the value of Rs.4,76,00,000/- (Rupees Four Crore Seventy Six Lakhs) and hence, directed the appellant to pay the difference in the stamp duty.

(c) Aggrieved by the said Order, the appellant filed a Writ Petition before this Court in W.P.No.20824 of 2019. This Court, by an Order dated 17.07.2019, disposed of the said petition leaving it open to the petitioner/appellant to file an appeal before the Appellate Authority, namely the first respondent/Chief Controlling Revenue Authority herein. Thereafter, the appellant filed an appeal before the first respondent herein stating that the Sale Deed was only with respect to the land and building and not machinery; that the Vendor was a Spinning Mill and it became sick due to financial crisis and therefore, it remained closed; that the 3rd respondent in his earlier proceeds dated 01.04.2011 had stated that the property sold under the Sale Deed was only land and building and hence, the order under challenge had to be set aside.

(d) The 1st respondent found that the concern sold was an ongoing concern and the machinery sold was embedded in the earth; that it has to be treated as immovable property and included in the valuation for collecting stamp duty; and therefore, held that the appellant was liable to pay the stamp duty for the value of the machinery.

3. Challenging the above Order passed by the 1st respondent, the appellant has preferred the above appeal.

4.Mr. AR.L.Sundaresan, the learned Senior Counsel for the appellant, submitted:

(a) that it is clear from the recitals in the Sale Deed that what was sold was only land and building and not the machinery. In such circumstances, there cannot be a presumption that the machinery was also sold under the Sale Deed.

(b) that the concern of the Vendor was not an ongoing concern as they had closed it one year prior to the sale as they were running at a loss.

(c) That the Order of the 1st respondent is liable to be set aside since the Order was passed on an erroneous appreciation of the Judgment of the Honourable Supreme Court in ***Duncas Industries Ltd., Vs. State of Uttar Pradesh*** reported in ***AIR 1998 SC 72.*** In the facts of that case, the Honourable Supreme Court held that the parties intended to sell the business concern, and hence, it would include the plant and machinery embedded in the earth. The learned Senior Counsel therefore, submitted that the said Deed is not applicable to the facts of the instant case.

(d) The learned Senior Counsel submitted that the Honourable Supreme Court in ***Duncas Industries Ltd., Vs. State of Uttar Pradesh*** (cited supra) held that the question of whether the machinery would be immovable property or not for the purpose of levying stamp duty would depend on facts and circumstances of each case.

(e) The learned Senior Counsel relied upon the Judgment of a Division Bench of this Court in ***Vodafone Idea Limited and Another Vs. Inspector General of Registration and others*** reported in ***AIR 2022 Mad 87 : (2022) 2 Mad LJ 58***. In that case, the Sale Deed originally sought to convey the land, building and machinery. It was rectified subsequently to the effect that the machinery was not sold under the sale deed. The Division Bench held that even in those cases, it cannot be held that what was conveyed included the machinery. The Division Bench further held that when there is no sale of the business, there is no question of a presumption that plant and machinery was part of the sale.

5. Mr.P.Harish, the learned Government Advocate appearing for the respondents, submitted that the Judgments relied upon by the learned Senior Counsel are not applicable to the facts of this case and that the appellant had admitted that the machinery was sold by a separate Invoice dated 07.12.2010, three days prior to the registration of Sale Deed. The Invoice shows that the machinery was sold for the price of Rs.4,96,00,000/- (Rupees Four Crore Ninety Six Lakhs Only). Since the appellant had admitted the sale of machinery, it has to be inferred that in the Sale Deed, the appellant had suppressed the fact that the machinery was embedded in the earth and was conveyed.

(a). The learned Government Advocate further submitted that Honourable Apex Court in ***Duncas Industries Ltd., Vs. State of Uttar Pradesh*** (cited supra) held that where the concern is sold, it has to be presumed that it was sold with the plant and machinery; that, therefore, the appellant had undervalued and executed the sale deed, supressing material facts and hence, liable to pay additional stamp duty demanded by the second respondent.

6. The short question involved in the instant appeal is whether the appellant is liable to pay additional stamp duty for the purchase of machinery worth Rs.4,96,00,000/- from the Vendor, though they had not shown the machinery in the schedule to the Sale Deed. Admittedly, the Sale Deed does not mention the fact that a going concern is sought to be sold. The Sale Deed only mentioned about the sale of land and building. It is also an admitted fact that, there was an Invoice dated 07.12.2010 for the purchase of machinery. Thereafter, it appears that a letter was sent by the appellant to its Vendor cancelling the agreement to buy the machinery. It is also seen from the records that the 3rd respondent had sent a letter to the 4th respondent on 01.04.2011, in response to its letter dated 17.03.2011 bearing No.54 of 2011 stating that since the Sale Deed only refers to the land and building, the stamp duty should be levied only for the value of the land and building. However, on 11.05.2011, the 2nd respondent sent a letter to the appellant claiming stamp duty for the value of the machinery. The appellant objected to said notice stating that

though originally they had purchased the machinery on 07.12.2010 under a separate invoice, it was subsequently cancelled, and the same was accepted by the Vendors. The appellant had also objected to the valuation fixed for the land and the building. Thereafter, it appears that no orders were passed. According to the appellant, no orders were communicated to them and the documents were also not released. Therefore, they had filed an application under the RTI Act and learnt that the District Revenue Officer/2nd respondent had passed an order in August 2014 holding that the appellant is liable to pay a deficit stamp fee, including the value fixed for the machinery. The respondents had not produced any document to show that the said Order was communicated to the appellant.

7. Be that as it may. The 1st respondent by the impugned order found that the appellant had not established that the sale did not relate to an ongoing concern; and that, since the machinery was embedded in the earth, it had to be treated as immovable property. In ***Duncas Industries Ltd., Vs. State of Uttar Pradesh's*** case, the Honourable Apex Court had dealt with a case where the deed of conveyance indicated that the transfer was of the business of the Vendor. The Honourable Supreme Court found that the business included plant and machinery and therefore, the

purchaser was liable to pay stamp duty for the machinery. The Honourable Apex Court held that in the said case that the question of whether the machinery was embedded in the earth is a question of fact and would depend on facts and circumstances of each case.

8. Now adverting to the facts, the appellant in their reply to the notice sent by the 2nd respondent, had stated as follows:

> "*We submit that we purchased the land and buildings of a sick and closed industry under the said sale deed. The machinery which were not embedded to the land and which were not used for a long period by our vendors were not included in the said sale deed. Originally we have separately negotiated and purchased the machinery on 07.12.2010 under a separate invoice and also paid VAT on the purchase price. Hence we are not able to pay the stamp duty on the value of the said machines.*
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> …
>
> "*Further the said machinery,*

because of their non user for a long time were impaired and worned out and hence we found them unsuitable and therefore subsequently we have cancelled the deal of purchasing the same and it has been accepted by our vendors as well. For this reason also we are not liable to pay the stamp duty on the value of the said machinery."

The Schedule of Property in the Sale Deed reads as follows:

"In the Registration District of Erode and presently Tirupur Registration District, in the Sub Registration District of Moolanur, in Dharapuram Taluk in Moolanur Village, GS.No. 1352 Punjai Acre 7.23 or hectare 2.92.5 tharam Rs.4.05 having the following Boundaries.

On the North	*Lands in S.P.Nos. 1317 & 1318*
On the South	*Lands in S.P.Nos. 1353 & 1354*

On the East	*North South Tar Road in S.F.No.1354*
On the West	*Land in S.F.Nos.1315 & 1316*

Within the above boundaries dry acres 7.23 or hectare 2.92.5 of land with all R.C.C. and A.C.C. buildings constructed thereon together with compound walls and fence with right of ways.

Property bearing Door Nos.17/26, 18/27, 19/28, 20/29, 21/30, 23/32 and 21-A, B, C and D."

9. The above would show that the Sale Deed did not convey the Vendor's business. The appellant had specifically stated that the machinery was not embedded in the earth and they had withdrawn their deal with regard to the sale of the machinery. The appellant had also shown that it was not an ongoing concern. In such circumstances,

the burden is on the respondents to show that the property conveyed, included the machinery and the same was embedded in the earth and therefore, has to be treated as immovable property. The order of the first respondent does not indicate how he came to the conclusion that the business of the Vendor was an ongoing concern and the machinery was embedded in the earth. Though the first respondent has referred to the sale invoice and the subsequent cancellation, there is no discussion. The 1st respondent had simply presumed that the machinery was embedded in the earth and was also part of the sale and had observed that the appellants had not produced any document to show that it was not an ongoing concern. This Court is of the view that such a presumption cannot be made, especially when the Sale Deed does not convey the machinery. There is also a specific stand by the appellant that the machinery was not embedded in the earth. In this regard, it would be useful to refer to the observations of the Division Bench of this Court in ***Vodafone Idea Limited and Another Vs. Inspector General of Registration and others*** which is extracted hereunder:-

> *"21.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. 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 or 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.''

10. Therefore, this Court is of the view that if the respondents'

claim that the machinery was embedded in the earth and were part of the sale, it must be based on acceptable evidence and not on presumption. Since the order passed by the first respondent confirming the 2nd respondent proceeds on surmises and conjectures, it cannot be sustained. The Order, in as much as it levies stamp duty for the machinery is set aside. The deficit stamp duty demanded, if any, for the differences in the value of land and building, however, cannot be assailed.

11. Therefore, the Civil Miscellaneous Appeal is allowed accordingly with the above observations. No Costs. Consequently, the connected Miscellaneous Petition is closed.

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03.08.2023

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Index: Yes/No
Speaking Order / Non-Speaking Order
Neutral Citation: Yes / No

To

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(Inspector of General of Registration, Tamil Nadu)
100, Santhome High Road,
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SUNDER MOHAN, J

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