IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25-03-2024

CORAM

THE HONOURABLE MR.JUSTICE S.M. SUBRAMANIAM
And
THE HONOURABLE MR. JUSTICE K.RAJASEKAR

WA No.2276 of 2023
And
CMP No.19514 of 2023

1.The Inspector General of Registration,
100, Santhome High Road,
Chennai-600 028.

2.The Sub Registrar Joint 1,
District Registration Office,
Veppamara Street,
Arani Road,
Vellore-632 001. .. Appellants

-vs-

1.G.K.Ramesh Kumaar

2.K.A.Hussain Sheriff .. Respondents

Writ Appeal is preferred under Clause 15 of Letters Patent against the order passed by this Court in WP No.5995 of 2022 dated 22.03.2022.

For Appellants : Mr.B.Vijay,
Additiional Government Pleader.

For Respondents : Ms.V.Chellammal for
Mr.D.Padmanabhan

J U D G M E N T

[JUDGMENT OF THE COURT WAS DELIVERED

BY S.M.SUBRAMANIAM, J.]

The respondents in the writ petition, are the appellants before us.

2. The respondents herein presented mortgage by conditional sale for registration. The document was accepted by the Registering Officer and kept as pending document. Subsequently, the Registering Officer demanded stamp duty on the ground that the document presented for registration is mortgage by conditional sale. The recitals in the document also reveal that conditions are explicit. In the event of failure to return the

document, the same will be converted as sale. Thus the Registering Authority demanded stamp duty as applicable. However, the respondents filed writ petition stating that they are ready to make necessary corrections in the document, namely, mortgage by conditional sale, as simple mortgage and the said document may be released.

3. The learned Single Judge permitted the respondents/writ petitioners to re-present the document without any conditional clause as simple mortgage deed. If any such document is presented by the writ petitioners/respondents, the appellants are directed to register the same.

4. Question of return of document would not arise in the present case, since the document was taken on file and kept as pending document under the provisions of the Registration Act, 1908. Once the document is taken on file for registration and kept as pending Document No.148 of 2021, then direction to return the document to the presentant under the provisions of the Registration Act,1908, would not arise at all.

5. Mr.B.Vijay, learned Additional Government Pleader, appearing on behalf of the appellants, would contend that the permission granted to respondents to re-present the document is beyond the scope of the provisions of Registration Act. Once the document is identified as mortgage by conditional sale, the Registering Officer is empowered to recover the stamp duty, as applicable, as pending document, cannot be returned and there is no provision under Registration Act, to return the document to the presentant.

6. In support of the said contention, the learned Additional Government Pleader, appearing on behalf of the appellants, relied on the orders passed by the Division Bench of this Court in the case of **Inspector General of Registration vs. P.G.Jose and Others [pronounced on 31.08.2012 in Writ Appeal No.65 of 2011],** wherein in paragraph-9, it has been observed as under:-

> *"9. Admittedly, eighth respondent was not before the Sub Registrar. The Sub Registrar found that all the executants have not appeared before him and as such, the document was not registered.*

The respondents 1 to 4 wanted a specific direction from the Writ Court to register the document without keeping it pending on account of the non appearance of eighth respondent. The learned Single Judge moulded the relief so as to enable respondents 1 to 4 to get the document registered. There is no provision in the Registration Act, to amend the document which has already been produced before the Registrar. Therefore, we are inclined to set aside the order passed by the learned Single Judge. The impugned order is accordingly, set aside."

7. The judgment of the Division Bench of this Court in the case of **Special Deputy Collector (Stamps) and Another vs. M.Alfred [2017 (5) LW 212]**, wherein in paragraph-21, it has observed as under:-

"21. The object of the Registration Act is to give certainty to the title, preventing fraud, give evidentiary value to the documents and make them public (See In Re, Official Liquidator, High Court [2010 (2) CTC 113]). Therefore, the provisions of the Registration Act and the Stamp Act are acting on their respective fields to achieve

their distinct objects. They are not in pari materia. While Indian Stamp Act is actually a fiscal enactment, the Registration Act gives sanctity to the transactions. Section 61 of the Registration Act deals with endorsement and certificates to be copied and documents returned. This provision speaks about the return of documents. This has got nothing to do with the provisions of the Stamp Act, especially cases dealing with undervaluation and reference made under Section 47-A of the Indian Stamp Act. Therefore, the so called return can only be with respect to the document, over which no determination was made with respect to the market value of the property mentioned therein."

8. The learned Additional Government Pleader brought to the notice of this Court that the stamp duty payable under the Indian Stamp Act, has been determined by the Competent Authority, namely, the District Registrar in proceedings dated 23.11.2021. The said decision was communicated to the respondents vide proceedings dated 31.12.2021. However, the impounding of the document is yet to be made by the

Authorities, but no order has been passed impounding the document so far.

9. We are of the considered opinion that the document presented by the respondents, was not returned by the Registering Officer. It was kept as pending document. Thereafter under Section 33 of the Act, the stamp duty payable has been determined by the Competent Authority and was communicated to the petitioner.

10. Under these circumstances, the document kept pending, cannot be directed to be returned for making corrections or by converting the document as simple mortgage. Such a direction issued by the Writ Court, is beyond the scope of the provisions of the Registration Act, 1908. There is no provision to return the document at that stage.

11. The respondents, in the event of paying the stamp duty as demanded, the appellants are bound to return the document by following the procedures as contemplated. Therefore, the relief granted by the Writ Court is not supported by the provisions of the Act. Consequently, the order dated 22.03.2022 passed in WP No.5995 of 2022 is set aside.

12. Accordingly, the present Writ Appeal stands allowed. However, there shall be no order as to costs. Consequently, the connected miscellaneous petition is closed.

(S.M.SUBRAMANIAM,J.)

(K.RAJASEKAR,J.)

25-03-2024

Index : Yes/No
Internet: Yes/No
Speaking order/Non-Speaking order
Neutral Citation : Yes/No
Svn

To

1.The Inspector General of Registration,
100, Santhome High Road,
Chennai-600 028.

2.The Sub Registrar Joint 1,
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<u>S.M.SUBRAMANIAM, J.</u>
<u>AND</u>
<u>K.RAJASEKAR, J.</u>

Svn

WA 2276 of 2023

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