IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.04.2024

CORAM

THE HONOURABLE MR. JUSTICE N. SATHISH KUMAR

WP.No.31229 of 2022
and W.M.P.No.30666 of 2022

S.Udayakumar .. Petitioner

Versus

1.The Chief Controlling Revenue Authority
Chennai South/Inspector General of Registration
Mylapore, Chennai

2.The Deputy Registrar (Administration)
Deputy Inspector General of Registration
Coimbatore

3.The Sub Registrar
Peliamedu
Coimbatore – 641 018 .. Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the records of the first respondent pertaining to Pa.Mu.8305/P1/2022 dated 15.09.2022 confirming the certificate issued by the second respondent and quash the same consequently to complete the registration and release the rectification deed dated 12.03.2021 pending before the third respondent as P46/2021 on the file of the third respondent by assigning regular number in Book-I.

For Petitioner : Mr.G.Vijayakumar

For Respondents : Mr.B.Vijay
Additional Government Pleader

ORDER

This writ petition is filed challenging the order of the first respondent dated 15.09.2022 impounding the rectification deed pending, quash and consequentially seeks a direction to register and release the same.

2. It is the case of the writ petitioner that he has entered a construction agreement on 28.08.2020 registered as Doc.No.2604/2020 and the sale deed is also executed on 28.08.2020 as Doc.No.2605/2020. At the time of registration of the said construction agreement, due to oversight instead of correct number of plot No.3B, 3A has been mentioned. Immediately the petitioner executed a rectification deed dated 12.03.2021, whereas, the document has been impounded by the third respondent on the ground that that the same has been entered for a new Plot No.3B. The said order is confirmed by the first respondent and the petitioner was directed to pay a sum of Rs.99,976/- as deficit stamp duty. Challenging the same, this writ petition has been filed.

3. Counter has been filed by the third respondent stating that a rectification deed has been presented by the petitioner for the purpose of rectifying an error mentioning the flat number as 3B instead of 3A. The said

deed has been classified as a fresh construction agreement by the District Registrar in his order No.4708/B1/2021 dated 11.01.2022 passed under Section 40(1) (b) of the Indian Stamp Act, 1899 thereby demanding payment of deficit stamp duty of Rs.99,976/-. The revision filed is also upheld. It is the contention of the learned Additional Government Pleader that only for the purpose of changing 3A initially allotted to Mrs.Vidhya Murali into Flat No.3B, in other words for changing the allotted flat, the document in question has been entered upon between the parties. Hence, according to them, the Order impugned does not require interference from this Court.

4. It is the contention of the learned counsel for the petitioner that instead of Flat No.3B, 3A has been mentioned in the construction agreement. The learned counsel would also submit that 3A is already sold to Manimala. Therefore, to set right the correct number, the rectification deed has been presented and it is not a separate transaction.

5. The learned Additional Government Pleader for the respondents submitted that since rights have been created, a fresh right has been treated as in a fresh agreement. Hence, submitted that the order does not require interference.

6. Heard both sides and perused the materials placed on record.

7. The fact that Flat No.3A is already registered in favour of one Manimala on 03.02.2021 is not disputed. It is the specific case of the petitioner that due to oversight instead of Flat No.3B, Flat No.3A has been mentioned in the construction agreement dated 28.08.2020 registered as Doc.No.2604 of 2020. On perusal of the document in question makes it clear that the reasons assigned by the first respondent cannot be sustained legally for the simple reason that it is not the case of the respondent some other flat has been included, flat No.3A is already sold and registered in favour of one Manimala. Therefore, correcting the Flat Number by way of rectification at no stretch of imagination would amount to separate transaction, they may not come under Article 5(h)(i) of the Schedule I to the Indian Stamp Act. If at all to invoke such provisions, it must be established that the new agreement relates to the construction of separate building, whereas, the petitioner has purchased only one flat not more than one. Therefore, merely a mistake with regard to the flat number was crept in the document and the same is sought to be rectified by an another deed, it cannot be held that such rectification deed amounts to fresh agreement for construction of the building.

8. Such view of the matter, the impugned order is liable to be set aside and the same is hereby quashed. The third respondent is directed to register the rectification deed in P46/2021 dated 12.03.2021 by assigning the regular number in Book I and release the same within a period of one month from the date of receipt of a copy of this Order.

9. Accordingly, this writ petition stands allowed. No costs. Consequently, connected miscellaneous petition stands closed.

18.04.2024

dhk
Index :Yes/No
Internet :Yes/No
Neutral Citation : Yes/No

To

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