BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 16.02.2024

CORAM:

THE HON'BLE MR.JUSTICE P.DHANABAL

C.M.A.(MD)No.1290 of 2014
and
M.P.(MD)No.1 of 2014

M.Sheik Hussian ... Appellant

Vs.

1.The Chief Controlling Revenue Authority
cum Inspector General of Registration,
Registration Department,
Santhome High Road,
Chennai – 28.

2.The Special Deputy Collector (Stamps),
Collectorate Campus,
Tiruchirappalli.

3.The Sub-Registrar,
Thiruvarambur,
Tiruchirappalli District. ... Respondents

PRAYER: This Civil Miscellaneous Appeal is filed under 47-A(10) of the Indian Stamp Act, 1899, praying to call for the records relating to the proceedings of the first respondent made in Mu.Mu.No. 37096/N4/2013 dated 03.11.2014, set aside the same and consequently remit the matter to the file of the first respondent for disposal afresh on merits and in accordance with law.

For Appellant : Mr.J.Antony Arul Raj
for Mr.D.Rajkumar

For Respondents : Mr.G.Sivaraja
Government Advocate [Crl. Side]

J U D G M E N T

****

This Civil Miscellaneous Appeal has been filed by the appellant as against the order passed by the first respondent in proceedings in Mu.Mu.No.37096/N4/2013 dated 03.11.2014, wherein the 1st respondent has passed an order under Section 47-A Sub-Clause 5, stating that the appellant has not filed appeal within two months from the date of order passed by the Sub-Collector [Stamps] under Rule 9(1) and the appeal was preferred after 7 ½ years. Therefore, the appeal was dismissed.

2.According to the appellant, he purchased the property in S.F.No.490/7R in Pathalapettai Village, Thiruvarambur Taluk, Tiruchirappalli District, measuring an extent of 2 acres on 03.09.1999 for valuable sale consideration of Rs.40,000/-. The said document was presented for registration before the third respondent and the same was registered on 09.09.1999. But the original document was not returned for want of deficit stamp duty. The second respondent issued notice dated 06.10.1999 and the appellant appeared and submitted his explanation on 25.10.1999. Thereafter, no further process took place in the said proceedings. All of a sudden on 25.01.2013, the Village Administrative Officer informed through postal card calling upon the appellant to remit a sum of Rs.1,00,638/- as deficit stamp duty for the said document. Thereafter, the appellant sent a letter dated 01.02.2013 to the second respondent. Thereafter only the appellant came to know that the second respondent already passed an order dated 16.11.2005 in Tha.Mu.Tha.Pa.No.2141/99/A, determining a sum of Rs.1,00,638/- as deficit stamp duty.

3.According to the appellant, the said order was not communicated to the appellant and the copy of the order was given to him only on 05.07.2013, by the second respondent. To that effect, the second respondent has also made an endorsement in the order. Therefore, he filed an appeal before the respondent on 31.07.2013. But the appellate authority without considering the above said facts simply passed an order saying that the appeal has been preferred after 7 ½ years and the appellant ought to have filed the appeal within two [2] months from the date of the order under Rule 9(1).

4.The second respondent filed a counter stating that the appellant purchased the property on 03.09.1999 and he paid stamp duty of Rs.4000/- as against the stamp duty fixed by the third respondent to the tune of Rs.1,00,638/- based on the guideline value. Since there was a deficit stamp duty, the third respondent referred the sale deed to the second respondent under Section 47(a)(1) of the Indian Stamp Act on 29.09.1999. The second respondent caused notice to the appellant on 06.10.1999 but he has not chosen to remit the same and release his document. Again, under “Samathan Scheme”, the appellant was offered an opportunity through notice dated 04.02.2005, but he did not avail that scheme. Thereafter, the second respondent caused Form-2 and Form-3 notices on 05.10.2005 and 16.11.2005, respectively. But the appellant has not responded to those notices. Thereafter, the second respondent initiated proceedings under the Tamil Nadu Revenue Recovery Act, 1864. Despite that the appellant has not chosen to remit the deficit stamp duty. Again the second respondent through urgent memos dated 05.07.2013 and 01.08.2013 directed the appellant to appear for direct enquiry, for that also he has not appeared. Hence, final notice dated 03.10.2014 was served to the appellant directing him to appear before the second respondent to put forth his defence. In the meantime, the appellant preferred appeal as against the order passed by the second respondent dated 16.11.2005 before the first respondent. The first respondent dismissed the appeal through order dated 03.11.2014, by holding that the appeal was preferred after a period of 7 ½ years. Therefore, the present appeal is liable to be dismissed.

5.Learned Counsel for the appellant would contend that the petitioner purchased the said property by virtue of sale deed dated 03.09.1999 and paid stamp duty for a sum of Rs.4000/-. Even in the counter affidavit, the respondent admitted that the second respondent caused notices to the appellant on 05.07.2013 and 01.08.2013 to appear for direct enquiry and thereafter, final notice was issued to him to appear before the authority on 03.11.2014 to put forth his defence. Therefore, the order passed by the third respondent that the appeal is filed after 7 ½ years is not acceptable since the second respondent himself admitted that the final hearing was fixed on 03.11.2014.

6.Learned counsel for the respondent would contend that already the third respondent fixed the stamp duty at Rs.1,00,638/- based on the guideline value for the said property. The appellant paid only Rs.4000/- and thereby they issued notices to pay deficit stamp duty. Thereafter, the matter was referred to the second respondent under Section 47(a)(1) of the Indian Stamp Act and thereafter, letter correspondences were sent to the appellant but he failed to avail those opportunities. In the meantime, he filed appeal as against the order passed by the second respondent before the first respondent and the first respondent passed the impugned order by dismissing the appeal stating that since it was filed after 7 ½ years, the order passed by the appellate authority is in order.

7.This Court perused the records and heard the learned Counsel on either side.

8.The main contention of the appellant is that he purchased the property on 03.09.1999. The third respondent has fixed the guideline value of the property as Rs.4,36,000/- per acre. But in the same survey number ie., S.No.490/7, he also purchased property to an extent of 9.14 acres and the guideline value was fixed at Rs.38,000/- by the same second respondent under Rule 47(a)(1) of the Act. But within a short span, when the impugned document was registered, they fixed the guideline value as Rs.4,36,000/- per acre. Therefore, the document was referred to second respondent for fixing the market value but thereafter, the appellant has not received any communication.

9.The second respondent also admitted that he issued notices to the appellant but the appellant has not appeared before him for enquiry and lastly the notice was sent on 03.11.2014, but the appellant has not appeared. In the meantime, the appellant preferred appeal before the first respondent and the first respondent passed the impugned order by dismissing the appeal. Therefore, from the above said admissions made by the second respondent, it is clear that the second respondent fixed the date as 03.11.2014, to put forth the defence of the appellant. While so, the order passed by the first respondent stating that the order under challenge was passed before 7 ½ years and thereby the reasons stated in the petition for the delay cannot be accepted is perverse. Therefore, it is appropriate to set aside the order passed by the first respondent and remit back the case to him for fresh consideration.

10. In the result, this Civil Miscellaneous Appeal is allowed and the impugned order passed by the first respondent is set aside and the matter is remanded back to the first respondent for fresh disposal and the first respondent is directed to pass orders after affording opportunity to the petitioner and dispose of the same within three [3] months from the date of receipt of a copy of this order. There shall be no order as to costs. Consequently, the connected miscellaneous petition is closed.

16.02.2024

NCC : Yes/No
Index : Yes/No
Internet: Yes/No
MR

To

1.The Chief Controlling Revenue Authority
cum Inspector General of Registration,
Registration Department,
Santhome High Road,
Chennai – 28.

2.The Special Deputy Collector (Stamps),
Collectorate Campus,
Tiruchirappalli.

3.The Sub-Registrar,
Thiruvarambur,
Tiruchirappalli District.

4.The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.

P.DHANABAL, J.

MR

C.M.A.(MD)No.1290 of 2014

16.02.2024