BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **15.07.2024**

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THE HON'BLE MR.JUSTICE R.VIJAYAKUMAR

C.M.A(MD)No.228 of 2018

South India Shelters Pvt.Ltd.,
No.14, Gulmohar Avenue,
Velachery MainRoad, Guindy,
Chennai-600 032,
Represented by its Assistant Marketing Manager,
Mohmed Faiz Ahmed. ... Appellant/Appellant

Vs.

1.Chief Controlling Revenue Authority and
Inspector General of Registration,
100, Santhome High Road,
Chennai-600 028.

2.The District Registrar (Admin),
Office of the District Registrar,
Tiruchirappalli-01.

3.The Joint-1 Sub Registrar,
Office of the District Registrar,
Tiruchirappalli-01. ... Respondents/Respondents

Prayer: Civil Miscellaneous Appeal is filed under Section 47 (A) (10) of the Indian Stamp Act r.w The Tamil Nadu Stamp Rules, 1968 to set aside the order of the Conttrolling Revenue Authority and Inspector General of Registration, dated 26.02.2018 in D.Dis.No.51173/P1/2017.

For Appellant : Mr.Raguvaran Gopalan

For Respondents : Mr.C.Satheesh
Government Advocate

JUDGMENT

The present appeal has been filed under Section 47 (A) (10) of the Indian Stamp Act r.w Tamil Nadu Stamp Rules, 1968 challenging the order passed by the Original and the Appellate Authorities under the said Act.

2. The appellant herein is a property developer and he has entered into an agreement for construction with several of his clients for construction of apartment. The development agreements were presented for registration and they were also registered and released. On a later point of time, an objection was raised by the registering authorities with regard to Clause (22) of the construction agreement, which is extracted as follows:

"22.Deposit of title deeds / Lien:

In order to secure payment of the installments as *specified supra, the CLIENT undertakes to deposit with the DEVELOPER the title deeds in respect of the CLIENT's said proportionate undivided share in the land on completion of registration of the sale deed in respect thereof, thereby creating a Mortgage by deposit of title deeds.*

The DEVELOPER shall also be entitled to a lien/charge over the said Apartment as a security against any dues of the CLIEMT under this Agreement and also to interest, with monthly rests at the rate of 15% per annum on any amount in arrears."

3. According to the authorities under the Stamp Act, this clause would amount to a mortgage and therefore, this agreement cannot be treated as a simple development agreement. Therefore, they have demanded additional stamp duty. Challenging the same, the developer had approached the Deputy Collector of Stamps on an appeal. Since there was no proper reply from the developer, the original authority has proceeded to confirm his provisional order. Thereafter, the appellant herein had approached the 1st respondent herein. The 1st respondent has also confirmed the said order considering Clause (22) as a mortgage. Challenging the same, the present appeal has been filed by the developer.

4. According to the learned counsel appearing for the appellant, Clause (22) is treated as a mortgage clause by the authorities under the Stamp Act and they are demanding additional stamp duty treating it as a mortgage deed. On instructions, he submits that both the developer and the clients have agreed to delete Clause (22) from the agreement which relates to this mortgage.

5. In view of the above said submission by the learned counsel appearing for the appellant herein, this appeal is disposed of on the following terms:

(i) The developer and the respective clients shall delete Clause (22) from the development agreement and thereafter, present the same before the 3rd respondent herein.

(ii) On such presentation, the deletion of Clause (22) shall be recorded by the registering authority and the document shall be returned to the clients.

(iii) Since Clause (22) is being deleted by consent of both the parties to a document, the document cannot be treated as a mortgage deed and the question of collecting additional stamp duty does not arise.

6. The Civil Miscellaneous Appeal stands disposed of on the above said terms. No costs.

15.07.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
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To

1.Chief Controlling Revenue Authority and
Inspector General of Registration,
100, Santhome High Road,
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2.The District Registrar (Admin),
Office of the District Registrar,
Tiruchirappalli-01.

3.The Joint-1 Sub Registrar,
Office of the District Registrar,
Tiruchirappalli-01.

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

R.VIJAYAKUMAR,J.

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Judgment made in
C.M.A(MD)No.228 of 2018

15.07.2024