BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 21.01.2025

CORAM

THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

W.P(MD)No.29036 of 2022
and
W.M.P(MD)No.23017 of 2022

R.Elangovan ... Petitioner

Vs

1.The Inspector General of Registration,
Santhome,
Chennai.

2.The District Registrar,
Madurai.

3.The Special Deputy Collector(Stamps),
District Collector Office,
Madurai – 625 020. ... Respondents

PRAYER: Writ Petition filed under Article 226 of Constitution of India, to issue a writ of Certiorarified Mandamus calling for the records relating to Form No.1 and 2 issued by the third respondent, dated 27.4.2018 vide proceedings SRNO.135/18/LR and quash the same and consequently to direct the third respondent to pass final orders in the proceedings initiated under Section 47-A of the Indian Stamp Act with reference to Document No.2896/2017, dated 22.09.2017 to drop the said proceedings.

For Petitioner : Mrs.Krishnaveni,
Senior Counsel
for Mr.P.Thiyagarajan

For RR 1 to 3 : Mr.D.Sadiq Raja
Addl.Govt.Pleader

ORDER

This Writ Petition has been filed challenging the Form No.1 and 2 issued by the third respondent, dated 27.04.2018 thereby directed the Petitioner to pay the deficit stamp duty to the tune of Rs.10,14,430/-.

2.Heard the learned counsel appearing on either side and perused the materials placed before this Court.

3.The Petitioner had purchased the property comprised in R.S.No.785/2 to an extent of 2 acres and 19 cents and the property comprised in R.S.No.785/3, to an extent of 3 acres and 3 cents, totally 5 acres and 22 cents situated at Maduvarpatti Village, Vaadipatti Taluk, Madurai from one R.I.Joseph, son of P.R.Immanuel vide document Nol62/2006. After purchase, the entire revenue records were mutated in favour of Petitioner and he was issued with patta in patta No. 1823 and 2149. While being so, one Solaiammal, who is the original owner of the subject property interfered with the peaceful possession and enjoyment of the subject property by the Petitioner on the ground that the Petitioner's father had no valid title over the property. She also filed a complaint before the District Collector and the same was forwarded to the Revenue Divisional Officer, Madurai. On the police complaint, an FIR was registered in Crime 167/2012 and subsequently, it was closed as mistake of fact. The fact is that Solaiammal owned the subject property and had executed a general power of attorney in favour of one Chandra on 1.3.1999. In turn, the general power of attorney had executed a sale deed in favour of the Petitioner's vendor R.I.Joseph on 4.9.2004. After sale, the said Solaiammal had cancelled the power of attorney deed on 2.5.2015. However, even before cancellation of power of attorney on 3.10.2005, the Petitioner had purchased the subject property from the said Joseph. Therefore, the Petitioner filed a suit for injunction as against Solaiammal in O.S.No.460 of 2015. While pending suit in order to purchase peace, the Petitioner had paid a sum of Rs.11 lakhs to the said Solaiammal and got settled the matter before Mediation Centre of Madurai District on 7.6.2018 on the following terms:

''4.........

(i)The Plaintiff and defendants settled the

matter out of Court and plaintiff and defendants informed before the Mediation that the defendants agreed the plaintiff's possession and enjoyment over the suit properties mentioned in plaint in O.S.No.460 of 2015 in A schedule property in S.No.785/2 and in B schedule property in S.No.785/3 and in total, an area of 5 acres and 20 cents. The defendants 1 to 3 have no objection as per the prayers in the suit.

(ii)The defendants 1 to 3 accepted the above terms and they agreed that they will not disturb the Petitioner's peaceful possession of the above said suit properties and also agreed that they will not claim any right by means of any legal proceedings in any Court of Law and the same was agreed by the plaintiff. The said settlement agreement was duly signed by the respective parties.''

4.On the basis of the settlement, the said Solaiammal also executed one consent deed in favour of Petitioner on 2.5.2017. It was presented for registration and got registered vide document NO.2896/2017. The said deed was valued at Rs.11 lakhs and accordingly, stamp duty was paid by the Petitioner to the tune of Rs.77,000/- alongg with Registration fees. After releasing the said consent deed, it was referred to under Section 47-A of the Indian Stamp Act. On such reference, the third respondent issued Form No.II on 21.10.2017 thereby calling upon objections for the amount arrived at by them to the tune of Rs.39,05,816/- towards deficit stamp duty. On receipt of the same, the Petitioner submitted objections and on receipt of the same, no final order has been passed. However, once-again, the third respondent issued Form No.I on 19.3.2018 thereby calling upon the Petitioner to make objections for the amount arrived at for the deficit stamp duty to the tune of 39,05,816/-. Once again, the Petitioner submitted objections. Thereafter, the third respondent issued Form NO.II on 27.4.2018 thereby calling upon the Petitioner to explain for the deficit stamp duty for the sum of Rs.19,14,430/- arrived at by them under Section 47-A of the Indian Stamp Act.

5.On a perusal of the counter filed by the second respondent and on the submissions made by the learned counsel for the second respondent, reveal that the consent deed was treated as a sale deed and valued the property and accordingly issued Form NO.I and II calling upon the Petitioner to pay the deficit stamp duty. The consent deed is also a deed of conveyance. On a perusal of the consent deed, dated 2.5.2017 reveal that the said Solaiammal and her sons have no objections and have no title over the subject property and also declared that as per the sale deed, dated 3.10.2005 registered vide Document NO.62/2006, the Petitioner can enjoy the property, for which, they have received a sum of Rs. 11 lakhs. Therefore no title was passed on in favour of the Petitioner by the consent deed. In the suit filed by the Petitioner for injunction in O.S.No.460 of 2015, on the file of the Principal Sub-Court, Madurai, the settlement arrived at between the Petitioner and the said Solaiammal and her sons before the mediation centre. In the mediation centre, issue was settled between themselves in the above said terms. Accordingly, the Petitioner had paid a sum of Rs. 11 lakhs and by way of abundant caution, on the instance of the Petitioner, the said Solaiammal and her sons had executed a consent deed. In fact, the consent deed does not require registration for enjoying the subject property by the Petitioner. Even then, by way of abundant caution, the Petitioner had obtained consent deed from Solaiammal and her sons and presented it for registration. The said deed was valued at Rs.11 lakhs and accordingly paid the stamp duty and registration fees. It was received and registered in favour of the Petitioner vide document NO.2896/2017. That apart, the third respondent initially issued Form No.I thereby fixed the stamp duty to the tune of Rs. 39,05,816/-.Thereafter, once again issued Form NO.I, thereby caling upon the Petitioner to submit objections for the deficit stamp duty arrived at Rs.19,14,430/-.The third respondent had failed to substantiate the difference between the first Form No.I and Second Form No.I issued to the Petitioner.

6.In view orf the above, the impugned notices issued in Form No.1 and 2 issued by the third respondent on 27.4.2018 cannot be sustained and liable to be quashed and accordingly, the same stands quashed. There shall be no order as to costs. Consequently, connected Miscellaneous Petition is closed.

21.01.2025

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

vsn

To

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G.K.ILANTHIRAIYAN, J.

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