
(2008) 04 MAD CK 0177

In the Madras High Court

Case No : C.M.A. No. 2048 of 2007 and M.P. No's. 1 and 2 of 2007

A. Vijayakumar and A. Udhayakumar

APPELLANT

Vs

The Tamil Nadu Chief Controlling Authority and Inspector
General of Registration, No. 120, Santhome High Road,
Chennai - 600 028 and The Special Deputy Collector
(Stamps) Virudhunagar Collectorate, Virudhunagar

RESPONDENT

Date of Decision : 21-04-2008

Acts Referred:

Limitation Act, 1963 — Section 5

Citation : (2008) 04 MAD CK 0177

Hon'ble Judges : S. Tamilvanan, J

Bench : Single Bench

Advocate : C.R. Prasanan, for the Appellant; R. Muthian, Spl.G.P. (CS), for the Respondent

Judgement

S. Tamilvanan, J.—This Civil Miscellaneous Appeal has been preferred against the Order, dated 06.06.2006 made in Mu.Mu. No. 45467/No.4/05 passed by the first respondent herein. Mr. C.R.Prasanan, learned counsel appearing for the appellants submitted that the impugned order, dated 06.06.2006 was passed by the first respondent without notice to the appellants. Even prior to the date of the aforesaid order, there was no notice to the appellants. According to the learned counsel for the appellants, while sending a legal notice on 23.03.2005 to the Joint Sub-Registrar asking for original sale deed, which was supposed to be in the custody of the said Joint Sub-Registrar-I, Virudhunagar, who sent his reply by his letter dated 23.03.2005 in Letter No.3060/05. stating that the document has been registered as Document No. 1511/02 and has been sent to the second respondent, Special Deputy Collector (Stamps), Virudhunagar. The appellants have to contact him for further details. Subsequently, the appellants issued legal notice on 25.04.2005 to the Special Deputy Collector (Stamps), the second respondent herein, requesting him to furnish details regarding return of the original document registered as Document No.1511/02.

2. According to the appellants, there was no notice from the respondents, prior to the passing of the impugned order and even the impugned order was not communicated to the appellants, hence, they filed a petition before the second respondent herein with the petition to condone the delay, however, the same was rejected. Learned counsel appearing for the appellant produced the copy of the legal notice, dated 23.03.2005 with the postal acknowledgment and another notice, dated 25.04.2005 with the postal receipt. Admittedly, there was no evidence to show that there was any notice served on the appellants before passing the order under challenge and for communicating the order passed by the respondents.

3. Mr.R.Muthian, learned Special Government Pleader (CS) submitted that it was sent by ordinary post by the respondents. Without any proof of service or any supporting document, it cannot be accepted that there was proper service of notice to the appellants, prior to the date of passing of the impugned order and service of the impugned order to the affected parties, namely, the appellants herein.

4. In support of his contention, the learned counsel appearing for the appellants cited the following decisions rendered by the Division Bench of this Court:

1. Kaliammal, M. vs. The Special Deputy Collector (Stamps), 2005 (3) CTC 529

2. Indira Devi vs. Inspector General of Registration, 2005 (1) CTC 733

5. In the decision, Indira Devi vs. Inspector General of Registration, reported in 2005 (1) CTC 733, this Court has held that under Stamp Act 1989, Section 47-A (10) and Tamil Nadu Stamp (Prevention of Undervaluation of Instruments) Rules 1968 and Section 5 of the Limitation Act, 1963, appeal against the order passed u/s 47-A(1) has to be filed within two months, after passing of the final order u/s 47(A) (5) and (6). However, aggrieved person cannot file appeal against the impugned order, unless the order is served on him and the date of service of the order on the appellant would be the starting point of limitation. Though Section 5 of the Limitation Act is not specifically excluded in Tamil Nadu Stamp Act and time taken for obtaining order copy is to be excluded in reckoning limitation. Considering the aforesaid aspects, the Division Bench held that there was no delay in preferring the said appeal.

6. Here in the instant case, it is seen that there is no evidence on the side of the respondents that notice was served on the appellants, prior to the passing of the impugned order and communication of the subsequent order passed in the appeal, preferred before the first respondent.

7. In this Civil Miscellaneous Appeal, from the materials available and placed before this Court, this Court is of the view that there was no notice to the appellants, prior to the passing of the impugned order. Similarly, the appellants herein had issued legal notice without receiving any copy of the impugned order, only based on the reply sent by the respondents herein. In such circumstances,

to meet the ends of justice, I find it reasonable to allow this Civil Miscellaneous Appeal and set aside the impugned order. However, the respondents are at liberty to dispose the appeal to be preferred by the appellants herein, on merits, according to law. In the result, this Civil Miscellaneous appeal is allowed and the impugned order, dated 06.06.2006 made in Mu.Mu. No. 45467/No.4/05, passed by the first respondent is set aside and the matter is remitted back to the respondent to dispose the same on merits, within a period of two months from the date of receipt of the copy of this order. The first respondent is also directed to issue notice and provide reasonable opportunity to the appellants herein, to make their representation effectively. No costs. Consequently, connected miscellaneous petitions are closed.