(1989) 04 MAD CK 0003

In the Madras High Court

Case No : C.R.P. No. 1358 of 1986

A.E. Varadharaju APPELLANT

Vs

Selvaraju, Muthayammal and Thulasimani RESPONDENT

Date of Decision : 05-04-1989

Acts Referred:

Citation : (1989) 04 MAD CK 0003

Hon'ble Judges : P.K. Sethuraman, J

Bench : Single Bench

Advocate : T. Somasundaram, for the Appellant;

Judgement

P.K. Sethuraman, J.—This is a revision filed by the petitioner plaintiff in R.E.P. No. 105 of 1984 in O.S. 265 of 1983 against the order

passed by the learned District Munsif, Salem, directing the petitioner here to comply with the requirements of the Registering Authority. It is to be

stated that the petitioner herein entered into an agreement of sale with the father of the respondents, one Palaniappa Gounder in respect of the suit

property on 5-9-1982 and the sale consideration was Rs. 12,000/- and the amount had been paid even on the date of agreement itself and the

time for completion of the transaction was six months from the date of agreement. It appears that the said Palaniappa Gounder died on or about

12-9-1982 and the respondents herein are the legal representatives of the said Palaniappa Gounder. Since they did not agree to execute the sale

deed as per the agreement entered into between the petitioner and their father, the suit had been filed and inasmuch as the respondents-defendant

failed to execute the sale deed as agreed they prayed for a decree for specific performance of reacting the respondents/defendants to execute its sale deed for Rs. 12,000/- and on their failure to execute the sale deed, direct the Court to excepts the sale deed in his favour. It is the case of the

Revision Petitioner that even under the agreement the price fixed is Rs. 12,000/- and it had been paid and the amount had been received by the

father of the respondent. The suit was decreed ex parte and for executing the decree R E.P. No. 105 of 1986 had been filed and the Court had

sent the document of sale executed by the Court itself as the respondents/ defendants failed to execute the sale deed and the learned District Munsif

had served communication dated 8-2-1985 to the Sub Registrar, Mallasamudrani, Salem District, request in the document to be registered On

receipt of the communication from the Court, the Sub Registrar is to have informed that the property is valued of Rs. 50,000/- and therefore, the

purchaser has to be directed to produce a certificate from the Income Tax Officer and on such communication, a memo is seen to have been filed

by the Revision-Petitioner-decree-holder (plaintiff) seeking a direction from the Court to the Sub Registrar to register the sale deed on the market

value of Rs. 12,000/- having regard to the date of the agreement in favour of the petitioner. It appears the petitioner placed reliance on the decision

reported in Noorunnissa, K. v. District Collector, North Arcot (95 L.W 284).

2. But the learned District Munsif, on perusing the memo has stated in the order that the sale deed had been prepared on the basis of unilateral

value given by the decree holder and the Registering Authority is competent to question it, if it was found to be undervalued. The learned District

Munsif has also stated the decision cited is not applicable to the facts of the case. Accordingly the petitioner was directed to comply with the

requirements as required by the Registering Authority.

3. Aggrieved by the said order, the present Revision has been filed contending that the order passed by the learned District Munsif is erroneous

and the learned District Munsif has failed to follow the decision reported in Noorunnissa, K v. District Collector, North Arcot (95 L.W. 284) and

in such circumstances it has been prayed that the order passed by the learned District Munsif has to be set aside. The point that arises for

consideration in this Revision is whether the order passed by the learned District Munsif is liable to be set aside

4. It has to be seen that the suit is stated to have ended in a decree inasmuch as

the respondents/defendants did not contest the suit. According to

the Revision Petitioner, the sale consideration was Rs. 12,000/- (Rupees Twelve Thousand) and it was received by the deceased father of the

respondents-defendants even on the date of the agreement, viz., 5-9-1982. The suit is for passing a decree praying for direction to execute the sale

deed in favour of the plaintiff for Rs. 12,000/- only and it has been so decreed. While that is so, simply because it had been executed sometime in

February, 1984 by the Court and was sent for registration. I feel it is not open for the Registering Authority to fix the market value of the property

conveyed at Rs. 50,000/- and insist production of Income Tax Certificate.

5. In the decision Noorunnissa, K v. District Collector, North Arcot (95 L.W. 284), Sengottuvelan, J. has dealt with a case wherein a property

was conveyed under an agreement of repurchase for consideration as stated in the agreement and the sale deed was executed in pursuance of the

agreement for reconveyance of the property on stamp paper of Rs. 15,000/- which was the price staled in the agreement. But when it was

presented for registration, it had been referred to the Sub Collector, who had valued it at Rs. 1,54,000/- and there was a direction to stamp the

document accordingly. Aggrieved with the said order an appeal had been filed before the Subordinate Judge, who had reduced the market value at

Rs. 1,00,000/-. Against the said order Revision had been filed before this Court in C.R.P. No. 1376 of 1980 and Sengottuvelan, J has pointed out

that the building had been sold with right of reconveyance and having regard to the agreement, the purchaser will not pay more than Rs. 15,000/-

for the property, and the market value of the property conveyed was subject to the right of reconveyance and in any event it cannot exceed Rs.

15,000/- and the stamp duty could be levied per Art. 23 only on the market value of the property conveyed and the property conveyed was a

house subject to the right of reconveyance valued at Rs. 15,000/-. Therefore, the learned judge held that the Subordinate Judge erred in taking the

market value of the property not subject to the right of reconveyance in coming to the conclusion as to what is the stamp duty payable under the

deed of reconveyance, and when the property conveyed is subject to the right or reconveyance, the stamp duty cannot be collected on the market

value of the property without any encumbrance. Hence the order of the learned

Subordinate Judge was set aside and the Revision was allowed.

6. Having regard to the principle laid down in the decision by the learned judge, in this case also it has to be held that the market value has to be

deemed to be only Rs. 12,000/- and it has been made clear that the price had been paid even on the date of agreement. In such circumstances, the

order passed by the learned District Munsif has to be set aside and the Sub Registrar, Mallasamudram who is the Registering Authority is to be

directed to register the document without insisting on production of any income tax certificate on payment of requisite stamp duty of Rs. 12,000/-

and also the necessary registration charges. In the result, the Revision Petition is ordered accordingly. There will be no order as to costs.