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(2000) 07 MAD CK 0058

In the Madras High Court

Case No : C.S. No. 1277 of 1992

Civil Engineering Corporation APPELLANT

Vs

Special Tahsildar (Stamps) and Another RESPONDENT

Date of Decision : 06-07-2000

Acts Referred:
Stamp Act, 1899 — Section 47A

Citation : AIR 2001 Mad 277

Hon'ble Judges : A. Ramamurthi, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

A. Ramamurthi, J.—Application filed by the applicant/plaintiff under Order XIV, Rule 8 of Oriiginal Side Rules read with Section 151 of Civil Procedure Code, to issue a direction to the respondents to releae the documents following the decision of the Division Bench of this Court in S.P. Padmavathi Vs. State of Tamil Nadu and Others, .

2. The case is brief in as follows :

The applicant plaintiff filed a suit for specific performance of an agreement of sale in respect of the suit property situate at old door No. 16, new door No. 25, Boag Road, T. Nagar, chennai 17 measuring an extent of 4 grounds and 1356 sq. ft. The suit was decreed pursuant to a compromise memo filed by the parties. As per the decree, they did not execute the sale deed and accordingly, the applicant was forced to file execution petition in E.P. No. 122 of 1993 and obtained orders for execution and the Assistant Registrar, High Court, Madras, executed 5 sale deeds on behalf of the judgment debtors and they were registered as documents by the 2nd respondent in 1996. Subsequently, the 2nd respondent insisted for payment of additional stamp duty and demanded further payment of Rs. 2,66,656/- for each of the documents presented by the Officer of this Court. The applicant brought to the notice of the 2nd respondent that the sale has been concluded only for Rs. 7.00 lakhs and as per the decree of this Court, the demand for enhanced stamp duty is without any authority or jurisdiction. However, the 2nd respondent referred the matter to the first respondent and the first respondent issued 5 notices dated 3-3-1998 fixing the date of enquiry as 9-3-1998. The applicant was constrained to issue legal notice through counsel on 20-6-1998. Despite the same, the documents have not been released. Unfortunately, despite the decision of the Division Bench, in SP Padmavathi''s case (cited supra), the respondents have not released the documents. Hence, the application.

3. The second respondent filed a counter and stated that the consideration shown in the sale deeds put together was only Rs. 7.00 lakhs. The suit was decreed against the vendors in the sale deeds presented for registration. The suit was decreed upon a compromise memo filed by the owners. On verification of the Guidelines, value of the property, additional stamp duty was called for to the extent of Rs. 2,66,656/- for each document. The market value has not been properly setforth in the instrument, it was referred to the Special Deputy Collector (Stamps) u/s 47-A of the Indian Stamp Act. Notice was issued in Form I u/s 4 of Tamil Nadu (Prevention of under-valuation of property) Act on 16-2-1996 and called for objections. The applicant has neither turned up for enquiry for filed objection. Reminder was also issued on 3-3-1998. The applicant did not avail the opportunity. All of a sudden, he issued, a legal notice. It could be seen that the applicant without availing the opportunity for oral enquiry, has rushed to the Court without adhering to the procedure contemplated under the Stamp Act. The applicant without extinguishing the remedy available under the Stamp At, has approached this Court hurriedly. The application is premature and is liable to be dismissed.

4. Heard the learned counsel of both sides.

5. The points that arise for consideration, are (1) Whether this Court can issue direction to the respondents to release the documents as claimed by the applicant ? and (2) To what relief ?

6. Points: It is admitted that the applicant/plaintiff field a suit for specific performance of an agreement of sale relating to the property bearing new door No. 25 Boag Road, T. Nagar, Madras 17 measuring an extent of 4 grounds and 1356 sq. ft. Admittedly, the suit was decreed purusant to a compromise memo filed by the parties; but as per the decree, the judgment debtors did not execute the documents and accordingly, execution petition was filed by the applicant in 1993 and the Assistant Registrar, High Court, Madras, executed 5 sale deeds on behalf of the Judgment debtors and they were registered before the Sub-Registrar, T. Nagar,Chennai. It appears that the 2nd respondent insisted for payment of additional stamp duty and demanded further payment of Rs. 2,66,656/- for each of the documents presented.

7. Learned counsel for the applicant contended that the sale was concluded only

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for Rs. 7.00 lakhs and the sale deeds were executed as per the decree passed by this Court and in view of the Bench decision referred to above, the authorities are not competent to claim any additional stamp duty and, as such, they should be directed to release the documents viz. 5 sale deeds dated 3-5-1995. Learned counsel also relied on Varadharaju, A.E. v. Selvaraju 1996 2 MLW 716 and also Jayaraman D. v. The Revenue Divisional Officer, Salem 1996 2 MLW 719, wherein it is observed that a sale deed executed by Court in a suit for specific performance, direction by the Revenue Division Officer on the basis of report of the Sub-Registrar that it must bear stamp on the market value of property as on the date of presentation and affirmed by the Subordinate Judge, on appeal, held not legal and set aside in revision. There is no dispute about this proposition but it has no application to the case on hand. A careful reading of these decisions would only indicate that the competent authority provided under the Stamp Act, after hearing the objections, have passed an order and aggrieved against this, only after availing statutory remedy provided under the Act, the aggrieved, party has preferred a revision before this Court and an order was passed.

8. Learned counsel for the applicant also relied on a Bench of this Court in S.P. Padmavathi Vs. State of Tamil Nadu and Others, , wherein a finding has been given that power u/s 47-A of the Act can only be exercised when the Registering Officer has reason to believe that the market value of the property, which is the subject of conveyance has not been truly setforth, with view to fraudulently evade payment of proper stampt duty. Mere lapse of time between the date of agreement will not be the determining factor that the document is under-valued and such circumstance by itself is not sufficient to invoke the power u/s 47-A of the Act, unlelss there is lack of bona fides and fraudulent attempt on the part of the parties to the document to under-value the subject of transfer with a view to evade payment of proper stmp duty. It was also held therein that pursuant to the decree for specific performance passed by the Civil Court, in which there is no allegation of deliberate under-valuation or lack of bona fides in valuing the subject of transfer with a view to evade payment of proper stamp duty, the mere fact that there is a time gap between, the agreement of sale and the execution of the document by itself is not sufficient for the Registering Officer to invoke his power under Seciton 47A of the Stamp Act, unless there are reasons to believe that there is an attempt on the part of the parties to the instrument to under-vlaue with a view to evade payment of proper stamp duty. There is also no dispute about this proposition, but it has no application to the case on hand on the sole reason that the writ petition as well as writ appeal have been filed only to quash the proceedings of the second respondent, directing the petitioner to pay stamp duty.

9. It is necessary to reproduce Section 47 A(l) of the Act for appreciating the various contentions of the parties and it reads as follows:

"47-A. Instrument of conveyance etc., undervalued how to be dealt with :--

(1) If the registering officer appointed under the Indian Registration Act, 1908

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(Central Act XVI of 1908) while registering any instrument of Conveyance, exchange, gift, release of benami right or settlement) has reason to believe that the market value of the property which is the subject-matter or Conveyance, exchange has not been truly set-forth in the instrument he may, after registering such instrument, refer to same to Collector for determination of the market value of such property and the property duty payable thereon."

10. It is also seen from Sub-clause (4) of Section 47A that any person aggrieved by an order of the Collector under Sub-section (2) or Sub-section (3) may appeal to the appellate authority specified in Sub-section (5). The appellate authority is also provided under Sub-section (5). It is necessary to state that the applicant has not exhausted the remedy provided u/s 47-A. The suit ended in compromise and the sale deed has been executed by the officer of the Court in pursuance of the decree. Now, the authorities have sent a notice and the applicant is liable to file his objections if any. Instead of filing any objections before the competent authority, the applicant has come forward with an application in a suit, which was already disposed of. I am of the view that the present application is not maintainable. When the suit had been disposed of and already the execution petition had also been closed, the question of payment of additional stamp duty cannot be considered in a sub-application in a disposed of suit. The remedy provided under various sub-sections of Section 47-A is to file objections before the competent authority and obtain an order. If the order is not favourable, it is always open to the applicant to file an appeal provided to the appellate authority as per Sub-section (5) of Section 47-A. It is unfortunate that the applicant has rushed to the Court by filing this sub-application in a disposed of suit and, as such, I am of the view that the application is premature and it is liable to be dismissed. No reason has been given as to why the applicant has failed to file objections before the authority provide, under the statute. Even though there are rulings in favour of the applicant, the only course open to the applicant is to file objections and rely opon the citations and convince the authorities concerned. The applicant has converted this Court as Appellate Court and wants to give a finding when no final order has been passed by the authorities under the Stamp Act. As such, I am of the view that no direction can be given to the 2nd respondent to return the documents.

For the reasons stated above, the application fails and is dismissed. It is open to the applicant to file necessary objections before the authorities provided under the Stamp Act and convince them if any order is passed and if the applicant is aggrieved it is always open to the applicant to prefer an appeal as provided under Sub-section (5) of Section 47-A of Stamp Act.

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