(1982) 01 MAD CK 0005

In the Madras High Court

K. Noorunnisa and Another APPELLANT

Vs

The District Collector RESPONDENT

Date of Decision : 08-01-1982

Acts Referred:

Citation : (1982) 95 LW 282 : (1982) 2 MLJ 28

Hon'ble Judges : R. Sengottuvelan, J

Bench : Single Bench

Judgement

R. Sengottuvelan, J.—This civil revision petition is filed against the order of the leaned Subordinate Judge of Tirupathur, North Arcot District

in C.M.A. No. 63 of 1976. The said civil miscellaneous appeal before the learned Subordinate Judge was fled by the civil revision petitioner

against the order of the Sub Collector, North Arcot District levying stamp duty on the sale deed, dated 24th October, 1976 as per Ref. No. R. 7

U.V. 242 of 1976, dated 1st December. 1976.

2. The facts of the case are briefly as follows : The property comprising of a premises situate at M.C. Road, Ambur, was sold for a sum of Rs.

15,000 on 1st March, 1968. On the same date there was an agreement for reconveyance by which the purchaser agreed to reconvey the property

for the same amount of Rs. 15,000 if the same is paid within 7 years from the date of sale. The vendor within the period of 7 years enforced the

agreement of reconveyance by paying tie sale price of Rs. 15.0C0 and accordingly a document of reconveyance was got up on a stamp paper

required for Rs. 15,000 and the same was presented for registration. The Sub Collector to whom the matter was referred to, valued the market

value of the property at Rs. 1,54,520.75 and ordered that the deed of conveyance will have to be stamped accordingly. As against the order of

the Sub-Collector C.M.A. No. 63 of 1976 was filed by the purchaser before the learned Subordinate Judge of Tirupathur. The learned

Subordinate Judge after taking into consideration the nature of the property fixed the market value at Rs. 1,00,000 and directed the collection of

stamp duty on the market value of Rs. 1,00,000. Since the purchaser had paid stamp duty on Rs. 15,000 the learned Subordinate Judge directed

the payment of stamp duty on Rs. 85,000. This civil revision petition is filed against the said order of the learned Subordinate Judge.

3. Before going into the facts of this case the relevant provisions of the Indian Stamp Act can be usefully referred to S. 2 (10) of the Indian Stamp

Act defines ""conveyance"" which is as follows;

2. (10) Conveyance includes a

conveyance on sale and every instrument by which property, whether movable or immovable, is transferred inter vivos and which is not otherwise

specifically provided for by Schedule I (or by Schedule I-A as the case may be.).

Article 23 of the Indian Stamp Act deals with conveyance as defined in Section 2(10) not being a transfer charged or exempted under Article 62.

As per Article 23 stamp duty is payable as per the rate specified in the article on the value of consideration mentioned in the deed of conveyance.

This Article was substituted by the Tamil Nadu Act XXV of 1967 by which the stamp duty is payable on the market value of the property covered

as per the rates mentioned in the Article. There is no separate article for re-conveyance of property under an agreement of re-conveyance. But we

find Article 54 of the Stamp Act deals with re-conveyance of mortgaged property for a market value equal to the amount of such consideration as

set forth in the reconveyance.

4. In the absence of a specific article for re-conveyance in pursuance of an agreement of reconveyance the transaction will have to be treated only

as a conveyance. As per the Article substituted by the Tamil Nadu Act XXIV of 1967 the stamp duty is leviable on the market value of the

property reconveyed. The market value is not defined in the Indian Stamp Act. Hence in the absence of specific definition we will have to construe

the market value as the value that may be paid by a willing purchaser to a vendor who is not unwilling to sell. Applying the above principle we will have to see whether the market value of the property conveyed as per the sale deed will amount to Rs. 1,00,000 as decided by the learned

Subordinate Judge.

5. The Sub-Collector as well as the Subordinate Judge seems to have taken into consideration the extent and the situation of the property and

arrived at the market value on the date of sale. The building may be worth Rs. 1,00,000 as found by the Subordinate Judge. But the subject-matter

of the sale deed is not a building which is not in any way encumbered. What was sold was only a building which was subject to a right of

reconveyance on payment of Rs. 15,000. Hence we will have to consider what is the market value of the building which was Subject to a right of

reconveyance on payment of Rs 15,000. In other words we will have to ascertain what will be the price fetched if the building i s sold subject to

the above said right of reconveyance. It is in evidence that any, purchaser will net pay more than Rs. 15,000 for the property subject to the right of

reconveyance. Hence the market value of the property conveyed subject to the right of reconveyance in any event cannot exceed Rs. 15,000.

6. The stamp duty can be levied as per the Article 23 only on the market value of the property conveyed. In this case the property conveyed is a

house subject to the right of reconveyance which can only be valued at Rs. 15,000- The learned Subordinate Judge erred in taking the market

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

re-conveyance. When the property conveyed is subject to the right of 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 is not correct and the same will have to be set aside.

7. In the result the order of the learned Subordinate Judge is set aside and it is ordered that the stamp duty paid on the market value of Rs. 15,000

is the proper stamp duty payable in respect of the above said reconveyance. The reference is answered accordingly. There will be no order as to

costs.