
(1994) 02 MAD CK 0027
In the Madras High Court
Case No : C.R.P. No. 1473 of 1991

Kuppuswami Pillai

APPELLANT

Vs

Subramaniam and another

RESPONDENT

Date of Decision : 14-02-1994

Acts Referred:

Stamp Act, 1899 — Section 47

Citation : AIR 1995 Mad 367

Hon'ble Judges : Srinivasan, J; Abdul Hadi, J

Bench : Division Bench

Advocate : T.R. Rajaraman, for the Appellant; V. Sumathi and V. Raghavachari, for the Respondent

Judgement

1. This civil revision petition is directed against the order of the learned subordinate Judge, Tiruvannamalai in E. P. No. 30/88 dated 4-5-1990,

directing the petitioner to pay the stamp duty for the present market value of the suit property in the above said E. P.

2. Learned counsel for the petitioner in support of his contention that stamp duty has to be paid only for the value mentioned in the agreement and

not for the market value of the property on the date when the decree is sought to be executed, drew the attention of this court to the decision of

this court in C. R. P. No. 942 of 1987 (D. Jayaraman v. The Revenue Divisional Officer, Balem) dated 6-11-1990. The said decision applies to

the present case. Accordingly, the order of the trial court in E. P. 30 of 1988 in O. S. 77 of 1985 is set aside and the lower court is directed to

execute the decree as per the value given in the agreement of sale. The civil revision petition is allowed. No costs.

This petition having been posted on Tuesday the 11th day of January 1994 for

being mentioned in the presence of Mr. T. R. Rajaraman, Advocate

for the petitioner and of Mr. V. Raghavachari, Advocate for the respondents the court made the following order :

This matter is posted again before me for being mentioned at the instance of the learned counsel for the respondents.

2A. Mr. V. Raghavachari, learned counsel for the respondents brought to my notice the decision in the case of Padmavathi, S. P. v. The State of

Tamil Nadu reported in 1993 WLR 470, where the learned Judge (Bakthavatsalam, J.) has observed as follows :

A stamp duty for registration of sale deed executed after decree of suit for specific performance is to be on value as on date of execution of

document on market value ascertained on the basis of guidelines fixed by the Collector. Obtaining decree for specific performance cannot be used

as lever to avoid proper stamp duty on the instrument executed and registered after 5 years.

Learned Judge further observed as follows :

Obtaining a decree for specific performance does not mean and cannot also, in my view, used as a lever to avoid the proper stamp duty to be

paid on the instrument to be executed and registered nearly after five years. On the facts of the instant case, just because a decree for specific

performance is passed it does not mean that it is binding on the authorities under the Registration Act as well as the Stamp Act. They are bound by

the provisions of the Act and when a person produces an instrument for registration, it is open to them to arrive at the duty based on the market

value on the date of the registration of the document.

Learned Judge relied upon the judgment reported in R. Thiagasundaram Vs. The State of Tamil Nadu and Others, (S. Ramalingam, J.) In the latter

decision, learned Judge has held that when the State is not a party, the order of the Civil Court regarding the market value is not binding on the

Registering Authority.

3. Section 47-A of Indian Stamp Act as amended by the Tamil Nadu Act reads as follows :

47-A. Instruments of conveyance etc., if undervalued, how to be dealt with :

(1) If the market value of any property which is the subject of any instrument of conveyance, exchange, gift, settlement, award or trust, as set forth

in such instrument is less than even the minimum value determined in accordance with any rules made under this Act, the registering officer

appointed under the Indian Registration Act, 1908, shall refer the same to the Collector for determination of the market value of such property and

the proper duty payable thereon.

4. Mr. T. R. Rajaraman, learned counsel for the petitioner relied upon the decision in the case of D. Jayaraman v. Revenue Divisional Officer,

Salem (C. R. P. No. 942 of 1987 -- Order dated 6-11-1990 where the learned Judge (Venkataswami, J.) relying upon the decisions in the case

of Noorunissa v. District Collector, North Arcot reported in 1982 95 Mad LW 284 and A. E, Varadharaju v. Selvaraju, (C.R.P. No. 1358 of

1986 dated 5-4-1989) held as follows :

The suit was for specific performance of an agreement, dated 19-4-1964 and after prolonged litigation, the sale deed through Court came to be

executed only on 28-7-1982. For this delay, the petitioner is not responsible. In my view, the value on the date of the agreement alone is relevant

and not the value on the date of execution of the sale deed in the matters of suit for specific performance.

Learned Judge set aside the order of the lower Court and held that the demand for deficit stamp papers cannot be sustained.

5. In view of the conflicting judgments, I am of the opinion that this case may be decided by a Division Bench of this Court and so, I place the

papers before My Lord the Hon"ble Chief Justice for orders accordingly, and this petition having been posted this day before the Honourable Mr.

Justice Sriniva-san and Mr. Justice Abdul Hadi, the court made the following order :

Srinivasan, J.

The Civil Revision Petition was allowed by order dated 24-11-1993. That order remains intact after it was signed by the learned Judge.

6. It is stated that the matter was posted for being mentioned at the instance of learned counsel for the respondents. On 11-1-1994 an order is

passed by the learned single Judge after referring to the contentions of both the parties that in his opinion the case may be decided by a Division

Bench of this court and he placed the papers before the Honourable Chief Justice for orders accordingly. Thereafter the Honourable Chief Justice

has directed this to be posted before us.

7. We find that the order dated 24-11-1993 has not been set aside. There was no petition for review. By getting a matter posted for being

mentioned an order passed judicially does not vanish. So long as that order stands, there cannot be a subsequent order referring the civil revision

petition to a Bench. If anybody was aggrieved by the order dated 24-11-1993 he ought to have filed a review petition or approached the Supreme

Court with a petition for special leave to appeal. We also note that even in the order making a reference there is nothing to show that the order

dated 24-11-1993 is modified, altered or set aside by the learned Judge. Hence we return the reference as unsustainable.

8. Order accordingly.