(2012) 04 MAD CK 0086

In the Madras High Court

Case No : Writ Petition No''s. 24554, 2011, 24792 and 25489 to 25491 of 2011 and connected M.Ps.

Metafilms (India) Ltd. and Others APPELLANT

Vs

Inspector General of Registration, Chennai 600 028 and Others RESPONDENT

Date of Decision : 17-04-2012

Acts Referred:

Constitution of India, 1950 — Article 226
Penal Code, 1860 (IPC) — Section 464
Registration Act, 1908 — Section 32, 34, 34(3), 34(3)(c), 35
Tamil Nadu Patta Pass Book Act, 1983 — Section 5(1)
Transfer of Property Act, 1882 — Section 53(2), 7

Citation : (2012) 4 CTC 384 : (2012) 4 MLJ 240

Hon'ble Judges : Vinod K. Sharma, J

Bench : Single Bench

Advocate : Prakash Goklaney, V. Vaidyanathan and R. Swaminathan, for the Appellant; R. Ravichandran, Additional Government Pleader and P. Karthikeyan, Government Advocate, for the Respondent

Judgement

Vinod K. Sharma, J.—As the common question of law and facts are involved in all these writ petitions, these are disposed of by common order. W.P. No. 25489 of 2011 has been filed by Meta Films (India) Ltd. invoking the jurisdiction of this Court with the prayer for issuance of a writ in the nature of mandamus, directing the Sub Registrar, Taluk Office Road, Ponneri, Tiruvallur district to return the amendment (Rectification) deed dated 22.1.2009 executed by Citrex Products Ltd and submitted by the petitioner for registration and registered as Document No. 377 of 2009 in the office of the second respondent.

2. Citrex Products Ltd., the vendor of the petitioner owned land measuring acres 30.80 cents in Thatchur and Peravallur Villages. The petitioner purchased the land measuring 5 acres in S. No. 124/4B and 124/12 in Peravallur Village in Ponneri Taluk, Tiruvallur district by of registered sale deed dated 1.9.1997. The description of the properties given in the sale deed reads as under:

All that land comprised in Survey No. 124/4B, 11 and 12, measuring 5 acres in peravallur Village, Ponneri Taluk, Tiruvallur District and bounded on the North by Kilmani Road, South by the land belonging to the vendor bearing Survey No. 157/1 Thatchur Village, East by GNT Road and on the west land belonging to the vendor bearing Survey No. 124/12 Peravallur and situate within the Registration District of North Madras and Registration Sub District of Ponneri. The market value of the property Rs. 11,50,000/-.

3. The submission of the petitioner is that in the sale deed executed by Citrex Products Ltd. survey numbers were wrongly mentioned. Though the total area purchased was correctly given by giving linear measurement of the property. The petitioner and vendor executed amendment (rectification) deed and stamp duty was fixed at Rs. 20/-.

4. The rectification deed was presented for registration in the office of Sub Registrar along with three other deeds of amendment. The documents were accepted for registration with liberty to the petitioner to take xerox copies of the documents. The Sub Registrar, Ponneri took the documents on the assurance to return after three days.

5. The petitioner thereafter approached the office of the third respondent, but the documents were not returned, as the rectification deeds were said to be not properly stamped. The Sub Registrar therefore, referred to rectification deeds for determination of deficit stamp duty u/s 47A of the Stamp Act by making reference under the Stamp Act.

6. The stand of the petitioner is that no notice of adjudication of stamp duty was served on the petitioner. However, in August, 2011 the petitioner was informed that the rectification deeds have been sent to the Inspector General of Registration for necessary orders.

7. In W.P.No. 25490 of 2011 and W.P.No. 25491 of 2011 also prayer made is for issuance of a writ in the nature of mandamus, directing the respondents to return the amendment/Rectification deeds on the same facts as pleaded in W.P. No. 25489 of 2011.

8. W.P. No. 24554 of 2011 has been filed by Thamiraparani Investment Ltd. seeking direction to the respondents 1 and 2 to cancel the registration of the Amendment deeds registered as Document Nos. 377-379 of 2009.

9. The submission of Thamiraparani Investment Ltd. is that Citrex Products Ltd. entered into sale agreement with the petitioner and handed over the possession of the property after the receipt of total sale consideration. It had also executed a Power of Attorney in favour of the petitioner. Subsequently, it was found that various sale deeds for land measuring 11 acres were fraudulently made by Mr. V. Rajendran and Mr. Satheesh Raj on behalf of Citrex Products Ltd. The sale deeds are under challenge in the civil Court. The petitioner however got registered the balance 14.8 acres of land by registered sale deed. During pendency of the suits,

the sale deeds are sought to be rectified for land measuring 10 acres and 5 acres in January, 2009.

10. The submission of the petitioner is that the respondent No. 4 and 5 by executing the amendment deeds purporting to be on behalf of the respondent No. 3, are attempting to nullify/cancel the sale in favour of the petitioner.

11. It is the case of the petitioner that registration has been carried out without mandatory enquiry u/s 34(3)(c) of the Registration Act. The prayer therefore, is to cancel the registration of amendment deed.

12. W.P. No. 24792 of 2011 has been filed by Citrex Products Ltd. on the pleadings that it was owner of land measuring 30.8. acres. The company''s entire shareholding was purchased from the original promoters by the family of Mr. V. Rajendran. Subsequently, various sale deeds were executed by Mr. V. Rajendran and his family members without authorisation. The sale deeds are under challenge before the civil Court. The case of the petitioner is that procedure u/s 34(3) (c) of the Registration Act has not been followed.

13. In response to the objection filed by Citrex Products Ltd., the petitioner was called for an enquiry on 12.9.2011 and after giving them opportunity of hearing, the respondent No. 1 orally instructed the second respondent to release the documents.

14. K. Balasubramanian, M. Rathinakumar and one R. Subramanian claiming to be the representative of Citrex Products Ltd., i.e. Petitioner in W.P. No. 24792 of 2011 filed objection u/s 34 of the Indian Registration Act against release of the documents.

15. In the enquiry conducted, it was pointed out that procedure laid down u/s 61 (2) of the Indian Registration Act was valid and it was held that the documents could be returned only to the person who has presented the document, on presentation of original receipt, and proof of payment of fee after completing the procedure contemplated u/s 61(1) of the Act. It was pointed out that the dispute with regard to title of the property, was to be determined by the civil Court.

16. The submission of the petitioner in W.P. No. 25489 to 25491 of 2011 is that on enquiry, the petitioner was informed that the documents were to be valued u/s 47-B and it was open to the petitioner to get the documents on payment of additional stamp duty, as the stamp duty was to be charged under Schedule I of the Act. The petitioner was also informed that the orders have been sent to District Registrar, Chennai for release of documents after collecting necessary stamp duty.

17. The learned counsel for the petitioner contended that neither Section 47A nor 47B of the Stamp Act was applicable to the rectification deed being not covered under the provisions of Section 47-B of the Stamp Act.

18. It is contended that there was no dispute with regard to payment of stamp

duty as the original deed was executed in favour of the petitioner and documents after registration was released to the petitioner. Furthermore, rectification deed was presented by both vendor and vendee without there being any change of area. The rectification was only with regard to survey numbers of the property.

19. The submission of the petitioner is that representation was filed on 5.10.2011 for return of documents, but till date no action has been taken. The respondents are said to be withholding the documents without any lawful justification, therefore action of the respondent is not permissible in law.

20. The stand of the State in all these writ petitions is that rectification deed is liable to be stamp duty u/s 47-B of the Stamp Act, as by way of rectification S. No. 124/11 has been deleted from the principal sale deed which resulted in extinguishment of right in the property, thus, rectification fell u/s 47-A(1) of the Indian Stamp Act, 1899.

21. It is also the submission of the State that in the principal sale deed, area was shown as agricultural land, whereas in rectification deed, area is shown as non-agricultural land by showing linear measurement and therefore, rectification deeds in question attracts ad-volaram stamp duty.

22. It is also submitted that directors of Thamiraparani Investment Ltd. also filed objection with the second respondent that the sale deed executed in favour of the petitioner was under challenge in the civil Court.

23. The stand of the directors of Thamiraparani Investment Ltd. was that this Court held that contesting respondents were the majority directors of the company, and the decision has attained finality.

24. The stand of the State in principle is that additional stamp duty of Rs. 7,53,116/- (Rupees seven lakhs fifty three thousand one hundred and sixteen only) has been adjudged to be payable by the petitioner seeking rectification deed, with additional registration fee of Rs. 98,875/- (Rupees ninety eight thousand eight hundred and seventy five only). On payment of the said fee, the petitioner is entitled to return of the documents.

25. It is also stated in the counter that the objection filed u/s 34 of the Registration Act has been rejected with the observation that the dispute qua title to the property can be adjudicated by the civil Court.

26. As already noticed above, the petitioners in W.P. No. 24554 of 2011 and W.P. No. 24792 of 2011 are opposing return of the documents, on the plea that the petitioners had no jurisdiction to claim rectification and that the sale deeds in favour of the petitioners are under challenge in the Sub Court, Ponneri, where the sale itself is claimed to be ''void ab initio''.

27. The stand of the respondent further is that land measuring 30.4 acres owned by Citrex Products Ltd. was sold as per the details as under:

Sl. No.

Document No.

Date

Beneficiary

Extent

1

2709 of 1997

1.9.1997

Meta Films India Ltd.

5 Acres

2

1761 of 1998

13.7.1998

V. Rajendran

9 Acres

3

1765 of 1998

13.7.1998

SathishRaj

1 Acre

4

3545 of 2004

1.9.2004

S. Radhakrishnan

1 Acre

5

97 of 2005

20.9.2004

Thamiraparani Investments

14.8 Acres

28. The stand is also taken that after lapse of 12 years of execution of sale deed,

the rectification deed has been executed claiming certain correction which is not permissible in law.

29. The ground of challenge is that in the deed of rectification, the petitioner cannot be allowed to include the land which already stood sold to the respondent, specially when the sale deed of the petitioner is under challenge before the civil Court.

30. The learned counsel for the petitioner in W.P.No. 25489 to 25491 of 2011 in support of the prayer made in writ petitions vehemently contended, that the registration and return of documents is governed by Section 60 and 61 of the Indian Registration Act, 1908 which reads as under:

60, Certificate of registration (1) After such of the provisions of Sections 34, 35, 58 and 59 as apply to any document presented for registration have been complied with, the registering officer shall endorse thereon a certificate containing the word "registered", together with the number and page of the book in which the document has been copied.

(2) Such certificate shall be signed, sealed and dated by the registering officer, and shall then be admissible for the purpose of proving that the document has been duly registered in manner provided by this Act, and that the facts mentioned in the endorsements referred to in Section 59 have occurred as therein mentioned.

61. Endorsement and certificate to be copied and document returned

(1) The endorsements and certificate referred to and mentioned in Sections 59 and 60 shall thereupon be copied into the margin of the Register-book, and the copy of the map or plan (if any) mentioned in Section 212 shall be filed in Book No. 1

(2) The registration of the document shall thereupon be deemed complete, and the document shall then be returned to the person who presented the same for registration, or to such other person (if any) as he has nominated in writing in that behalf on the receipt mentioned in Section 52."

31. The contention of the learned counsel for the petitioner therefore was that after registration of the document, it has to be returned to the person who presented it for registration.

32. The reliance was also placed on the Rule 55 of the Indian Registration Act which reads as under:

55. It forms no part of a registering officer''s duty to enquire into the validity of a document brought to him for registration or to attend to any written or verbal protest against the registration of a document based on the ground that the executing party had no right to execute the document; but he is bound to consider objections raised on any of the grounds stated below:

(a) that the parties appearing or about to appear before him are not the persons they profess to be;

(b) that the document is forged;

(c) that the person appearing as a representative, assign or agent, has no right to appear in that capacity;

(d) that the executing party is not really dead, as alleged by the party applying for registration; or

(e) that the executing party is a minor or an idiot or a lunatic...."

33. The contention of the learned counsel for the petitioner therefore was that registering authority can only enquire the objections falling under Rule 55, but cannot go into question of title nor it can go into validity of the documents.

34. In support of this contention, reliance has been placed by the learned counsel for the petitioner on the following decisions:

(i) B. Rajappa v. Special Deputy Collector and the Sub Registrar 2002 (3) CTC 544 : LNIND 2002 Mad 262 (vide: Typeset of Authorities page 109 to 116 @ pages 113-116)

"In paragraph 11,

"Paragraph 71: "The retention of the original document after completion of registration of the instrument is not provided for either in the Indian Stamp actor in the Registration Act or in the rules framed thereunder with respect to those instruments, where a reference u/s 47-A of the Indian Stamp Act read with Tamil Nadu Stamp (Prevention of under valuation of Instruments) Rules had been made or is being made.

Paragraph 73: The Registering Authority did not entertain any doubt, nor he had any reason to believe that the market value of the property had been set out truly. Having completed registration, as an after thought, it is not open to the Registering Authority to refer matter to the Collector in terms of Section 47-A of the Indian Stamp Act and at any rate after two years.

Paragraph 94: In the circumstances, this Court holds that the reference made by the Registering officer to the Collector u/s 47-A is arbitrary, as found under statutory provisions and without jurisdiction. Hence it is accordingly quashed.

Paragraph 13: In the light of the said provisions, the learned Advocate General had to necessarily admit that the respondents have no authority or jurisdiction to retain the documents once it has been registered. Even assuming that there is scope for reference in respect of alleged under-valuation, the registering authority has no authority to retain the documents and this is also clear from the provisions of Sections 52, 59 and 60 of The Indian Registration Act.

14. In the circumstances, while following the above pronouncements, these two

writ petitions are allowed. Accordingly, there will be a direction to the registering Authority namely, the second respondent in W.P. No. 22998 of 2001 and the sold respondent in W.P. No. 8637 of 2002, to return the original sale deed as registered with necessary endorsements within ten days from the date of communication of this order or a production of a copy of the same by the respective petitioner.

16. Before parting with the case, with heavy heart, this Court has a point out that neither the State Government nor the Chief Controlling Authority had intimated about the law laid down by the Division bench of this Court and the registrars have been flouting the dicta laid down by this Court with impunity. Such violations are per se contemptuous. This Court pointed out this to the learned Advocate General, who is turn relied upon certain circulars issued, but they are not towards compliance with pronouncements and in conformity with the judgment of the Division Bench. However, this Court takes a lenient view in this respect, in view of the fair stand taken and explanation offered by the learned advocate General.

Paragraph 17: This Court directs that the Inspector General of registration shall issue a circular setting out the directions issued by this Court to all the Registrars in the State and procedure to be followed by drawing their attention to the law laid down by the above pronouncements and that any infraction by any of the registrars will be viewed seriously." (emphasis supplied)

(ii) Tata Coffee Limited and K. Manohar Vs. State of Tamil Nadu and Others,

Paragraph 13: Section 61 of the Registration Act makes it clear that after completion of the registration, the registering office shall return the document to the person concerned or such other person who has been nominated......

Paragraph 15: Therefore, a combined reading of the relevant portions of the Indian Stamp Act and the Registration Act and the rules framed thereunder apart from the Tamil Nadu Stamp (Prevention of under valuation of Instruments) Rules 1968 makes it abundantly clear that after registration of the document, the Registering Authority has not power to retain the document. This position has been affirmed in Ramaswamy and Nallamanickenpatti Vs. The Inspector General of Registrations, The District Registrar and The Sub Registrar, ...the operative portion are as follows, 8. When the document had been registered on payment of stamp duty there is no power for the registering authority to retain the document...... The action of the respondent in refusing to release the document on the ground that the sale deed was executed by the person who has not the real owner is not legally sustainable. It is not for the Registering Authority to verify as to whether the vendor in the sale deed has a right to convey the property mentioned therein. Therefore, the action of the respondents is not legal. It is nothing but high handedness on the part of the respondents. The respondents have no right whatsoever to retain the document when once it has been registered in accordance with the rules.

Paragraph 25: (2) In cases where form I notice are served to the petitioners as seen in W.P. Nos.........the authorities are entitled to proceed further by conducting enquiry as per the Act and Rules to pass provisional orders and there after pass final order as per Rules 6 and 7. However in the meantime, the registering authority shall release the documents to the petitioners concerned with the endorsement in the form of affixing seal indicating that the reference u/s 47-A with respect to undervaluation and assessment of stamp duty payable is pending.

Paragraph 25: (4) Relating to other cases, wherein final orders are stated to have been passed by the Collector u/s 47-A(2) of the Act, as it is stated in W.P. Nos........the petitioners are entitled to file further Appeal to the Appellate Authority as per Section 47-A(5) of the Act from the date of service of such order as per Rule 15 within the time prescribed under the rules and in the meantime the registering authority shall release the documents with an endorsement in the form of affixing seal in dictating that reference u/s 47-A with respect to undervaluation and assessment of stamp duty payable is pending.

(iii) Madras High Court - P. Uthamaraj Vs. The District Registrar, The Sub Registrar and The District Revenue Officer (Stamps) The District Registrar, The Sub Registrar and The District Revenue Officer (Stamps),

7. It is relevant to point out at this stage that originally when the sale deed by which the petitioner purchased dated 5.5.2003 was registered as document No. 1133 of 2003 in the office of the Sub Registrar, Alandur, the value of the property was assessed as Rs. 43 lakhs and stamp duty was paid on the same amount and at the time of registration of the said document in the year 2003, the second respondent, the registering authority has not raised objection about valuation. It is only in the year 2005, when the rectification deed was sought to be registered, the respondents have taken a stand that the valuation of the property has to be made as on the date of presentation of rectification deed and based on that, the guideline value of the property has been arrived at Rs. 63 lakhs as on the date of presentation of the rectification deed. Therefore, after taking into account the stamp duty already paid viz., Rs. 5,71,630/- the petitioner was directed to pay a sum of Rs. 1,71,270/-. It is also seen that the third respondent issued notice in Form I by initiating enquiry u/s 47-A of the Act.

It is the case of the petitioner that by rectification no change in the valuation was effected and therefore, the document ought not to have been referred u/s 47-A of the Act since there was no dispute regarding the valuation when originally the document was registered on 5.5.2003.

10. Pursuant to the said order, the first respondent viz., the District Registrar (Administration) Chennai by relying upon Section 47-B of the act, found that rectification of any document should be assessed based on the value of the property as on the date of rectification deed and after deducting the stamp duty already paid under the original sale deed, the balance amount has to be

recovered.

But, a reading of Section 47-B it is clear that chargeability under Schedule I would be applicable only in cases where in the rectification deeds by making change in description of property from the previous instrument, the valuation is sought to be altered. It may arise in cases where by rectification the extent of the property is sought to be increased or altered by which the value of the property or superstructure may get increased. In those cases, certainly by applying Section 47-B of the Act, the difference in stamp duty can be recovered by making calculation as per Schedule I. In cases where by rectification, there is no alteration in the basic nature of the document, especially in the extent and valuation of the property or where the rectification is only in respect of technical aspect such as typographical error or where the rectification is in respect of extent of property while the actual measurement remain unchanged, there is no question of application of Schedule I or application of Section 47-A of the Act.

15. At the risk of repetition, it is made clear that if by way of rectification ded, the extent is going to be increased, certainly for the difference in extent, the registering authority is entitled to charge the stamp duty under Schedule I. But, it is not open to the registering authority to reopen the original sale that took place in the year 2003 for the purpose of fresh assessment of value as on the date of rectification of typographical error and by imposing stamp duty on the rectification deed and to seek to recover the difference of stamp duty from the petitioner. Inasmuch as the registering authority at the time of presentation of document for registration in the year 2003 did not raise any objection u/s 47-A of the Act, it is not open to the respondents to raise the dispute regarding valuation now.

16. In such view of the matter, I am of the considered view that the impugned order of the first respondent dated 28.3.2007 cannot be construed to be in consonance with the provisions of the Indian Stamp Act, on the facts and circumstances of the present case wherein by rectification there is no alteration regarding extent of the property resulting in any dispute regarding valuation. Therefore, the impugned order of the first respondent is set aside holding that on the facts and circumstances of the case, no proceedings u/s 47-A(1) of the Act is warranted and the respondents are directed to return the document registered as document No. 142 of 2006 dated 19.1.2006 to the petitioner within a period of four weeks from the date of receipt of copy of this order."

(iv) J. Thirukumaran v. The District Collector on 7 June, 2011 CDJ (2011) MHC 3143 : LNIND 2011 Mad 2198 (vide: Typeset of authorities pages: 126 to 130 @ Pages 129-130)

8. With reference to the demand for payment of difference in stamp duty, he also placed reliance upon an unreported judgment of this Court in W.P. No. 11413 of 1989 filed against the department more or less in an identical circumstances. This Court by a final order, dated 3.7.1998 had accepted the contentions of the

petitioners. In that judgment, when a rectification deed was presented for altering the survey number, a similar demand was made. This Court held that it is only a misdescription of the property which was sought to be rectified and that the law does not require to levy stamp duty on the rectification deed as a fresh sale deed. The following passage extracted below, which reads as follows:

5. I have perused the documents and I find that the contention of the petitioner is entitled to acceptance. The total extent purchased under the document is one acre. The original survey number given for the entire extent of one acre was S. No. 215. However, it would appear that while the revenue authorities measured the property for the purpose of giving patta to the writ petitioner, it was discovered that the entire one acre extent did not lie in S. No. 215, though a major portion, namely, 71 cents lay in the said survey number and the balance extent of 29 cents lay in S. No. 214/1B1, which also belonged to the writ petitioner''s vendor. As already stated, the extent, the boundaries, the consideration, are not changed. Only a mistake that had crept into the deed in respect of the survey number was sought to be rectified by introducing another survey number for the balance extent of 29 cents, thus, making up a total of one acre, as having been sold to the writ petitioner, by his vendor. It was only a misdescription of property, which was sought to be rectified. The authorities had not acted legally in seeking to levy stamp duty on the rectification deed as a fresh sale deed. There is an error apparent on the face of the record.

9. In view of the above, the petitioner is entitled to succeed. Accordingly, the writ petition will stand allowed. The impugned order stands quashed. The respondents are directed to register the rectification deed without demanding any additional stamp duty on the basis of the revised market value calculated as on the date of presentation of the instrument. However, there will be no order as to costs. Consequently, connected miscellaneous petition stands closed. 7.6.2011."

(v) V.K. Amalraj v. Inspector General CDJ (2011) MHC 697 : LNIND 2011 Bmm 194:

8...... The power of the Registrar/Sub Registrar, while examining a document presented for registration, is spelt out under Sections 34 and 52 of the Act. The Registering Officer can only examine the document presented for registration under the provisions of the Registration Act, 1908 and the rules framed thereunder. Particularly, Rule 55 speaks about what is not the duty of the Registering officer. Hence, by covering all the legal position, the petitioner cannot expect the Registering Officer to examine the fact whether the seller of the property in any sale deed is a rightful and lawful owner. The Registering Officer can initiate action only u/s 83 of the Act and by invoking Section 82 of the for offence like false presentation alone and examining of ownership of the seller is beyond the jurisdiction and competence of the Registering Officer.

35. The learned counsel for the petitioner disputed the stand of the respondents

by contending that the sale deed for 14.80 acres was without showing boundaries or survey numbers or linear measurements therefore, were sham thus not valid in law.

36. It is also the stand of the learned counsel for the petitioner that even after the documents submitted by the respondents, the validity of the sale of 5 acres in favour of the petitioner is not disputed.

37. The learned counsel for the petitioner also vehemently contended that the rectification deed as submitted would show that there is no change qua as the boundaries has not been changed on 3 sides nor any additional consideration has been paid. The effect of rectifications claimed to be as under:

IV. Effect of Rectification:

W.P. No. 25489 of 2011 Doc. No. 377 of 2009

Before Rectification

After Rectification

Vendor

Citrex Products Limited

Citrex Products Limited

Buyer

Metafilms (India) Ltd.

Metafilms (India) Ltd.

Extent

A 5.00 cents

A 5.00 cents

Document Rectified

2709 of 1997

2709 of 1997

Parent Doc. No

47 of 1993

2829 of 1993

Survey nos.

124/4b,11 & 12 in Peravallore Village

124/4b and 124/12 in Peravallore Village

North

Kilmeni road

Kilmeni road

South

Vendors land in S. No. 157/1, Thatchur Village

Vendors land in S. No. 157/1, Thatchur Village and metro water land

East

G.N.T. Road

G.N.T. Road

West

Vendor land bearing survey No. 124/12 Peravellore Village

Vendor land bearing survey No. 124/12 Peravallore Village

W.P. No. 25490 of 2011 -Doc. No. 378 of 2009

Before Rectification

After Rectification

Vendor

Citrex Products Limited

Citrex Products Limited

Buyer

Sasthish Raj

Sathish Raj

Extent

A 1. cents

A 1. cents

Document Rectified

1765 of 1998

1765 of 1998

Parent Doc. No

47 of 1993

2829 of 1993

Survey nos.

124/12 in Peravallore Village

157/1 Thatchur Village

North

Property belonging to Metafilms (I) Ltd.

Property belonging to Metafilms (I) Ltd. & metro water land

South

Vendor land in S. No. 157/1, Thatchur Village

Vendor land in S. No. 157/1, Thatchur Village

East

G.N.T. Road

G.N.T. Road

West

Vendor land bearing survey No. 124/12 Peravallore Village

Land belonging to V. Rajendran bearing survey No. 157/1 Thatchur Village

There is no change in three side''s boundaries and hence the property is fixed

W.P. No. 25491 of 2011-Doc. No. 379 of 2009

Before Rectification

After Rectification

Vendor

Citrex Products Limited

Citrex Products Limited

Buyer

V. Rajendran

V. Rajendran

Extent

A 9. cents

A 9.00 cents

Parent Doc. No

1761 of 1998

1761 of 1998

Survey nos.

157/1 in Thatchur Village

157/1 Thatchur Village a 5.00 cents and 124/12 Peravallore Village 1 4.00 cents total a 9.00 cents

North

Property belonging to Metafilms (I) Ltd.

Property belonging to Metafilms (I) Ltd. & Kilmeni road

South

Vendors land in S. No. 157/1, Thatchur Village

Vendors land in S. No. 157/1, Thatchur Village

East

Property owned by the vendor

Property belonging to Metafilms (I) Ltd. And Sathish Raj

West

Vendor land bearing survey No. 124/12 Peravallore Village

Vendor land bearing survey No. 124/12 Peravallore Village

38. The learned counsel appearing for Thamiraparani Investment Ltd. has opposed the writ petition by contending that amendment deed is nothing but fraud, as the property before the amendment had been mortgaged, furthermore, Citrex Products Ltd., vendor was not represented by authorised person as Mr. V. Rajendran and Mr. R. Sathish Raj had no connection with the company.

39. It was also the contention of the learned counsel appearing for Thamiraparani Investment Ltd. that Mr. V. Rajendran and R. Satheesh Raj were barred to be appointed as directors of the public Ltd. Company, and the bar was still continuing. It cannot therefore, be said that the documents were presented by the authorised person.

40. It was also contended by the learned counsel for the respondents that the registering officer is bound to enquire whether the person executing document is the person who purports to be. Therefore, it was the duty of the registering authority to see whether the person representing the vendor was the director of the company. The registering authority also could not register a document which was illegal and patently violation of law and leave the parties to go to civil Court.

41. The stand of the respondent was that non registration of document is a lesser injury as the party has right of appeal under the registration Act itself. The

registering authority cannot work like a post office to collect stamp duty, but is bound to act in accordance with law.

42. Reliance was placed by the learned counsel on circular No. 67 of 2011 laying down that the registering authority was bound to enquire into the issues whether the documents are fraudulent in nature and in case it is so, to cancel the registration.

43. In support of the contention that the registering authority is bound to conduct enquiry on the right of the party qua the property on the date of execution, the reliance is placed on the judgment of this Court in 5. Rangarajan v. The District Registrar, Trichi (2008) 4 LW 411 : LNIND 2008 Bmm 1177.

44. This judgment cannot be of any help because this Court merely held that direction can be given by the civil Court restraining the respondent from registering the documents.

45. It is not disputed that Thamiraparani Investment Ltd. has already filed a suit to challenge the sale deed which is pending. The remedy of Thamiraparani Investment Ltd. was therefore, to move the civil Court for injunction, and no writ petition is therefore competent as Thamiraparani Investment Ltd. cannot seek two remedies at the same time.

46. The contention of the learned counsel for Thamiraparani Investment Ltd. that W.Ps. 25489 to 25491 of 2011 filed for registering documents are not maintainable, again misconceived.

47. It is not disputed that rectification deeds also stand registered. The petitioner is only seeking return of the registered documents. The documents have been registered after holding enquiry u/s 34 of the Act, after giving opportunity of hearing to the objectors.

48. In addition thereto, the learned counsel also raised following arguments:

That the enquiry contemplated as above was not required for deciding on unilateral sale deed cancellation as in such cases there would be nothing to enquire as it would be ex facie obvious. Yanala Malleshwari and Others Vs. Ananthula Sayamma and Others, (Andhra Pradesh High Court - view of Dissenting Judge - the majority judgment has since been overruled by the Apex Court)

Besides, in the present case, the documents themselves show that the property had already been conveyed by a registered document, therefore, no enquiry was needed to be conducted. It is only on mere reading of the document that Sub Registrar would come to a conclusion that the document, which was sought to be registered, was an illegal document and as such could not be registered. Therefore, the argument of the learned counsel for respondents that the Sub Registrar has no authority to make enquiries with regard to the title of the parties who execute the documents, would have to be accepted with exceptions.

That may be true, but if the document itself shows that the party who executes the document has no title over the property, the Sub Registrar is not bound to register such a document. This evidence that the enquiry contemplated in the Kerala and the Madras High Court decisions could relate only to the documents other than unilateral cancellation of sale as such documents do not even need any enquiry as they are ex facie evident.

Principle

That the Patta Passbook act covers all properties other than house sites and the mandatory requirement to verify patta passbook at the time of registration.

Madras High Court W.P.(MD) No. 11651 of 2011 dated 22.12.2011 Rajambal v. The Inspector General (Registration) and 2 Others LNIND 2011 Bmm 2797

42. Therefore, the State Enactment viz., the Tamil Nadu Patta Pass Book Act, imposes obligation upon the registering authority, to call for the production of the patta pass book, before registering the transfer of any land by way of sale, gift, mortgage, exchange, settlement or otherwise."

51. Therefore, it appears that the requirement u/s 5(1) of the Tamil Nadu Patta Pass Book Act, 1983, is not an encroachment into the field occupied by the Registration Act and the Registration Rules. It is only an additional requirement, that does not run contrary to any specific prescription contained in the Registration Act, 1908."

Principle

That this Court can exercise jurisdiction under Article 226 to cancel such documents -Madras High Court Full Bench Latif Estate Line India Ltd. Vs. Mrs. Hadeeja Ammal, The Inspector General of Registration and The Sub Registrar Ambattur,

55. From the reading of the aforesaid provision, it is manifest that three conditions are requisite for the exercise of jurisdiction to cancel an instrument i.e.

(1) An instrument is avoidable against the plaintiff;

(2) The plaintiff may reasonably apprehend serious injury by the instrument being left or outstanding; and

(3) In the circumstances of the case, the Court considers it proper to grant this relief of preventive justice.

G.D. Subramaniam Vs. The Sub Registrar, P. Shanmugam, B. Dillibabu and B. Vasu,

27. When a public authority has acted without jurisdiction in violation of principles of natural justice, while performing a public function, the self imposed restrictions on the powers of the High Court under Article 226 of the Constitution of India, cannot place hurdles upon this Court to interfere so as to safeguard the

buyer''s rights by setting aside the said act of the public authority. Principle

That the enquiry was required to be made as to whether the persons presenting the document were the persons they were purporting to be Pandurangan v. The Sub Registrar, Reddiarpalayam and 2 Others Madras High Court Pandurangan Vs. The Sub Registrar, The District Registrar and The District Collector,

13. In particular, the scope of any enquiry to be conducted by the Registering Officer is circumscribed by sub-section (3) of Section 34 which reads as follows:

(3) The Registering Officer shall thereupon (a) enquire whether or not such document was executed by the persons by whom it purports to have been executed; (b) satisfy himself as to the identity of the persons appearing before him and alleging that they have executed the document; and (c) in the case of any person appearing as a representative, assign or agent, satisfy himself of the right of such person so to appear;

14. In simple terms, the enquiry to be made by the Registering Officer is (i) on the factum of execution of the documents, (ii) the identity of the person who claims to have executed the document, and (iii) the right of the person who appears as a representative, assignee or agent of the executant.

Madras High Court G.D. Subramaniam v. The Sub Registrar (supra)

In my considered opinion, it is too hard to accept the said contention. Of Course, Section 34 of the Act does not expressly provide that the Registering Officer should hold an enquiry in respect of the validity of the document presented for registration. But, Rule 55 of the Registration Rules states thus:

55. It forms no part of a registering officer''s duty to enquire into the validity of a document brought to him for registration or to attend to any written or verbal protest against the registration of a document based on the ground that the executing party had no right to execute the document; but he is bound to consider objections raised on any of the grounds stated below:

(a) that the parties appearing or about to appear before him are not the persons they profess to be;

(b) that the document is forged;

(c) that the person appearing as representative, assign or agent, has no right to appear in that capacity;

(d) that the executing party is not really dead, as alleged by the party applying for registration; or

(e) that the executing party is a minor or an idiot or a lunatic.

Kerala High Court Noble John v. State of Kerala (2010) 3 KLT 941

"6. These provisions would go to show that the registering officer can enquire as to whether the person executing the document is the person who represents himself to be.

Principle

That only a person with a right in the property can present a document for registration

Kerala- Noble John v. State of Kerala (supra)

Under Section 7 of the Transfer of Property Act, 1882, for a person to become competent to transfer property, two conditions have to be satisfied viz. (1) he has to be competent to contract and (2) he must be entitled to transferable property or he must be authorised to dispose of transferable property not his own. Section 32 of the Registration Act, 1908, details the persons who can present documents for registration, who shall be either the person executing the document or his representative or assign or the agent of such a person duly authorised by power of attorney. The provisions of Rule 191 have to be appreciated in the light of the above provisions. Sub clause 12 of Rule 191 lays down that the registering officer can refuse registration for the reason that the person purporting to have executed the document is a minor, an idiot or a lunatic. This reason relates to the competency of the person to contract, which is the 1st condition laid down in Section 7 of the Transfer of Property Act. Sub clause 10 of Rule 191 lays down that the registering officer can refuse registration for the reason that he is not satisfied as to the right of the person appearing as a representative, assign or agent so to appear. This reason relates to sub Section (b) and (c) of Section 32 of the Registration Act and the later part of condition No. 2 in Section 7 of Transfer of Property Act. Therefore, essentially, as far as transfer of immovable property is concerned, the Registration Act and Rules are framed in terms of the Transfer of Property Act itself. Therefore, I am of opinion that want of capacity to transfer property as stipulated in Section 7 of the Transfer of Property Act, should also be a reason for which the sub registrar can refuse registration of a document relating to transfer of property.

In fact that is exactly what has been provided for by Sub clause 7 of Rule 191, making it competent for the sub-registrar to refuse registration for the reason that the document is presented by a person who has no right to present it. As far as transfer of property is concerned u/s 7 of the Transfer of Property Act, 1882 only a person who is entitled to transferable property is competent to transfer property. u/s 32 of the Registration Act, 1908, the document shall be presented by the person executing the document, if he is presenting the document himself. Therefore, if a person is not entitled to transferable property, he cannot execute a document in respect of transfer of the property and therefore he is not a person competent to present such a document for registration.

Principle

That illegal documents cannot be registered by the registering Authority.

Section 464 IPC sets out that it is criminal offence to create a false document and illustration (h) sets out how creating a conveyance on a ante dated basis is within scope of Section 464. The impugned documents herein all come under the scope of Section 464 as the same are created in 2009 as though to take effect from 1997 and 1998 to deprive the property rights vested in 2004 on the petitioner.

The documents as executed are also of the nature set out in Section 53(2) of the Transfer of Property Act as the impugned documents seeking as though to amend documents of 1997 and 1998 are made only to defraud the petitioner herein who is a subsequent purchaser under Doc. No. 97 of 2005."

Madras High Court G.D. Subramaniam v. The Sub Registrar (supra)

15. In the said backdrop, if the entire scheme of the Act and the rules are analysed, then it would make one to understand without any doubt, that the Registering Officer either ton enquiry or without an enquiry, should, besides other things, prima facie be satisfied that the document is neither illegal nor void and then to register the same provided the other requirements are satisfied. If the document is ipso facto illegal or void, then, he is not obliged to register the same and instead he should refuse to register the said document."

Kerala High Court Noble John v. State of Kerala (supra)

Take for example a case where a person presents for registration a sale deed executed by him selling the property comprised of the High Court or any Government property for that matter; or an agreement between two persons whereby one agrees to kill a third person for consideration. Is the registering officer bound to register the same.

Andhra Pradesh High Court - Yanala Malleshwari and Others v. Ananthula Sayama and Others (supra)

(Andhra High Court - view of Dissenting Judge - the majority judgment has since been overruled by the Apex Court)

If ''A'' executes a document with ''B'' that he would kill ''C'' on payment of consideration and if such a document is presented before the Sub Registrar, is the Sub Registrar duty bound to register such a document?

If ''A'' executes a sale deed conveying the title of ''Charminar'' or High Court for consideration, is the Sub Registrar bound to register such a document?

Principle

Whether under a property such as the 3 acres out of the 13.3 acres in Peravallore Village conveyed to the petitioner can be sought to be taken back only by way of re-conveyance from the petitioner and not in the manner of executing amendment deeds set as though to take effect on a ante dated basis.

Madras High Court Full Bench Latif Estate Line India Ltd. v. Hadeeja Ammal and

2 Others (supra)

59. After giving our anxious consideration on the questions raised in the instant case, we come to the following conclusion:

(i) A deed of cancellation of a sale unilaterally executed by the transferor does not create, assign, limit or extinguish any right, title or interest in the property and is of no effect. Such a document does not create any encumbrance in the property already transferred. Hence such a deed of cancellation cannot be accepted for registration.

(ii) Once title to the property is vested in the transferee by the sale of the property, it cannot be divested unto the transferor by execution and registration of a deed of cancellation even with the consent of the parties. The proper course would be to re-convey the property by a deed of conveyance by the transferee in favour of the transferor.

(iii) Where a transfer is effected by way of sale with the condition that title will pass on payment of consideration, and such intention is clear from the recital in the deed, then such instrument or sale can be cancelled by a deed of cancellation with the consent of both the parties on the ground of non-payment of consideration. The reason is that in such a sale deed, admittedly, the title remained with the transferor.

(iv) In other cases, a complete and absolute sale can be cancelled at the instance of the transferor only by taking recourse to the civil Court by obtaining a decree of cancellation of sale deed on the ground inter alia of fraud or any other valid reasons.

As set out in para 59(ii) above any property conveyed under a sale deed has to be validly re-conveyed under a sale deed and as such the amendment deeds seeking to create the effect of taking back of the property by the guise of documents with ante dated effect cannot be countenanced."

Summary

1. The documents ought not to have been registered as:

(a) the persons executing are not competent to execute the same

(b) the Company did not have any right in the property at the time of execution

(c) the provisions of Patta Passbook Act were not complied with.

(d) the documents were illegal documents u/s 464 IPC as set out in illustration

(e) the Registering Officer is bound to make enquiry

(f) the Registering Officer cannot register illegal documents.

(g) the Registering Officer is bound under Rule 55 to check whether the executants are who they claim to be

(h) the Registering Officer was bound to act on complaint as per Circular 67 of 2011 of their own Authority.

(i) that property conveyed to the petitioner cannot be taken away except by deed of conveyance

(j) that the ratio enquiry by Registering Officer set out in the decisions is not in respect of unilateral sale deed cancellations as there is no need for enquiry in such cases.

2. The series of decisions by Courts in these matters are on the principle that rights vested on a buyer under a registered document cannot be usurped by registering a contrary document. The Courts in the said matters had occasion to consider issue of cancellation of a sale deed unilaterally but the reasoning set out therein would cover the case of the impugned documents where the rights vested under sale deed of 2004 are sought to be taken away by retrospectively amending documents of 1997 and 1998 seeking to reflect properties conveyed to the petitioner herein as though they were conveyed to the father son duo.

3. A specific reading of both the judgments of the Ld. single Judge of our High Court and the Kerala High Court reveal that they have revealed that the Registering Officer cannot blindly register and that the person registering the document should be vested with the property as on the date of the execution and none of these findings would be required if the mere intention was to declare unilateral sale deed cancellation void.

4. In the case of the impugned 3 documents the Registering officer was always aware based on the records at the office that on the date of execution of the said documents in 2009 the Company was in no manner the owner of the properties and that they were in no manner competent to present the documents for registration.

5. The Registering office was also aware that the properties sought to be set out in the amended schedule had already been conveyed to the petitioner herein in W.P. No. 24554 of 2011 by Doc. No. 97 of 2005.

6. The records of Directors of Companies are easily available as all the information in this regard is available at the website maintained by the Ministry of Corporate Affairs.

7. The Full Bench of this Court had also held that the 3 conditions for exercising jurisdiction to cancel a document are that the instrument is avoidable against the plaintiff, that there would be serious injury by the instrument and in the facts of the case the Court considers it proper to grant such relief In this case, all the tests are fulfilled as it is settled law that the document to which the petitioner herein is not a party cannot bind them and hence the document is avoidable against it and that since the document is sought to be created as operating with ante dated effect it has serious consequences and in any event the transaction being one of fraud where the executants are not even Directors of the company

and the 3 documents are merely documents executed between a father son in various claimed capacities the Court is bound to exercise its power to cancel the documents.

8. The nature of the fraud sought to be played by the petitioner in W.P. No. 25489 to 25491 of 2011 is revealed by the fact that the petitioner in W.P. No. 25491 of 2011 has 1 year after executing the amendment deed executed and registered a Deposit of Title Deeds (Doc. No. 6324 of 2010) in favour of a Public Sector Bank setting out the old schedule of the property without giving effect to the claimed "amendment" which he had supposedly effect in 2009 itself.

9. The Registering Authorities having no answer to the issues raised by the petitioner in W.P. No. 24554 of 2011 have not even filed a counter setting out any stance despite the matter having been pending for over 3 months. It is evident that the Registering Authorities have acted in collusion and tried to set out as though the Registrar is bound to register any document and as though they are unaware of the orders of this Court which are law presently and thus binding on the said Registering Authorities and in any event they have acted contrary to Circular 67 of 2011 issued by the first respondent himself which is a circular binding on them.

10. Tamil Nadu Wakf Board Vs. K.V. Jeyaraj, The Inspector General of Registration, The Registrar, Regisration and The Sub-Registrar, This matter where the question involved is that of the Registering Authority''s power to withhold registration and release of document when any party objects to the ownership has been referred to a Full Bench.

11. The ratio of the decisions cited above have been applied in various decisions by this High Court and as such there cannot be any doubt that the Registering Authority have failed to discharge their duty within the ratios and directions set out by the Full Bench and in the Ld. single Judge order as such the registration of the 3 impugned documents ought to be cancelled as he documents are not executed by the persons purporting to execute them, the persons executing them have no right in the property on the date of execution, the documents are illegal as they are a offence u/s 464 failing under illustration (h) therein and the documents are an attempt to take away rights vested under completed conveyance in Doc. No. 97 of 2005 in favour of the petitioner which cannot be done even by mutual consent as set out by the Full Bench of this Court and that as per settled law set out, it is incumbent on the Court to exercise its powers under Article 226 or in the alternative, the matter may be referred to a Full Bench.

49. Citrex Products Ltd. has opposed the writ petitions. The learned counsel for the petitioner however argued that registering authority is bound to enquire u/s 34(3) and Rule 55 whether the person who executed document is person who purports to be and on complaint enquiry is required to be held.

50. The contentions on the face of it is misconceived, as positive stand from the

State is that enquiry as envisaged u/s 34 was held, and thereafter documents have been registered. The documents as per the stand of the respondent has been withheld for want of payment of additional stamp duty and registration fee.

51. Reliance placed by the learned counsel for the respondent on the judgment of this Court in S. Rangarajan v. The District Registrar, Trichi (supra) is misplaced, as in this case that the dispute is not of vendor, but the dispute raised was only as to who was to represent the company. It was therefore always open to the petitioner to take necessary steps in the civil suit where respective pleadings of the parties with regard to title were on record. The petitioner certainly could not have filed another writ petition (W.P. No. 24792 of 2011) claiming title to the property when the matter is sub judice before the civil Court.

52. The next contention of the learned counsel for the respondent was that in this case, no enquiry was required to be conducted as documents placed on record would show that the property sought to be conveyed by registering the documents, had already been conveyed to some other party and therefore, documents sought to be registered are illegal.

53. It is also the contention of the learned counsel for the respondent that this Court in exercise of writ jurisdiction under Article 226 of the Constitution of India is competent to cancel such document. This contention again is misconceived. It is not disputed that question with regard to validity of sale deed is pending before the civil Court.

54. It was next contended by the learned counsel for the petitioner that when a public authority acts without jurisdiction or in violation of principle of natural justice, there is no bar to exercise of power under Article 226 of the Constitution of India. This Court in exercise of writ jurisdiction can also safeguard the buyer''s rights raised by setting aside the act of the public authority. Reliance in support was placed on the judgment of this Court in G.D. Subramaniam v. The Sub Registrar (supra).

55. This contention again is misconceived, as the registration and return of documents cannot be said to be without jurisdiction. Similarly, there is no violation of principle of natural justice, as objectors were heard before registering the documents.

56. It was next contended by the learned counsel for Citrex Products Ltd. that it was duty of the Registrar to conduct enquiry as to whether person presented the document was the genuine person. There can be no dispute with this proposition. But in this case, Citrex Products Ltd., the vendor who had presented the documents for registration along with vendee 13 persons claiming to be the directors of Citrex Products Ltd. who had already challenged the authority to sell the land and the matter was sub judice before the civil Court. The objection prima facie was not correct and rightly rejected by the competent authority under the registration act.

57. It was finally contended that the illegal documents cannot be registered by the registering authority. This contention cannot be faulted with, but the question is how it is applicable. The documents were only rectification deeds executed by the parties who are parties to the original sale deed about which there was no dispute whatsoever. The documents also cannot be said to be forged or false documents, as the person who executed the documents appeared before registering authority in view of Rule 55, it was not duty of the registering authority to go into detail enquiry qua their locus standi as rightly contended by the learned counsel for the petitioner.

58. Considering the respective contention of the parties, the question to be decided in these writ is whether the petitioners in W.P. No. 25489 to 25491 of 2011 are entitled to relief as prayed for?

The answer is to be Yes.

59. It is not disputed that the sale deed was executed in favour of the petitioners with regard to land measuring 5 acres wherein boundaries were given.

60. It is also not disputed that the vendor and vendee has presented amendment deed for registration which was duly registered after considering the objection raised u/s 34 of the Registration Act. The competent authority rightly held that the question of title and rights of the parties have to be determined by the civil Court. In this case, admittedly civil suits are already pending where the sale deed in favour of the petitioner is under challenge.

61. Prima facie dispute raised is with regard to right to represent the company, as the title of Citrex Products Ltd. is not disputed nor it is disputed that the sale deed was executed by the company as also rectification deed.

62. The W.P. No. 25489 to 25491 of 2011 therefore deserves to be allowed in view of law laid down by this Court in V. Rajappa v. Deputy Collector and Tata Coffee v. State of Tamil Nadu and Others (supra).

63. The positive stand taken by the official respondents in the counter is that the documents stand registered after rejecting the objection against registration. Positive direction is also issued that the petitioners in the writ petitions are entitled to have a copy of the documents on payment of additional stamp duty.

64. In view of the stand of the official respondents and in view of the fact that the documents stand duly registered and adjudication for additional stamp duty and registration charges is complete, there is no justification with the respondent 1 to 3 to retain the documents and not to return the same to the petitioner in terms of Section 61 and 62 of the registration Act.

65. In view of the reasons stated hereinabove;

W.P. No. 25489 to 25491 of 2011 are ordered. The petitioner shall be entitled to return of the registered documents along with the rectification deeds on payment of additional stamp duty and registration charges finally adjudicated.

W.P. No. 24554 of 2011 and 24792 of 2011 are ordered to be dismissed. However, it is made clear that any finding recorded hereinabove shall have no bearing on the suit pending and the civil Court which shall decide the question of title to the property in accordance with law without being influenced by any observation made in this judgment.

Consequently, connected miscellaneous petitions are closed.

No cost.