(2014) 12 MAD CK 0124

In the Madras High Court

Case No : W.P. Nos. 13355 of 2012, 31274 of 2014 and M.P. Nos. 1 to 4 of 2014

Pratishta Associates APPELLANT

Vs

State of Tamilnadu and Others RESPONDENT

Date of Decision : 04-12-2014

Acts Referred:
Stamp Act, 1899 — Section 3, 3, 4, 4, 4(1)

Citation : (2015) 2 CTC 548 : (2015) 2 MLJ 45

Hon'ble Judges : V. Ramasubramanian, J

Bench : Single Bench

Advocate : P. Subba Reddy, Advocates for the Appellant; A. Kumar, SGP, Advocates for the Respondent

Judgement

V. Ramasubramanian, J.—The petitioners have come up with the above writ petitions challenging a circular issued by the Inspector General of Registration, demanding an additional stamp duty, whenever a prior agreement holder is made a party to a sale deed as a confirming party. Heard Mr. P. Subba Reddy, learned counsel for the petitioners and Mr. A. Kumar, learned Special Government Pleader for the respondents.

2. The sole petitioner in the first writ petition is a builder. They entered into an agreement on 12.1.2006 with a company by name Themes Aqua Farms Private Limited, which is the fifth petitioner in the second writ petition. The said company was the owner of a property at old door No. 15, new door No. 67, Cross Road, New Washermenpet, Chennai-81. The agreement was for the sale of the properties to the petitioner in the first writ petition. The builder namely the petitioner in the first writ petition also got a deed of power of attorney executed in favour of its nominee, by the owner company.

3. Pursuant to the said agreement, the petitioner in the first writ petition constructed flats in the property and nominated the petitioners 1 to 4 in the second writ petition for purchasing specific flats. After construction, the owner namely the fifth petitioner company in the second writ petition was to execute a

sale deed in favour of the nominees, with respect to appropriate undivided shares. When the sale deeds were executed, the builder namely Prathista Associates - the petitioner in the first writ petition also joined as a confirming party, in view of the fact that they developed the property in pursuance of the agreement of sale dated 12.1.2006 entered into with the original owner.

4. When the sale deeds so executed, describing the fifth petitioner in the second writ petition as the seller, the petitioner in the first writ petition as the confirming party and the petitioners 1 to 4 in the second writ petition as the purchasers of the flats, the Sub- Registrar refused to register and returned the documents on the ground that by virtue of a circular issued by the Inspector General of Registration, twice the amount of stamp duty had to be paid. The circular issued by the Inspector General of Registration was to the effect that whenever a prior agreement holder was made a party to a sale deed, there are two conveyances and that therefore, the instrument of sale has to be construed as two sales. Hence, aggrieved by the said circular, the petitioners have come up with the above writ petitions.

5. Before proceeding further, it should be pointed out that in the sale deeds, which have become the subject matter of dispute, the company - Themes Aqua Farms Private Limited, which is the fifth petitioner in the second writ petition, is described as the vendor, the builder namely Prathista Associates, which is the petitioner in the first writ petition, is described as the confirming party and the buyers of the flats, who are the petitioners 1 to 4 in the second writ petition, are described as the purchasers.

6. The circular issued by the Inspector General of Registration, which is under challenge in these two writ petitions, requires to be extracted. Hence, it is extracted as follows :

"In the sale deeds, inclusion of the agreement holders as executants, while the earlier sale agreement is subsisting, is made only to release his right over the property in favour of the nominee/purchaser.

Further, when nominee has no relationship with agreement holder, the recital to include such agreement holder in the sale deed is being done with the intention/ motive to extinguish his right to obtain a sale deed in respect of the property, which is the subject matter of the sale deed, even though the same may not be explicitly stated in the sale deed. Otherwise, there would be no necessity to include agreement holder as an executant even as a matter of abundant caution or as a confirming party, when he has no title.

Actually, if the vendor wants to execute sale deed in favour of the purchaser, he can simply cancel earlier sale in favour of the agreement holder on the grounds of default on the part of the sale agreement holder or by mutual consent. But, while doing so, the agreement holder would lose his right to nominate a person as purchaser, for execution of sale deed in favour of that person by the vendor. The power to nominate a person in whose favour sale has to be executed and who is not a principal/agent of the agreement holder itself is a right.

In view of the above reasons, the sale deed executed by the agreement holder as one of the vendors or as confirming party has to be treated as an instrument which brings to the fore the deemed conveyance which happened in favour of the agreement holder by virtue of execution of sale agreement in his favour and hence, such instrument is to be treated as instrument, comprising two sales.

The above order comes into effect from 14.9.2011 for all documents to be presented for registration as well as for all documents pending for registration, other than those for which final orders have not been passed under Section 40 of the Indian Stamp Act, 1899."

7. A careful look at the above circular would show that whenever a prior agreement holder is joined as an executant along with the parties to the subsequent agreement, the Department has construed the sale to be a composition of two conveyances, one by the prior agreement holder and another by the subsequent agreement holder. But unfortunately, the circular has gone simply by logic and not by law. The circular does not refer to the provisions of the Indian Stamp Act. Therefore, it is necessary to have a look at the provisions of the Indian Stamp Act before testing the correctness of the above circular.

8. Indian Stamp Act, 1899 makes certain instruments, listed in Section 3, liable to be charged with duty of the amount indicated in Schedule I, subject to the provisions of the Act and the exemptions contained in the same Schedule. A careful look at the provisions of Section 3 would show that what is made chargeable to duty is the instrument and the transaction and not the persons. This is made clear by Section 4. Section 4(1) makes it clear that where several instruments are employed for completing a transaction, the principal instrument alone shall be chargeable with duty prescribed in Schedule I. Each of the other instruments are chargeable with a fixed duty. Sub-Section (2) of Section 4 also gives an opportunity to the parties to determine for themselves, which of the instruments shall be deemed to be the principal instrument.

9. Section 5 deals with instruments relating to several distinct matters. If one instrument comprises or relates to several distinct matters, it shall be chargeable with the aggregate amount of the duties, with which, separate instruments, each comprising or relating to one of such matters, would be chargeable under the Act. The instrument where the prior agreement holder merely joined as a confirming party in order to acquiesce himself to the subsequent agreement and the sale in the subsequent agreement, cannot be construed as an instrument relating to several distinct matters. At the most, such instruments can be construed as (i) the cancellation of the prior agreement of sale; and (ii) the conveyance by the vendor to the subsequent agreement holder. If it is so construed, these two transactions namely that of cancellation of the prior agreement and the conveyance in pursuance of the second agreement, would fall under Section 6. Section 6 covers instruments that come within two or more of

the descriptions in Schedule I. In such an event, if the duties chargeable are different, the instruments should be charged only with the highest of the duties.

10. But unfortunately, without even any application of mind as to the provisions of Sections 3 to 6, the Inspector General of Registration has passed the impugned circular. Therefore, the same cannot be sustained.

11. Even if it is assumed for a minute that an instrument of sale, to which, the prior agreement holder joins as a confirming party, comprises of two transactions, the conclusion, to which, the Inspector General of Registration has come, is not possible. An agreement or memorandum of agreement is covered by Article 5 of Schedule I to the same Act. The cancellation of an agreement falls under Article 17. The conveyance comes under Article 23.

12. Suppose a person has entered into an agreement with another for the sale of an immovable property, such an instrument will come within the purview of Article 5. A sale deed will come within the purview of Article 23. If, in a sale deed, which comes under Article 23, a prior agreement holder is included as a confirming party, it would at the most amount to a transaction canceling the first agreement. In other words, the instrument, in respect of which, the impugned circular has been issued, may at the most cover two transactions, one falling under Article 17 and another falling under Article 23. Even in such an event, Section 6 would go to the rescue of the parties, making them liable to pay the highest of the two duties. Therefore, the impugned circular issued wholly without any relevance or reference to any of the provisions of the Indian Stamp Act or the Schedule contained therein, is unlawful and liable to be set aside. Accordingly, the writ petitions are allowed and the impugned circular is set aside. The respondents are directed to treat the documents presented by the petitioners as comprising of only one sale, charge stamp duty and registration fee and thereafter release the documents, within a period of four weeks from the date of receipt of a copy of this order. No costs. Consequently, the above MPs are closed.