(2003) 09 MAD CK 0183

In the Madras High Court

Case No : Writ Petition No. 19008 of 1999

Ramaswamy APPELLANT

Vs

The Inspector General of Registrations and Others RESPONDENT

Date of Decision : 12-09-2003

Acts Referred:
Stamp Act, 1899 — Section 33, 47A

Citation : AIR 2004 Mad 305

Hon'ble Judges : A.K. Rajan, J

Bench : Single Bench

Advocate : V. Raghavachari, for the Appellant; R. Vijayakumar, Government Advocate, for the Respondent

Final Decision : Allowed

Judgement

A.K. Rajan, J.—The writ petition has been filed for the issue of a writ of mandamus directing the respondent to release the document No. 2549/1997 filed before him for registration on 25-9-1997.

2. In the affidavit filed in support of the writ petition it is stated that the petitioner purchased an extent of 2410 Sq. ft. in Survey No. 708/1, 714/1 (Part) at Pallapatti Village, Dindigul Taluk within the registration district of Sub-Registrar, Dindigul-II. The owners of the property executed the sale deed in favour of the petitioner on 25-9-1997. The sale deed was presented for registration to the third respondent and the document was given the number 2549/ 1997. The property was valued for the purpose of registration at Rs. 48,200/- and the stamp duty of Rs. 5,802/- was paid. The third respondent felt that the value of the agricultural land would be more. Hence he referred the matter to the Special Deputy Collector (Stamps), Madurai-20 who determined the value of the property at Rs. 1,37,370 and by order dated 13-11-1998 he called upon the petitioner to pay a sum of Rs. 16,487/- towards stamp duty. The petitioner paid the same on 8-12-1998. Even thereafter the third respondent did not release the document.

3. The petitioner issued a notice to the third respondent on 28-3-1999. Thereafter by letter dated 31-3-1999 the second respondent informed the petitioner that even though the stamp duty had already been remitted, the document will be returned only if the first respondent directs to that effect. The action of the second respondent in retaining the document is illegal. Hence the writ petition has been filed.

4. The first respondent has filed a counter wherein it is stated that the document was presented before the Joint-II Sub-Registrar, Dindigul on 22-9-1997 and the document was assigned the number 2549/1997. The Sub-Registrar found that the market value of the property was not correctly mentioned and hence referred the document to the Special Deputy Collector (Stamps) for initiating action u/s 47-A of the Indian Stamp Act. The Special Deputy Collector, after inspection, valued the property at Rs. 1,37,3370/- and the deficit stamp duty was also collected. The document was returned to the Sub-Registrar concerned.

5. In the meanwhile the Executive Officer of Arulmigu Soundararaja Perumal Thirukoil, Dindigul by his letter dated 11-12-1997 had informed that the property transferred belongs to the temple and requested to cancel the registration of the document. That communication was received after the registration of the document and hence the Executive Officer was directed to approach the appropriate Court. Since the document affects the property belongs to the temple, the same was not returned to the parties. In order to protect the property that belong to the temple, the first respondent has instructed not to return the document so as to enable the temple authorities to take suitable action.

6. The learned counsel for the petitioner submitted that when the document has been registered on payment of the entire stamp duty on the market value, the document cannot be retained by the Registrar''s Office, The learned counsel relied upon the judgment of this Court in Sukumaran v. State of Tamil Nadu (2002) 2 CTC 329. But that judgment has no application to the facts of the present case.

7. As seen from the counter-affidavit, the reason for not returning of the document is that the Executive Officer of Soundaraja Perumal Koil has written a letter stating that the property conveyed was the property of the temple and the officer requested the respondent not to release the document. The stand taken by the first respondent is not legally sustainable.

8. When the document has been registered on payment of stamp duty, there is no power for the registering authority to retain the document. If the property does not belong to the vendor who executed the sale deed and it belongs to someone else, the real owner may file a suit, before the appropriate Court, to set aside the document. Further by any deed of conveyance executed by a person who had no right over the property that is conveyed, no right is conveyed. In such cases, the purchaser takes the risk of losing his money. But on that ground

the Registering Authority or the Collector cannot refuse to return the document registered. The action of the respondent in refusing to release the document on the ground that the sale deed was executed by the person who was 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.

9. For the reasons stated above, the writ petition is allowed as prayed for. The third respondent is directed to deliver the document forthwith to the petitioner herein on receipt of the copy of this order. Consequently W. M. P. 27827/99 is closed.