(2014) 10 MAD CK 0194

In the Madras High Court

Case No : WP. Nos. 4459/2012, MP. No. 2/2012 and 13979/2012 and MP. No. 1/2012

S.N. Kirubanandam APPELLANT

Vs

The Sub Registrar RESPONDENT

Date of Decision : 15-10-2014

Acts Referred:

Registration Act, 1908 — Section 53
Stamp Act, 1899 — Section 31, 33, 40, 5

Citation : (2014) 6 CTC 262 : (2014) 5 LW 534

Hon'ble Judges : S. Rajeswaran, J

Bench : Single Bench

Judgement

S. Rajeswaran, J.—The writ petition in WP. No. 4459/2012 has been filed by the petitioner challenging the notice in Proc. No. Nil on the file of the respondent herein, viz., the Sub Registrar, Ambattur, served upon the petitioner on -02-2012 and to direct the respondent to register and return the document presented before for registration on 14.11.2011.

2. The writ petition in WP. No. 13979/2012 has been filed by the petitioner challenging the proceedings of the 2nd respondent in Circular No. 30196/P1/2011-1 dated 13.09.2011 and the notice in Proc. No. NIL on the file of the 1st respondent served upon the petitioner on 28.03.2012 and to further direct the respondent to register and return the document presented before for registration on 14.11.2011.

3. Since the matter involved in both the writ petitions is one and the same, and the parties are also identical, a common order is being passed to dispose of these two writ petitions.

4. The case of the petitioner in common in both the writ petitions is as follows:-

[a]The property in S. No. 96/I.D.1 comprised in Patta No. 177, Ambattur belonged to one C.U. Mansoor Ali, who had purchased the same under a Sale

Deed dated 22.09.2010, from D. Marimuthu, son of Late Deenadayalan. The vendor had parted with his possession through a power agent on the same day. From the date of purchase, he has been in effective possession and occupation of the said property. Patta and the other revenue records have been mutated in his name. Subsequently, the petitioner herein has purchased the same from him for a valuable consideration and a Sale Deed has been executed in the name of the petitioner''s wife and the petitioner. At that time, brothers of the said Deenadayalan were also called upon to join as confirming parties along with the said Mansoor Ali, which is nothing but a sort of attestation to confirm the sale executed in favour of the petitioner. In reality, they have no right, title or interest in the property which the petitioner has purchased along with his wife. Only for mere confirmation of the sale made in favour of the petitioner and his wife, those persons were referred to and shown as confirming parties. Immediately, on its execution, the document was presented before the 1st respondent for registration. But, the said document was kept pending by the first respondent without registration. When the petitioner approached the 1st respondent to know the reason for not registering the document, he had advised the petitioner to remove the names of the confirming parties in order to register the said documents.

[b]Hence, a writ petition in WP. No. 27948/2011 was filed before this Court, which was disposed of on 01.02.2012, to return the document which was presented before it. Immediately after the issuance of Court''s directions, a notice was issued on -02-2012 by speed post, wherein the petitioner was called upon to pay an additional stamp duty of Rs. 1,01,472/-. Challenging the above said notice, the petitioner filed WP. No. 4459/2012 and this Court ordered notice of motion and thereafter, called upon the respondent to file counter. Consequently, a counter affidavit has been filed in that writ petition only. IN the meantime, the 1st respondent in WP. No. 13979/2012 issued notice dated 28.03.2012 threatening to return the document without registration. Hence, challenging the notice dated 28.03.2012, the above WP. No. 13979/2012 has been filed.

[c]After filing of the above writ petition, MP. No. 2/2013 was filed by the petitioner in WP. No. 13979/2012 seeking for amendment of the prayer portion in the writ petition on the ground that the 1st respondent was not able to register the document only on the basis of the circular issued by the Inspector General of Registration, viz., the Circular No. 30196/P1/2011-1 dated 13.09.2011. The Inspector General of Registration was also sought to be impleaded in WP. No. 13979/2012 as 2nd respondent in MP. No. 1/2013. The 2nd respondent was impleaded on 26.07.2013 and MP. No. 2/2013 for amendment was ordered on 08.04.2013. After amendment, the petitioner wants to challenge the circular dated 13.09.2011 along with the original impugned order dated 28.03.2012 in WP. No. 13979/2012.

5. A counter affidavit has been filed by the 1st respondent in WP. No. 4459/2012

and the learned Additional Government Pleader requests this Court to treat this counter common to both the writ petitions.

6. According to the 1st respondent, as per the circular dated 13.09.2011 issued by the 2nd respondent, the Sale Deed which was sought to be registered by the petitioner, could not be registered. The Circular dated 13.09.2011 is the basis for passing the impugned order dated 28.03.2012. According to the 1st respondent, the document in question is comprising recitals which are against the provisions contemplated in the Registration Act, 1908 and the Indian Stamp Act, 1899. Therefore, it is mandatory to collect the deficit duty as per the impugned circular and also u/s. 33 and section 5 of the Indian Stamp Act, 1899. It is contended by the 1st respondent that the instrument in question is to be classified as an instrument not only stamped under section 31 of the Indian Stamp Act but also under section 5 and 33 of the Indian Stamp Act.

7. The 1st respondent contends that after thoroughly perusing the instrument which was sought to be registered by the petitioner, a right decision was made that it contains 2 distinct matters and therefore, it comes under section 5 of the Act.

8. It is stated in the counter that once a property of Common right has been severed to different members of joint family, the joint right would cease to exist. As per section 53 of the Registration Act, any person who signs a document, as an executant in token of his assent to the transaction and not merely as a witness, then it attracts another transaction and therefore, the order has been correctly passed by the 1st respondent and the writ petitions are to be dismissed.

9. Heard the learned counsel for the petitioner and the learned Additional Government Pleader appearing for the respondents. I have also gone through the documents made available on record including the common counter affidavit filed on the side of the respondents.

10. The subject matter in both the writ petitions is the Sale Deed executed by the petitioner''s vendor Thiru C.U. Mansoor Ali and 5 others, as confirming parties in favour of the petitioner and his wife.

11. The petitioner''s vendor C.U. Mansoor Ali purchased the property from one Dr. Marimuthu through his power agent Thiru Mohamed Illiyas, on 29.09.2010 registered as Document No. 8849/2010 on the file of the 1st respondent.

12. The petitioner''s vendor''s vendor Thiru Marimuthu got the property by way of a Deed of Settlement dated 14.09.2010 from Tmt D. Chandra settling her undivided half share which was registered as Doc. No. 8284/2010. Tmt D. Chandra is none other than mother of D. Marimuthu.

13. The details as to how Tmt D. Chandra obtained the property are also traceable in the subject matter of the writ petition. A perusal of the very same Sale Deed shows that one Perumal purchased lands measuring an extent of 55 cents in S. No. 96 in Mahatma Gandhi Street, Aynambakkam Village by a

registered Sale Deed dated 11.07.1924, registered as Document No. 1893/1924 on the Sub Registrar office, Saidapet. The said Perumal passed away leaving his 2 sons Krishnan and Chandran as his legal heirs. By a Partition Deed dated 22.02.1990, registered as Doc. No. 1389/1990. Krishnan was allotted 50% of the property, i.e., lands measuring an extent of 27.5 cents. The said Krishnan passed away on 27.05.1998 leaving behind his 6 sons, i.e., [1] K. Deenadayalan [2] K. Anandan [3] K. Velu [4] K. Sahadevan [5] K. Mani and [6] K. Settu. One of the above said 6 sons, i.e., K. Deenadayalan passed away on 01.01.2007 leaving behind his wife Tmt D. Chandra and son Thiru D. Marimuthu as his legal heirs. It is stated in the subject matter Sale Deed, after the death of Deenadayalan, there was an oral partition on 15.04.2009 between the five brothers of Deenadayalan and his wife D. Chandra. Pursuant to oral partition, Tmt D. Chandra was allotted a plot measuring an extent of 1989 sq. ft. which is the schedule mentioned property in the subject matter Sale Deed. As already referred to by me, Chandra settled the above said property in favour of her son Thiru Marimuthu and from Marimuthu, Thiru C.U. Mansoor Ali purchased the property from whom, the petitioner in these writ petitions purchased the property in November 2011 and Sale Deed was executed by Thiru Mansoor Ali as Vendor, along with 5 confirming parties who are the 5 brothers of Thiru K. Deenadayalan to and in favour of the petitioner and his wife. When this Sale Deed was sought to be registered, a doubt arose as to the role of the confirming parties in executing the Sale Deed along with the Vendor to the petitioner. When no decision has been taken by the registering authority, the petitioner filed WP. No. 27948/2011 for a writ of mandamus directing the registering authority to register and return the Sale Deed presented for registration on 14.11.2011.

14. By order dated 01.02.2012, this Court passed the following order:-

3. The action of the respondent in not taking a decision to register the documents or to return it, can lead to the only conclusion, that the respondent has failed to perform his statutory duty under the Registration Act. In view of the facts recorded above, without expressing any opinion on the merits, as to whether the documents presented, deserves to be registered or not, the writ petition is disposed of by directing the respondent, either to register the documents or pass an appropriate orders, rejecting the documents in accordance with law, within one month time of the receipt of the certified copy of this order, so as to enable the petitioner to take appropriate legal remedy under the Registration Act in accordance with law. No costs.

15. After the above order has been passed, a notice was issued by the very same registering authority holding that the subject matter Sale Deed comes u/s. 5 of the Indian Stamp Act, 1899 and therefore, a further sum of Rs. 1,01,472/- is to be paid for registering the document, failing which, the document would be impounded. Challenging the notice, WP. No. 4459/2012 was filed by the petitioner. Thereafter, an order has been passed by the very same registering authority on 28.03.2012 which is the only subject matter in WP. No. 13979/2012

before amending the prayer.

16. Now, in the light of the above facts, let me consider the issue raised in both the writ petitions.

17.A perusal of the original impugned order dated 28.03.2012 in WP. No. 13979/2012 would show that the 1st respondent informed the petitioner that the subject matter Sale Deed was directed to be returned by this Court on 01.02.2012 in WP. No. 27948/2011 and therefore, the petitioner has to come and collect the document without registration. This order dated 28.03.2012 is palpably wrong as this Court has not directed the 1st respondent to return the document without registration as wrongly stated by the 1st respondent. In fact, this Court on 01.02.2012 directed the 1st respondent either to register the document or pass an appropriate order rejecting the document in accordance with law within one month. Therefore, the impugned order dated 28.03.2012 will not stand the scrutiny of law and is liable to be set aside. However, in view of the subsequent development, i.e., the payment of Rs. 1,01,472/-, by the petitioner and the registration of the document by the 1st respondent makes the impugned order dated 28.03.2012 infructuous and therefore, this Court need not set aside the same.

18. In view of the fact that the registration charges and stamp duty have been paid without prejudice to the petitioner''s rights in the writ petition, now the validity of the impugned order dated Nil. 02.2012 in WP. No. 4459/2012 is to be considered.

19. The 1st respondent for raising additional stamp duty, mainly relied on section 5 of the Stamp Act, which was seriously disputed by the petitioner. In the counter, the 1st respondent relied on the Circular dated 13.09.2011 also for raising additional stamp duty and hence, this was put into challenge in WP. No. 13979/2012.

20. First, let me consider the Circular dated 13.09.2011. The Circular dated 13.09.2011 reads as follows:-

Office of the Inspector General of Registration Chennai-28.

Circular No. 30196/P1/2011-1

Dated 13.09.2011

Sub: Stamp duty clarification issued for determination of nature of sale deeds executed along with agreement holder or as Confirming Party Reg. Ref: C.C. R.A. Order No. 30196/P1/2011 dated 13.09.2011

A copy of the above order is sent herewith for strict adherence and for deciding the nature of the similar sale deeds coming up for registration in future.

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 his 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, 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 agreement 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 deed 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 14.09.2011 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 u/s. 40 of the Indian Stamp Act, 1899.

The receipt of this Circular should be acknowledged by all the registering officials to the District Registrars, all District Registrars to Deputy Inspectors General of Registration and by all Deputy Inspectors General of Registration to this office.

Sd/-

Inspector General of Registration

To All Deputy Inspectors General of Registration All District Registrars All Sub-Registrars

Copy to: All officers of O/o. The I.G. of Registration

Copy to Stock file.

21. A perusal of the above Circular would show that it has nothing to do with the case on hand and it deals with agreement holders as Executants while the earlier sale agreement is subsisting. Therefore, I am of the strong view that the reliance placed upon by the 1st respondent on the 2nd respondent''s Circular dated 13.09.2011 is misconceived and it cannot be a reason for raising additional Stamp duty for the execution of the Sale Deed by the Vendor along with the Confirming parties.

22. In view of the above decision taken by me, the Circular dated 13.09.2011 need not be set aside as it holds a different field other than the one occupying the present writ petitions.

23. Now, the only question that arises for consideration is whether the respondent in WP. No. 4459/2012 is legally correct in passing the impugned order dated -02-2012 raising additional Stamp Duty of Rs. 1,01,472/- after holding that the document comes u/s. 5 of the Indian Stamp Act, 1899.

24. Section 5 of the Indian Stamp Act, 1899 is extracted below for ready reference:-

5. Instruments relating to several distinct matters.- Any instrument comprising or relating to several distinct matters 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 this Act.

25. From the above, it is clear that if any instrument relates to several distinct matters, then, it shall be chargeable with the aggregate amount of the duties with which separate instruments would be chargeable under the Act.

26. In the present case, the facts narrated by me would make it very clear that the petitioner wants his vendor''s vendor''s settlors husband''s five brothers as confirming parties. Obviously, the petitioner is aware that the five brothers have not released their shares even though an oral partition is said to have taken place and only in that oral partition, the confirming parties brother''s wife Tmt. D. Chandra was allotted the scheduled property in the Sale Deed. As this fact is worrying and gives some defectiveness in the title, the petitioner wants the confirming parties also to join the vendor in executing the Sale Deed. If they are made as confirming parties the defectiveness will not continue and by joining the vendor, the confirming parties are confirming their release in the oral partition which is said to have taken place on 15.04.2009.

27. In view of the above facts two distinct matters get attracted, i.e., (1) the vendor executing the Sale Deed in favour of the petitioner and his wife and the confirming parties are confirming their release of the property and [2]curing the defect in the title and in such circumstances, Section 5 of the Indian Stamp Act gets attracted and the respondents demand for a further sum of Rs. 1,04,172/- is legal and sustainable.

28. In the result, W.P. No. 13979/2012 is disposed of in the above terms and W.P. No. 4459/2012 is dismissed. No costs. Consequently, connected miscellaneous petitions are also dismissed.

