
(1996) 10 MAD CK 0094
In the Madras High Court
Case No : W.A. No. 1205 of 1991

S.P. Padmavathi

APPELLANT

Vs

State of Tamil Nadu and Others

RESPONDENT

Date of Decision : 15-10-1996

Acts Referred:

Constitution of India, 1950 — Article 14, 19(1)
Stamp Act, 1899 — Article 23, 17, 2, 27, 47A(3)

Citation : AIR 1997 Mad 296 : (1997) 2 CTC 617 : (1997) 2 LW 579

Hon'ble Judges : K.A. Swami, C.J.;AR. Lakshmanan, J

Bench : Division Bench

Advocate : V.P. Venkataraman, for the Appellant; K.P. Sivasubramanian, Government Pleader, for the Respondent

Judgement

K. A. Swami, C.J.—This appeal is preferred against the order dated 24-7-1991 passed by the learned single Judge dismissing W.P.No.2214 of 1991. Hence the petitioner therein has come up in appeal.

2. The petitioner has sought for quashing the proceedings of the second respondent, dated 18-10-1990 bearing No. 60608/B4/90, directing the petitioner to pay stamp duty not on the sum of Rs. 2,75,000/- mentioned as consideration amount in the sale deed, but on the market value, which, according to the second respondent, was in the order of Rs. 7,06,312.50. Therefore, additional stamp duty of Rs. 56,077/- should be paid, in addition to Rs. 35,750/- already paid.

3. Learned single Judge has taken a view that the market value of the property, as on the date of the execution of the sale deed, has to be taken into account for the purpose of determining the stamp duty payable on the document of conveyance. Therefore, the order passed by the second respondent does not call for interference. The relevant portion of the order of the learned single Judge is as follows :--

"As such, the specific performance is an equitable remedy given by the Court to enforce against the defendant the duty of doing what he agreed by contract to do. That is all. Obtaining a decree for specific performance does not mean and cannot also, in my view, used as a lever to avoid the proper stamp duty to be paid on the instrument to be executed and registered nearly after five years. On the facts of the instant case, just because a decree for specific performance is passed, it does not mean that it is binding on the authorities under the Registration Act as well as the Stamp Act. They are bound by the provisions of the Act and when a person produces an instrument for registration, it is open to them to arrive at the duty based on the market value on the date of the registration of the document. In fact, S. Ramalingam, J., reported in R. Thiagasundaram Vs. The State of Tamil Nadu and Others, , has held that when the State is not a party, the order of the civil court regarding the market value is not binding on the Registering Authority. I am also supported by the views expressed by a Division Bench of this Court and also by the judgment of Balasubramanyan. J., which has been extracted above.

By no stretch of imagination it can be said that there is oppression. Explanation to S.47 A of the Act is not used as oppression on the facts of the case. This Court can take judicial note of the fact as to how the prices are spiralling up and as such, in my view, the petitioner has to pay the duty on the market value as fixed by the respondents. I am not able to see any error in the conclusion arrived at by the second respondent in the impugned order that as per sub-sec. (7) of S. 2 read with the Explanation to S. 47A of the Stamp Act, the stamp duty has to be collected based on the market value as per the guidelines on the date of the execution of the document. There are no merits in the writ petition and it is dismissed. No costs."

4. Learned Government Pleader was specifically asked to file a counter affidavit as to the consequences on the revenue and also on the question as to whether stamp duty on the document of conveyance should be paid on the amount of consideration mentioned in the document or on the market value, in cases where sale deeds are executed pursuant to the decree passed by the Civil Court, in a suit for specific performance, we specifically make it clear that our decision relates to only execution of the sale deeds, pursuant to the decree for specific performance passed.

4.1 The relevant and necessary facts of the case are as follows :--

The petitioner entered into an agreement of sale with one N. Balakrishnan for purchase of the property bearing Door No. 3, New Tank Street, Nungambakkam, Madras-34 for a sum of Rs. 2,75,000/-. As the vendor committed breach of contract and did not execute the sale deed, it became necessary for the petitioner/appellant to file a suit for specific performance of the agreement of sale dated 11-2-1985 against the aforesaid Balakrishnan and a third party by name T. Padmavathi who claimed a right to the property on the basis of an alleged earlier agreement of sale in her favour dated 3-1-1985, in C.S.No. 245 of

1986 on the file of the Original Side of this Court. Meanwhile, the vendor Baiakrishnan expired and his legal representatives were brought on record. The suit was contested. After contest, the suit was decreed in favour of the petitioner on 13-6-1989. Aggrieved by the judgment and decree the aforesaid Padmavathi the second defendant therein preferred O.S.A. No. 227 of 1989 and the same was dismissed on 28-8-1989, confirming the judgment and decree passed in C.S. No. 245 of 1986, Thereafter, the decree-holder/plaintiff/petitioner filed E.P. No. 16 of 1990 to execute the decree, with a direction to the defendants to execute the sale deed or to have the sale deed executed through the Commissioner appointed by the Court.

5. In the document of conveyance, consideration of Rs. 2,75,000/- was mentioned. The document was prescribed for registration before the third respondent in the Writ Petition on 26-4-1990. The document was registered as Document No. 477/90, But the third respondent refused to deliver the document on the ground that the value mentioned in the sale deed was too low and it did not agree with the market value. Therefore, as per S. 47A(3) of the Indian Stamp Act, as amended by the State of Tamil Nadu, the market value was determined at Rs. 7,06,312.60 and an additional stamp duty of Rs. 56,077/- was directed to be paid.

5.1 Learned single Judge, as already pointed out, has taken a view that a decree for specific performance docs not take away the cases out of the purview of S.47-A of the Stamp Act. Therefore, stamp duty has to be paid on the basis of the market value.

6. Learned counsel for the petitioner/ appellant contended that Article 23 of Schedule I of the Stamp Act, sale consideration agreed to between the parties, in respect of the property, was at Rs. 2,75,000/- and, therefore, the same shall have to be accepted as the market value of the property and that was the value of the property at the earlier point of time. It was also contended that the Indian Stamp (Madras Amendment) Act, 1967, did not shift the chargeable event from the instrument to the market value, that the respondents had no right to ask for the stamp duty on the market value and that the price mentioned in the document of conveyance should be taken to be the correct market value, unless the circumstances existed that there was a fraudulent evasion of stamp duty.

6.1 On the contrary, it is contended by the learned Government Pleader that the market value, as on the date of the execution of the document, alone is determinative, or the basis for determination of the stamp duly payable on the document of conveyance and that even though the parties agreed, at certain point of time, before the execution of the document to sell the property for a certain sum, the same will not take away the power of the authority under Sec. 47-A of the Stamp Act to deter mine the market value of the property conveyed under the document presented for registration.

Learned Government Pleader also relied upon the definition of the expressions

"execution", "(sic) chargeable", "instrument chargeable" and also on the provisions contained in Sections 2, 6, 17 and 47-A of the Stamp Act (hereinafter referred to as the Act). Both parties have placed reliance on certain decisions we will refer to them at the relevant point of time.

7. In the light of these contentions, the points that arise for consideration are :--

(1) What is the scope of S. 47-A of the Act?

(2) Whether, in the case of deed of conveyance presented for registration, pursuant to the decree for specific performance passed in the suit, in the absence of any material or circumstance to show that there is an attempt to fraudulently evade payment of proper stamp duty or lack of bona fides, is it open to the Registrar, registering the documents, in exercise of his power under S.47-A of the Act, to direct payment of stamp duty on the market value of the property, as on the date the document, is executed and presented for registration?

(3) Whether the order of the learned single Judge requires to be interfered with?

8. Point No. 1 :--

Section 47-A of the Act reads thus : 47-A. Instruments of conveyance etc., under valued how to be dealt with: -- (1) If the registering officer appointed under the Indian Registration Act, 1908 (Central Act XVI of 1908) while registering any instrument of conveyance, (exchange, gift, release of benami right or settlement), has reason to believe that the market value of the property which is the subject matter of conveyance, gift, release of benami right or settlement) has not been truly set forth in the instrument he may, after registering such instrument, refer the same to the Collector for determination of the market value of such property and the proper duty payable thereon.

(2) On receipt of a reference under sub-sec. (1), the Collector shall, after giving the parties a reasonable opportunity of being heard and after holding an enquiry in such manner as may be prescribed by rules made under this Act, determine the market value of the property which is the subject matter of conveyance, (exchange, gift, release of benami right or settlement) and the duty as aforesaid, The difference, if any, in the amount of duty, shall be payable by the person liable to pay the duty.

(3) The Collector may suo motu, within two years from the date of registration of any instrument of conveyance, (exchange," gift, release of benami right or settlement) not already referred to him under sub-sec. (1), call for and examine the instrument for the purpose of satisfying himself as to the correctness of the market value of the property which is the subject matter of conveyance, (exchange, gift, release of benami right of settlement) and the duty payable thereon and if after such examination, he has reason to believe that the market value of the property has not been truly set forth in the instrument, he may determine the market value of such property and the duty as aforesaid in

accordance with the procedure provided for in sub-sec. (2). The difference, if any, in the amount of duty, shall be payable by the person liable to pay the duty :

Provided that nothing in this sub-section shall apply to any instrument registered before the date of the commencement of the Indian Stamp (Madras Amendment) Act, 1967.

(4) Any person aggrieved by an order of the Collector under sub-sec. (2) or sub-sec. (3) may appeal to the appellate authority specified in sub-sec. (5). All such appeals shall be preferred within such time and shall be heard and disposed of in such manner, as may be, prescribed by rules made under this Act.

(5) The appellate authority shall be :--

(i) in the City of Madras, the Madras City Civil Court; and

(ii) elsewhere :--

(a) The Subordinate Judge, or if there are more than one Subordinate Judge, the Principal Subordinate Judge having jurisdiction, over the area in which the property concerned is situated; or

(b) if there is no such Subordinate Judge, the District Judge having jurisdiction over the area aforesaid.

Explanation : For the purpose of this Act, market value of any property shall be estimated to be the price which in the opinion of, the Collector or the appellate authority, as the case may be, such property would have fetched or fetch if sold in the open market on the date of execution of the instrument of conveyance, (exchange, gift, release of benami right or settlement).

The underlined words contained in sub-sees, (1) and (3) of S. 47-A clearly reveal the intention of the legislature in inserting the aforesaid S.47-A of the Act. The basis for exercising the power under S.47-A is that there must be a reason to believe that the market value of the property, which is the subject matter of the conveyance, has not been truly set forth in the instrument. It is not a routine procedure to be followed in respect of each and every document of conveyance presented for registration, without any evidence to show lack of bona fides on the part of the parties to the document by attempting fraudulently to under-value the subject of conveyance with a view to evade payment of proper stamp duty and thereby cause loss to the revenue. Therefore, the basis for exercise of the power under S. 47-A of the Act is wilful under-valuation of the subject of transfer, with fraudulent intention to evade payment of proper stamp duty.

9. The validity of this provision came up for consideration before a Division Bench of this Court in *The State of Tamil Nadu Vs. T.N. Chandrasekharan*, Of course, the validity was challenged on the ground that the provisions of S. 47-A of the Act were hit by Arts. 14 and 19(1)(f) of the Constitution. While dealing with the contentions based on Arts. 14 and 19(1)(f) of the Constitution, the Division Bench has observed thus (at page 118 of AIR) :--

"We agree with him that stamp duty is a duty on a instrument as defined in the Stamp Act, and that this concept as to the character of the duty is in accordance with the British and Indian Legislative Practice, and the scope of Entry 44 in List III of the Seventh Schedule to the Constitution "Stamp duties other than the duties or fees collected by means of judicial stamps, but not including rates of stamp duty." But, we cannot agree with him that the substitution made by the Amending Act has altered the character of the duty. While stamp duty is a charge on the instrument which by itself is the taxable event, the measure of charge may be fixed or ad valorem. Chargeable event which is an instrument, as defined in the Act and described in the first column of the First Schedule to the Act, is not to be confused or mixed up, or identified with the measure of duty, which is indicated in the second column of that Schedule. Section 3 of the principal Act, which is the charging section makes this clear, that is what attracts liability to duty is the instrument of the particular description, the charge is on the instrument, nor on the consideration or amount indicated in the document which is but a measure of, or the basis for compulation of the extent of liability to stamp duty. The section says that every instrument mentioned in that Schedule, subject to exemptions or exceptions, shall be chargeable with duty of the amount indicated in that Schedule as the proper duty therefor. Liability to duty is on the instrument and its quantum depends on its description as well as the measure indicated in the First Schedule to the Act. To illustrate, an acknowledgement attracts stamp duty as an instrument of conveyance, but the proper stamp duty is fixed as 151 NP. Conveyance in Entry 23 of the Schedule attracts duty as an instrument of conveyance, but the proper stamp duty is measured on the amount or value of the consideration for such conveyance as set forth therein, which works out on a slab basis. Section 27 of the principal Act requires facts affecting duty to be set forth in the instrument. If the value of the property is understated, S. 64 makes it an offence punishable with fine. But on that account an instrument will not become void, nor is it rendered inadmissible in evidence. The Amending Act, in order to check evasion, requires, by the substitution complained against, market value to be mentioned in the instrument of conveyance, gift, or partition as the basis for measure of the extent of liability, or quantum of stamp duty with which such instrument is chargeable, and provides for determination of the true market value where it is suspected to be understated, with right of appeal to Court by the aggrieved party. We are clearly of opinion that the amendment to that effect has not shifted the chargeable event from an instrument to market value, and the duty after the amending Act is still on the instrument. and not on the market value any more than consideration mentioned therein. We hold that the Amending Act is within the competence of the State Legislature.

Again, with respect, we are also unable to agree that market value is such an uncertain and indefinite matter so as to make the Court hold that the amendment is arbitrary or unreasonable involving violation of Articles 14 and 19(1)(f) of the Constitution. The expression "market value" as a basis for direct

tax or for quantification of tax is to be found in several of the taxing statutes, as for instance. Wealth Tax Act, the Gift Tax Act, the Estate Duty Act, and so on. Though market value may be a varying factor and arithmetical accuracy may not be possible, still it cannot be said that the expression is so uncertain or vague or indefinite as to make it arbitrary or unreasonable for purposes of the said two Articles. Market value has been made the subject of taxation or the means by which tax could be quantified as such in many Acts, and its validity has been upheld by this Court as well as the Supreme Court. We are of the view, therefore, that the Madras Amendment is not violative of Article 14 or Article 19(1)(f) of the Constitution,

The learned Judge has stated that adoption of a uniform basis of levy of stamp duty for sale, exchange and gift is without any rational classification. In matters of taxation, the Legislature is given a wide choice. It does not have to tax everything in order that a given tax may be supported as to its validity. The quantum of taxation is a matter of policy and will depend on the exigency of the budgetary needs. If the Legislature adopted a uniform standard for assessment of the quantum of duty for the three categories of instruments, we do not think that it will be hit by Article 14 or even Article 19(1)(f) of the Constitution on that account.

Before we leave this matter, we would like to make this observation. Palaniswamy, J., in the course of his judgment, evidently apprehended that the Amending Act might be used as a means of oppression by the officers entrusted with the duty of collecting the charge. But this charge can be levelled in respect of other taxing statutes as well where the basis of tax or quantification of tax is the market value. Even so, we are inclined to think that the object of the Amending Act being to avoid large scale evasion of stamp duty, it is not meant to be applied in a matter of fact fashion and in a haphazard way. Market value itself, as we already mentioned, is a changing factor and will depend on various circumstances and matters relevant to the consideration. No exactitude is, in the nature of things possible. In working the Act great caution should be taken in order that it may not work as an engine of oppression. Having regard to the object of the Act, we are inclined to think that normally the consideration stated as the market value in a given instrument brought for registration should be taken to be correct unless circumstances exist which suggest fraudulent evasion. Even in such a case, we trust that disputes will not be raised for petty sums. Unless the difference is considerable or sizable and it appears patent that the amount mentioned in the document is a gross undervalue, no dispute as to value is expected to be started."

In the aforesaid decision, it has been specifically held that the Amendment has not changed the chargeable event from an instrument to market value through which the property is conveyed. It has also been further held that while the stamp duty is charged on the instrument which by itself is the taxable event, the measure of charge may be fixed or ad valorem, that the chargeable event which

is an instrument, as defined in the Act and described in the first column of the First Schedule to the Act is not to be confused or mixed up, or identified with the measure of duty, which is indicated in the second column of that Schedule. It has also been further held that the exercise of power u/s 47-A of the Act for determination of the true market value can be undertaken, where it is suspected to be understated. The Power should be exercised with great caution and care should be taken to ensure that it does not work as an engine of operation. It has also been further observed that normally the consideration stated as the market value in an instrument brought for registration should be taken to be correct, unless the circumstances exist which suggest fraudulent evasion. The Division Bench has also further stated that even in such a case, the disputes should not be raised for petty sums, unless the difference is considerable or sizeable and it appears patent that the amount mentioned in the document is gross under-valuation. We are of the firm view that Section 47A of the Act came to be inserted by the Tamil Nadu Amendment Act 24 of 1967 with a view to check fraudulent evasion of stamp duty payable on the documents while registering any instrument of conveyance, exchange, gifts, release of benami right or settlement. The question as the fraudulent evasion of capital gain tax and the purpose of Chapter XX-C of the Income Tax Act, preventing such fraudulent evasion of capital gain tax by making under valuation came up for consideration before the Supreme Court in C.B. Gautam Vs. Union of India and Others, . While considering the purpose of Chapter XX--C of the Income Tax Act, the Supreme Court specifically pointed out that although a presumption of an attempt to evade the tax may be raised by the appropriate authority concerned, but it has to determine that in a given transaction of an agreement to sell there might to several bona fide considerations which might induce a seller to sell his immovable property at less than what might be considered as a fair market value.

10. For example, he might be in immediate need of money and unable to wait till a buyer is found who is, willing to pay the fair market value for the property. There might be some dispute as to the title of the immovable property as a result of which it might have to be sold at a price lower than the fair market value or a subsisting lease in favour of the intending purchaser. There might similarly be other genuine reasons which might have led the seller to agree to sell the property to a particular purchaser at less than the market value even in cases where the purchaser might not be his relative. Unless an intending purchaser or intending seller is given an opportunity to show cause against the proposed order for compulsory purchase, he would not be in a position to rebut the presumption of tax evasion and to give an interpretation to the provisions which would lead to such a result would be utterly unwarranted. The very fact that an imputation of tax evasion arises where an order for compulsory purchase is made and such an imputation cast a slur on the parties to the agreement to sell, lead to the conclusion that before such an imputation can be made against the parties concerned, they must be given an opportunity to show cause that the under valuation in the agreement for sale was not with a view to evade tax.

11. Learned Government Pleader placed reliance on the decision of the Supreme Court in Rambaran Prosad Vs. Ram Mohit Hazra and Others, to support his contention that mere agreement of sale docs not create any interest in the property and therefore, the amount of consideration mentioned therein cannot be a determining factor. We are not concerned here with the question as to whether an agreement of sale as such creates any right, title or interest in the property. Therefore, we are of the view that the said decision is of no assistance to determine the question as to whether the stamp duty is payable on the amount of consideration in the sale deed executed pursuant to the decree for specific performance or on the market value as may be determined by the Registering Officer u/s 47-A of the Ad.

12. We accordingly, answer Point No. 1 as follows:--

"Power u/s 47A of the Act can only be exercised when the Registering Officer has reason to believe that the market value of the property, which is the subject of conveyance, has not been truly set forth, with a view to fraudulently evade payment of proper stamp duty. Mere lapse of time between the date of agreement and the execution of the document will not be the determining factor that the document is undervalued and such circumstance by itself is not sufficient to invoke the power u/s 47-A of the Act, unless there is lack of bona fides and fraudulent attempt on the part of the parties to the document to undervalue the subject of transfer with a view to evade payment of proper stamp duty...."

13. Point No. 2:--

It is not the case of the respondents in the writ petition that there is an attempt on the part of the parties to the document to evade stamp duty and because of that the value of the property mentioned in the document requires to be re-determined. There is no whisper about the lack of bona fides on the part of the parties to the transaction in question. This is a case in which the owner of the property had voluntarily agreed to sell for a sum of Rs. 2,75,000/- and the petitioner had agreed to purchase it for the aforesaid sum. The agreement of sale was also executed on 11-2-1986. It is also not in dispute that as the vendor did not perform his part of the contract and he committed breach of the agreement, the petitioner was compelled to approach the Civil Court in a suit for specific performance in C. S. No. 245 of 1986 on the file of the original side of this Court, which after contest was decreed, it may also be pointed out here that there was no delay on the part of the petitioner in approaching this Court for specific performance, inasmuch as the agreement of sale was entered into on 11-2-1985, where as the suit came to be filed in the year 1986 itself and the same came to be decreed on 13-6-1989 and the appeal was also disposed of on 28-8-1989. In the plaint also, the sale consideration was stated and Court-fee was paid on that amount. It was not even the case of the defendants in the suit that there was under valuation. As such, there was no circumstance whatsoever to cast any doubt on the bona fides of the parties to the document. It is also

relevant to point out that in this case the delay is also not much as within a period of four years, not only the suit but the appeal also has been disposed of. Thus, the consideration for the sale agreed to is voluntary and there is no delay in obtaining and executing the decree on the part of the petitioner. Immediately after the disposal of the appeal, the execution petition also came to be filed. It is in this background and also in the light of the finding recorded on Point No. 1 as to when and under what circumstances Section 47-A of the Act can be exercised, we have to examine whether in a case like this it is the value agreed to by the parties for sale of the property, to be taken into account for the purpose of determining the stamp duly payable on the document of conveyance or the market value of the property, as may be determined on the basis of the market value prevailing on the date of execution and registration of the sale deed.

14. In Collector of Nilgiris at Ootacamund Vs. Mahavir Plantations Pvt. Ltd., Section 47-A of the Stamp Act came up for consideration. It was held thus at page 143 :--

"The valuation guidelines prepared by the Revenue Officials at the instance of the Board of Revenue were a vowedly intended merely to assist the Sub Registrars to find out, prima facie, whether the market value set out in the instruments has been set forth correctly. The guidelines were not intended as a substitute for market value or to fore close the inquiry by the Collector which he is under a duty to make u/s 47-A. The valuation guidelines were not prepared on the basis of any open hearing of the parties concerned or, any documents. They were based on date gathered broadly with reference to classification of lands, grouping of lands and the like. This being so, the Collector acting u/s 47-A cannot regard the valuation guidelines as the last word on the subject of market value. To do so would be to surrender his statutory obligation to determine market value on the basis of evidence, which is a judicial or a quasi judicial function which he has to perform."

It was also further held that the market value u/s 47-A would not be the market value, as determined under the Land Acquisition Act. Open market is an objective standard which lays down that the market value to be adopted by the Collector and the market value which the parties are required to adopt in their instruments must be a fair market value in the sense that there are no economic shackles or inhibitions of any kind which prevent the price level from finding its level. Thus the conception of open market rules out, at one end, fancy prices, and, at the other end, distress sales. Economic equilibrium is the hall mark of open market.

15. Learned Government Pleader laid stress on the expressions, "Chargeable", "execution" and "instrument". Expression "chargeable" has been defined u/s 2(6) of the Act. According to the said definition, "chargeable" means, as applied to an instrument executed or first executed after the commencement of this Act, chargeable under this Act and, as applied to any other instrument, chargeable under the law in force in India when such instrument was executed, or, where

several persons executed the instrument at different times, first executed." It may be pointed out here that nowhere the expression "chargeable" defers to the value on which the stamp duty has to be charged. It only says "as applied to an instrument executed". Therefore, on the basis of this expression, it is not possible to hold that the market value of the property as on the date of the execution of the deed of conveyance should be the basis for the stamp duty chargeable on the conveyance. The stamp duty is a charge on the instrument which by itself is a taxable event.

16. Expression "Duly stamped" is defined u/s 2(11) of the Act, as follows :--

"Duly stamped" as applied to an instrument, means that the instrument bears an adhesive or impressed stamp of not less than the proper amount and that such stamp duty has been affixed or used in accordance with the law for the time being in force in India."

17. Expression "Conveyance" includes a conveyance on sale and every instrument by which property, whether movable or immovable, is transferred inter vivos and which is not other-wise specifically provided for by schedule I. In the case of sale by agreement, it is transfer inter vivos. Therefore, the consideration mentioned by mutual agreement between the parties should be taken as the basis for stamp duty.

18. Expression "Instrument" is defined in Section 2(14) of the Act. According to that definition, "Instrument" includes every document by which any right of liability is, or purports to be, created, transferred, limited, extended, extinguished or recorded. Section 6 is not relevant for our purpose, as it only deals with the instruments coming within the several description in Schedule I and further provides that in such a situation the instrument shall be chargeable only with the highest of such duties. Such a situation does not arise in the instant case. Section 17 of the Stamp Act provides that all instruments chargeable with duty and executed by any person in India shall be stamped before or at the time of execution. This section also does not suggest that the market value on the date of the execution should alone be the basis for stamp duty. Clause (12) of Section 2 of the Act defines the words "executed" and "Execution." "Executed" and "Execution" used with reference to instruments, means "signed" and "signature". Thus, from the definition of this expression read with Section 17 of the Act, it is not possible to hold that the only inference possible from this provision that it is the market value of the property on the date of execution of the deed alone should be the basis for the stamp duty.

19. It is not in each and every case, the Registering Officer is expected to deal with the instrument u/s 47-A of the Act, but it is only when the Registering Officer has reason to believe that the instrument has been undervalued or has not been truly set forth in the instrument. In the case of instrument executed pursuant to the decree, there is no scope for doubting the bona fides of the parties. Of course, we do not rule out the possibility of unscrupulous persons, with

a view to evade payment of proper stamp duty, creating agreements to sell for a very low sum and then approaching the Court for specific performance and obtaining a decree for specific performance by mutual consent or without much contest, and thereafter presenting the documents for registration pursuant to the decree passed for specific performance. In such cases, under valuation would be apparent and it would also be open to the Registering Officer, after being satisfied as to lack of bona fides and fraudulent attempt on the part of the parties to undervalue the subject of transfer, to invoke the power u/s 47A of the Act. But such a process or proceedings cannot, in the normal course, be pursued in all cases. It is only if the Registering Officer has reason to believe that the consideration amount has not been truly set forth in the document.

20. We have already pointed out that, in the instant case, there is no such plea raised by the respondents or even by the Registering Officer, who had passed the order under Sec. 47A of the Act. There is no finding recorded that there was lack of bona fides or any reason to believe that there was under-valuation. The Registering Officer has purported to exercise his power in the instant case under Sec. 47A of the Act to determine the market value only on the ground that there is a time-gap between the agreement of sale and the date of execution of the sale deed and in the meanwhile the value of the property has gone up, without there being any lack of bona fides on the part of the parties to the document and no attempt on their part to fraudulently evade payment of proper stamp duty.

21. This aspect may be viewed from another angle. It may be that the consideration mentioned in the document does not conform to the market value of the property as on the date of execution of the sale deed. But in the case where the value of the property goes down, it would not be open to the parties to mention a lesser sum than the one for which they agreed to purchase. This aspect is also important to determine whether the chargeable event, is the instrument or the market value.

22. The Division Bench of this Court in *The State of Tamil Nadu Vs. T.N. Chandrasekharan*, has clearly brought out this aspect of the matter, the relevant portion of which we have already extracted and, therefore, we do not consider it necessary to repeat it once again.

23. Therefore, we are of the view that in the case of instrument of conveyance executed pursuant to the decree for specific performance passed by the Civil Court, in which there is no allegation of under-valuation or lack of bona fides, the mere fact that there is a time-gap between the agreement of sale and the execution of the document, is not sufficient to the Registering Officer to invoke his power u/s 47A of the Act, unless there are reasons to believe that there is an attempt on the part of the parties to the instrument to deliberately under-value the subject of transfer with a view to evade payment of proper stamp duty.

24. We may also point out that the decree passed on the original side of this Court directs the plaintiff therein to deposit the amount of stamp duty payable on

the consideration amount and the defendants to register the sale deed in respect of the property belonging to the first defendant, in favour of the plaintiff for a sum of Rs, 2,75,000/- as per the agreement dated 11-2-1995.

25. There are decisions which have taken different views. One set of decisions takes a view that such a direction is not binding on the Registering Officer, who is not a party to the suit and the other set of decisions takes a view that as, it is a direction of the Court in a suit for specific performance, both parties are bound by it and, therefore, the value is fixed. We do not consider it necessary to go into this aspect of the matter, having regard to the conclusion we have reached, as above.

26. A Division Bench of this Court in *The Chief Controlling Revenue Authority, Madras, Board of Revenue Madras, Referring Officer Vs. The Canara Industrial and Banking Syndicate Ltd., Madras and Others*, has construed the expression "executed" thus :--

"A document has to be considered as chargeable to stamp duty, when it is executed, which term "executed" itself has to be interpreted in the light of the definition embodied in S. 2(12).

Under S. 2(12) "executed" means "signed" and "execution" means "signature", so it is clear that this will include the signatures of all persons, who are required by the character of the document to sign in the document, in order to give that document effect according to law, Therefore, if a document is of such a character that both parties to the document should sign it, to constitute it a binding agreement between them, it should contain the signatures of both; similarly if it had to be signed by two other persons in order to make it legal, this will also be necessarily part of the definition. But, once a document is complete in execution in this sense and the effective words of disposition are there, immediately transferring rights by the very virtue of the document, the question of its subsequent registration is a distinct matter altogether, and the document is certainly liable to stamp duty with reference to the relevant Article of the Stamp Act, since execution is complete."

This decision also does not deal with the point involved in the case on hand.

27. Learned Government Pleader also relied on the decision of this Court in *R. Thiagasundaram Vs. The State of Tamil Nadu and Others*, in which it has been held that the value as accepted by the Civil Court is not binding on the Registering Officer. However, this is the circumstance to be taken into consideration. We are not resting our decision on the ground that value mentioned in the agreement is accepted by Civil Court. We are of the view that the transaction in question does not suffer from lack of bona fide and that there are no reasons to believe that the true value of the property is not set forth in the document.

28. For all the above reasons, we answer point No. 2 as follows :

In the case of instrument of conveyance executed pursuant to the decree for specific performance passed by the Civil Court, in which there is no allegation of deliberate under-valuation of lack of bona fides in valuing the subject of transfer with a view to evade payment of proper stamp duty, the mere fact that there is a time-gap between the agreement of sale and the execution of the document by itself is not sufficient for the Registering Officer to invoke his power u/s 47A of the Stamp Act, unless there are reasons to believe that there is an attempt on the part of the parties to the instrument to under-value with a view to evade payment of proper stamp duty.

29. POINT NO. 3 :-- In the light of the findings recorded on Points 1 and 2 and in view of the fact that the order of the learned single Judge has proceeded on the basis that it is the market value of the property on the date of execution will be the determining factor for determining the amount of stamp duty payable on the document and the Registering Officer has also not stated any circumstance which led him to believe that there was deliberate or fraudulent under-valuation of the subject of transfer with a view to evade payment of proper stamp duty, the order of the learned single Judge which is also reported in 1993 (1) M LW 629 and also that of the Registering Officer require to be interfered with. This point is answered accordingly.

30. For the reasons stated above, the appeal is allowed. The order dated 24-7-1991 passed by the learned single Judge in Writ Petition No. 2214 of 1991 (reported in 1993 (1) M LW 629 is set aside and the Writ Petition is allowed. The order dated 18-10-1990 passed by the Registering Officer is hereby quashed. A direction shall issue to the second respondent to release the instrument of conveyance, which is registered as Document No. 477 of 1990 to the writ petitioner/appellant. Compliance within six weeks from the date of receipt of the order. No costs.

31. Appeal allowed.