

(1991) 07 MAD CK 0011
In the Madras High Court
Case No : Writ Petition No. 2214 of 1991

S.P. Padmavathi

APPELLANT

Vs

State of Tamil Nadu

RESPONDENT

Date of Decision : 24-07-1991

Acts Referred:

Constitution of India, 1950 — Article 226
Stamp Act, 1899 — Section 17, 2, 2(6), 3

Citation : (1991) 07 MAD CK 0011

Hon'ble Judges : Bakthavatsalam, J

Bench : Single Bench

Advocate : V.P. Venkataraman, for the Appellant; P. Arivudainambi, Government Advocate, for the Respondent

Final Decision : Dismissed

Judgement

Bakthavatsalam, J.—The petitioner challenges the proceedings of the second respondent dated 18-10-1990 negating the contention of the

petitioner with regard to the payment of stamp duty for registering a document. The facts leading to the filing of the writ petition may be briefly

stated as follows:

The petitioner entered into an agreement on 11-2-1985 to purchase the property bearing door No. 3, New Tank Street, Nungambakkam,

Madras-34 for a sum of Rs. 2,75,000 with one Balakrishnan who was residing at Choolaimedu, Madras-94. Since the vendor of the petitioner

committed breach of the agreement of sale, the petitioner had to initiate proceedings against her vendor to enforce the specific performance of the

agreement of sale dated 11-2-1985, and third party one T. Padmavathi also claimed rights to the said property on the basis of an alleged earlier

agreement of sale executed in her favour, in C.S. No. 245 of 1986 on the file of the Original side of this Court. Pending disposal of the Suit, it

seems, the vendor Balakrishnan expired and his legal representatives were brought on record and after contest, the suit was decreed in favour of

the petitioner on 13-6-1986. Against the said judgment and decree, the second defendant in the suit unsuccessfully preferred an appeal in O.S.A.

No. 227 of 1989 and the same was confirmed in a compromise judgment and decree passed by the Division Bench on 28-8-1989. When the

judgment debtors, the petitioner's vendors evaded the compliance of the decree for specific performance, the petitioner initiated proceedings in

E.P. No. 16 of 1990 for execution and registration of sale deed. At this stage the vendors of the petitioner came forward to execute the sale deed

in favour of the petitioner in accordance with the terms of the decree passed and the conveyance was valued at Rs. 2,75,000 instead of the alleged

guideline value prevailing in the year 1990. All the facts were incorporated in the sale deed which was duly executed and presented by the vendors

of the petitioner for registration on 26-4-1990 to the third respondent. Though the said conveyance was registered as Document No. 477 of 1990,

yet, the third respondent refused to deliver the said registered document to the petitioner by raising objections with regard to the stamp duty and

the third respondent raised the objection stating that the stamp duty should be paid as per the Collector's guidelines and not at the rate disclosed in

the sale agreement which was the subject matter of the decree in C.S. No. 245 of 1986 on the file of Original Side of this Court, However, a sum

of Rs. 56,077, was demanded by the third respondent stating it to be the deficit stamp duty and registration charges and representing the difference

of the rate between 1985 and 1990. No written memo was given by the third respondent to the petitioner in this regard. The petitioner sent a

notice through her counsel on 7-5-1990 to the third respondent and during the personal hearing on 14-5-1990, the petitioner explained the factual

and legal position to the third respondent. Since there was no communication of the result of the enquiry, the petitioner sent a notice dated 23-5-

1990 to the third respondent's immediate superior, the Assistant Inspector General of Registration. As there was no response, an elaborate and

comprehensive reminder dated 29-8-1990 was addressed to the"" second respondent who sent the impugned order dated 18-10-1990 holding

that the stamp duty and registration charges as claimed as per the guidelines obtaining at the time of the registration should be paid. The petitioner

sent a communication dated 7-11-1990 addressed to the second respondent and it was not replied, and that, is why the writ petition has been filed

by the petitioner for the relief as stated supra.

The petitioner alleges in the affidavit filed in support of her writ petition that the interpretation given by the second respondent to Ss. 2(6), and A of

the Stamp Act are not correct and stated that the second respondent has not applied his mind at all, It is stated that sub-S. (6) of S. 2 of the Stamp

Act as amended defines ""Chargeable"" and it refers to the date of the executive which fixed the price and the objection could not be taken when

that price was below the market rate or the Collector's guidelines as on that date and the guidelines as on the date of the registration the instant

case were inoperative and irrelevant. It is also stated that S. 17 of the Stamp Act defines that the document should be stamped before or at the

time of execution and S. 47A of the Stamp Act cannot be invoked to the facts of the present case because the second respondent cannot have any

suspicion with regard to the valuation. The petitioner submits that the price had been fixed on the date of the sale agreement which merged in the

decree and the decree in law. dates back to the time of the institution of the suit and in the instant case, to the date of the agreement which gave

rise to the suit. It is further submitted that if the stamp duty and registration charges arc to be paid as on the date of the registration of the

document, the vendors can as will if claim the same benefit and demand the price that prevails at the time of the conclusion of the litigation, and as

such, the suit for specific performance would become meaningless. It is stated in the affidavit that Art. 23 of the Stamp Act, First Schedule, the sale

consideration was agreed to between the parties in respect of the property at Rs. 2,75,000 and the market, value has not been defined in the

Stamp Act and hence the respondents should have accepted the market value of the property as the value that was disclosed at the earliest point

of time in the agreement lot sale and also in the proceedings for specific performance and a reference to the decision reported in 1982-2-M.L.J.

23 has also been made. It is alloyed that the Indian Stamp (Madras Amendment) Act 1967 did not shift the chargeable event from the ""instrument

to ""market value"", and the respondents have no right to ask for the stamp duty on the market value instead of on the instrument which was registered after litigation, and normally the consideration stated as the market value should be taken to be the correct value unless the circumstances exist which suggest fraudulent evasion. It is stated further that the petitioner had disclosed the sale consideration in the agreement for sale itself and as such there cannot be any suspicion warranting any fraudulent evasion of duty and that the respondents have applied the Amending Act 1967, in a haphazard way without any application of mind and without appreciating the sale consideration disclosed in the decree passed by this Court.

2. Notice of motion was ordered by me on 20-2-1991, Mr. Arivudai Nambi, learned Government Advocate (writs) appeared for the respondents.

3. Mr. V.P. Venkataraman, learned counsel appearing for the petitioner, contends that if the respondents take the attitude that the market value has to be fixed on the date of the registration of the document as per the Collector's guidelines instead of valuing the property on the basis of the consideration in the agreement of sale entered into in 1985, it is an oppression. Learned counsel points out that having regard to the fact that there was an agreement of sale between the petitioner and her vendor and because there was a breach of agreement, a suit was filed for specific performance on the original side of this Court and a decree obtained for specific performance on the basis of the agreement of sale wherein the sale consideration was fixed, the sale deed has got to be registered and the respondents have no jurisdiction to ask for the stamp duty on the market value as on the date of the registration of the document, According to the learned counsel it is not a case where undervaluation has been made purposely or fraudulently and this is a genuine case where the vendors of the petitioner delayed the execution of the sale deed and on the institution of the suit for specific performance of the agreement and after passing a decree on the Original Side of this Court in the said suit, the sale deed came to be executed. Learned counsel points out the terms of the decree passed and states that the decree itself shows the sale consideration for which alone the deed has to be executed by the vendors. Taking into

consideration of the decree passed in the suit, learned counsel contends that the decision of the respondent is not correct, in the sense that the market value as on date has to be fixed based on the guidelines for registering the document. The learned counsel also states that this cannot be the intention of the Legislature when the Act was enacted and the intendment of the section is only to safeguard the revenue from fraudulent transfers purposefully undervalued. The learned counsel submits that this is a genuine case where the respondents have to accept the value as stated in the agreement of sale, dt. 11-2-1985 and any action taken by the respondents to the contrary has to be taken as oppressive and is against the decision of a Division Bench of this Court reported in *The State of Tamil Nadu and Another Vs. T.N. Chandrasekaran and G. Devandrakumar and Another*, and also a judgment of a single Judge of this Court reported in *Collector, Nilgiris v. M/s. Mahavir Plantations Pvt. Ltd.* 94 L.W. 685 A1R 1982 Mad 138.

4. Per contra, the learned Government Advocate contends that under S. of the Indian Stamp Act, 1899 (hereinafter referred to as the Act) the value of the property has to be fixed on the date of the execution of the instrument and a reading of the Explanation to S. 47-A of the Act read with S. 17 will clearly show that the petitioner has to pay the stamp duty as on the date of execution and market value according to the guidelines fixed by the Collector on the date of the registration of the document. Learned Government Advocate points out the term ""Chargeable"" in sub-S. (6) of S. 2 of the Act and submits that there is nothing wrong in the impugned order and this Court need not interfere with the impugned order exercising powers under Art. 226 of the Constitution of India.

5. The short question that arises for consideration in this writ petition is whether the stamp duty has to be paid as on the date of execution of the document on the basis of the guidelines of the Collector or as on the date of agreement of sale dated 11-2-1985 in which the sale consideration has been used long before the execution of the sale deed. It is necessary to refer to certain provisions of the Indian Stamp Act, 1899 and also the scope of the suit for specific performance to decide the issue raised in this writ petition. Sub-S. (6) of S. 2 of the Act defines ""Chargeable"" as under :

(6) Chargeable.- "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.

Sub-S.(11) of S. 2 of the Act defines ""Duly Stamped"" as follows:

Duly Stamped.-"", as applied to instrument, means that the instrument bears an adhesive or impressed stamp of not less than the proper amount

and that such stamp has been affixed or used in accordance with law for time being in force in (India);

The term ""executed and execution"" is defined in sub-S. (12) of S. 2 as follows:

Executed and Execution.-""Executed and Execution"", used with reference to instruments, means ""signed"" and ""signature"";

S. 3 of the Act is a charging section. It states that subject to the provisions of the Act and the exemptions contained in schedule, the instruments

shall be chargeable with duty of the amount indicated in the schedule as the proper duty therefore ,S. 17 of the Act states thus:

17. Instruments Executed in India-All instruments chargeable with duty and executed by any person in (India) shall be stamped before or at the time of execution.

The Explanation to S. 47A of the Act so far as Tamil Nadu is concerned is as follows:

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 would fetch, if sold, in the open market on the date of the

instrument of conveyance, exchange or gift.

Art. 5of the First Schedule to the Act gives a description of the document i.e., agreement or memorandum of an agreement and the rate of the

proper stamp duty is given in Column (2). So also Article 23 provides for ""conveyance"" which is defined in sub-S. (10) of S. 2 of the Act. Sub-S.

(10) of S. 2 of the Act defines ""conveyance"" as under:

Conveyance,-""Conveyance"" includes a conveyance on sale and every instrument by which property, whether moveable or immovable, is

transferred inter vivos and which is not otherwise specifically provided for by schedule 1.

A conjoint reading of the Sections stated above clearly shows that the stamp duty is a duty on an instrument as defined in the Stamp Act and the

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. The charge is

on the instrument not on the amount or consideration indicated in the document, which is but a measure of or the basis for computation of the

extent of liability to stamp duty. It has been held by a Division Bench of this Court in *The State of Tamil Nadu and Another Vs. T.N.*

Chandrasekaran and G. Devandrakumar and Another, , that even after the Amending Act, 1967 the duty is still on the instrument and not on the

market value any more than the consideration mentioned therein. The Division Bench further held that though market value may be varying factor

and arithmetical accuracy is impossible, still the expression is not so uncertain or vague as to take it arbitrary or unreasonable and that normally the

consideration stated as the market value should be taken to be the correct value unless circumstances exist which suggest fraudulent evasion and

unless the difference is considerable or sizeable and it is patent that the amount mentioned is a gross undervalue, no dispute as to the value is

expected to be started. On the facts of the case on hand, it cannot be denied that the difference is considerable if the market value of the property

on the date of execution of the document as per the guideline of Collector is taken into consideration. *Balasubramanyan, J.*, in a judgment reported

in *Collector of Nilgiris at Ootacamund Vs. Mahavir Plantations Pvt. Ltd.*, had an occasion to consider the scope of S. 47-A of the Act and

determine the market value. When considering the scope of Explanation to S. 47-A of the Act, the learned Judge referred to a judgment of a

Division Bench of this Court at page 146 *The State of Tamil Nadu and Another Vs. T.N. Chandrasekaran and G. Devandrakumar and Another*, ,

rejected the argument that the concept of market value has to be understood as it is only with reference to the value made under the Land Acquisition

Act and held at page 144 is as follows:

. In my judgment, the conception of open market which the Explanation to S. 47-A of the Stamp Act projects cannot be understood in the same

way as market value under the Land Acquisition Act is understood. For, ex-hypothesi the discussion of market value in the Stamp Act is with reference to a transaction, imbedded in an instrument, in which the parties thereto have signified their acceptance voluntarily and willingly. There is no element of compulsion in a sale or a gift or an exchange, although stamp duty is payable under the statute on the basis of the market value of the subject-matter of the sale, exchange or gift, as the case may be. In this context, therefore, the conception of a willing buyer and a willing seller would be tautologous and would only tend to obfuscate the obvious element in market valuation. What the conception of open market in the Explanation to S. 47-A of the Stamp Act conveys is that the market value should be determined on the basis of conditions of equilibrium and not on the basis of speculative trends, whereby reason of exercise of economic power on the part of influential interests in real estate which wield enormous bargaining authority, prices of individual properties are either rigged up or depressed tending to distort the price structure. Open market is, in my judgment, 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. (Underlining is mine). 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. As such, in my view, considering the relevant sections and the provisions of the Stamp Act and also the decisions of this court, the arguments advanced by Mr. V.P. Venkataraman learned counsel appearing for the petitioner, are unsustainable. It is one thing to say that a decree has been passed for specific performance and it is another thing to say what is the duty to be paid for registering a document. For the purpose of registering a document, the value has to be fixed only by the authorities mentioned by the Stamp Act and it is not as if the authorities are bound by the agreement made by the petitioner in 1985 and proceed to register the document on the basis of the value fixed in 1985. It is clear from the provisions of the Act that the value of the property and the duty to be paid thereof have to be fixed as on the date of the execution of the

document.

6. The next point that has to be decided is what is the scope of the suit for specific performance; in other words, what exactly the remedy of the

specific relief. A passage in Specific Performance by Gareth Jones & Williams Goodheart, Chapter 1, 1986, is as follows:

Specific performance is a decree of the court which compels the defendant personally to do what he promised to do. If the defendant disobeys,

the court had adequate remedies to compel compliance; for example, it has the power to nominate a person to execute an instrument; if the

defendant refuses to do so, and in the last resort, he may be punished by being committed for contempt. The remedy for specific performance is an

equitable remedy which the court will grant if the plaintiff requests it and if it is just to do so. No plaintiff is, therefore, entitled specific performance

as of right. The court gives a specific performance instead of damages only when it can by that means do more perfect and complete justice. But

the discretion to grant or refuse specific performance is not exercised capriciously but with regard to principles established by provision

authorities.

Again, in Halsbury's Law of England, in paragraph 401. page 275, 4th Edn., Volume 44, it is stated as follows:

The remedy by specific performance is an equitable relief, given by the court to enforce against a defendant the duty of doing what he agreed by

contract to do; a plaintiff may, therefore, obtain judgment for specific performance even though there has not in the strict sense, been any default by

the defendant before the issue of the writ.

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., as 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 or the case. This court can take judicial note of the fact as to how the prices are spiraling up and as such, in my view, the petitioner has to pay 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. S. (7) S.2 read with the Explanation to S.47-A of the Stamp Act, the stamp duty has to be collected based on the market value as per the guidelines as on the date of the execution of the document. There are no merits in the writ petition and it is dismissed. No costs.