(2014) 11 MAD CK 0088

In the Madras High Court

Case No : W.A. No. 1749 of 2011 and M.P. No. 1 of 2011

The Inspector General of Registration and Others APPELLANT

Vs

K.K. Thirumurugan RESPONDENT

Date of Decision : 27-11-2014

Acts Referred:

Citation : (2015) 1 CTC 526

Hon'ble Judges : M. Jaichandren, J;Aruna Jagadeesan, J

Bench : Division Bench

Advocate : R. Ravichandran, Additional Public Prosecutor, Advocates for the Appellant; M. Muthappan, Advocates for the Respondent

Judgement

M. Jaichandren, J.—Heard the learned Counsel appearing on behalf of the Appellants, as well as the Respondent. This Writ Appeal has been filed against the Order of the learned Single Judge, dated 6.1.2011, made in W.P. No. 29226 of 2010.

2. The Respondent in the present Writ Appeal had filed the Writ Petition, in W.P. No. 29226 of 2010, praying for a Writ of Mandamus to direct the Respondents to accept the value of the Sale Certificate, dated 28.10.2010, issued in his favour, in respect of the property, comprised in S. No. 166/3B3 part, Kovilambakkam village, Sholinganallur Taluk, Kancheepuram District and to register the said document and to return it to the Respondent.

3. The learned Single Judge had passed the Order, dated 6.1.2011, allowing the Writ Petition, relying on the decision of the Supreme Court, in V.N. Devadoss Vs. Chief Revenue Control Officer-cum-Ins. and Others, . It had been held that Section 47-A of the Indian Stamp Act, 1899, would not be applicable to the present case, as there was no under valuation of the document in question, by the First Respondent, the Petitioner in the said Writ Petition. Challenging the Order passed by the learned Single Judge, dated 6.1.2011, the Respondents in the Writ Petition had preferred the present Writ Appeal before this Court stating

that the bid amount in the Public Auction sale, conducted in respect of the property in question, as per the provisions of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, cannot be taken as the market value of the said property. It had also been stated that the learned Single Judge had failed to note that the debtors have the right to assail the Auction Sale conducted by the financial institution concerned. The financial institution could also resort to sale by private negotiations. The learned Single Judge had erred in relying on the decision of the Supreme Court, in V.N. Devadoss Vs. Chief Revenue Control Officer-cum-Ins. and Others, , as it is not applicable to the facts and circumstances of the present case.

4. It had also been stated that the learned Single Judge had erred in arriving at the conclusion that Section 47-A of the Indian Stamp Act, 1899, is not applicable to an Auction Sale conducted in respect of the properties which had been brought for sale by the proceedings initiated under the provisions of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, and the Rules framed thereunder.

5. The learned Counsel appearing on behalf of the Appellants had relied on the decision of the Supreme Court, in State of Rajasthan and Others Vs. Khandaka Jain Jewellers, , wherein it had been held that the relevant date for the valuation of the property, for the purposes of the payment of the Stamp duty, should be assessed on the market value prevailing at the time of the execution of the Sale Deed.

6. Per contra, the learned Counsel appearing on behalf of the Respondent had relied on the following decisions in support of his contention that Section 47-A of the Indian Stamp Act, 1899, would not be applicable to a sale of the property by way of Public Auction, under the procedures contemplated by the provisions of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002.

7. In V.N. Devadoss Vs. Chief Revenue Control Officer-cum-Ins. and Others, , the Supreme Court had held that when a property is purchased in the open market, in response to an open offer, the question of non-disclosure of the correct price or the intention to defraud, in order to evade the Stamp duty, does not arise.

8. In V. Sivakumar Vs. The Inspector General of Registration Mylapore and The Sub Registrar Suramangalam it had been held as follows:

"The Stamp duty has to be paid as per the prevailing guideline value as on the date of registration and the stamp duty is liable to be paid as on the date of registration of the instrument."

In view of the contentions raised on behalf of the Appellants, as well as the Respondent, and on a perusal of the records available, and on considering the decisions cited supra, we are of the considered view that the Appellants have not shown sufficient cause or reason to interfere with the Order passed by the learned Single Judge, dated 6.1.2011. The Appellants have not been in a position to show that Section 47-A of the Indian Stamp Act, 1899, would be applicable to a Public Auction Sale of the properties which are brought for sale, as per the provisions of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, and the Rules framed thereunder. It cannot be stated that the document presented for registration had been undervalued by those, who had presented the document for registration. Therefore, the question of reassessing the market value of the property, which had been brought for sale by way of a Public Auction, under the provisions of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, by invoking Section 47-A of the Indian Stamp Act, 1899, would not arise. Hence, we find it appropriate to dismiss the Writ Appeal. Accordingly, the Writ Appeal stands dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.