(2014) 02 MAD CK 0078

In the Madras High Court

Case No : C.M.A. No. 2089 of 2013 and M.P. No. 1 of 2013

Y.K. Mohan Rao and Others — APPELLANT

Vs

Chief Revenue Controlling Authority, Inspector General for Registration and Others — RESPONDENT

Date of Decision : 27-02-2014

Acts Referred:

Registration Act, 1908 — Section 17, 17(1), 17(2)(xii), 49, 89(2)
Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI) — Section 13(2), 13(4)
Stamp Act, 1899 — Section 35
Transfer of Property Act, 1882 — Section 54

Citation : (2014) 2 MLJ 678

Hon'ble Judges : G.M. Akbar Ali, J

Bench : Single Bench

Final Decision : Allowed

Judgement

G.M. Akbar Ali, J.—Civil Miscellaneous Appeal filed against the order dated 26.2.2013 made in Pa.Mu. No. 50681/N1/2012. The appellants are the successful bidders in a public auction conducted by the Recovery Officer of AXIS Bank, Chennai in a proceeding under the SARFAESI Act and in exercise of power under Sec. 13(2) and (4).

2. The sale was confirmed for various amounts and the authorised officer issued sale certificates for the sale confirmed on 17.3.2005. The delivery of possession was also effected. In 2011, the appellant, through the Bank, presented the sale certificate for registration before the Sub Registrar, Chennai North, the third respondent herein. The third respondent found that the documents did not reflect the correct market value and forwarded the same to the second respondent, District Revenue Officer (Stamps) for assessment of stamp duty.

3. The second respondent assessed the land and building on the prevailing rate on the date of presentation of the document and directed the appellants to pay Rs. 2,98,765/- as difference of stamp duty. As they failed to pay, an order was

passed on 12.11.2011 under sec. 47A of the Indian Stamps Act.

4. The appellants preferred an appeal before the first respondent, the appellate authority. The appellate authority relied on a decision reported in V. Sivakumar Vs. The Inspector General of Registration Mylapore and The Sub Registrar Suramangalam and held that the impugned sales certificate is the conveyance deed which is liable for stamp duty under Article 23 of the Stamps Act and thereby held that the stamp duty has to be paid on the market value and upheld the order of the second respondent. Aggrieved by which, the present appeal.

5. The point for consideration is whether the impugned order is sustainable?

6. Mr. S. Arun Kumar, learned counsel for the appellant submitted that the property was auctioned in the year 2005 and the sale certificate were issued only for the auction amount and therefore, the stamp duty paid on the amount reflected in the sale certificate has to be accepted. The learned counsel further submitted that the guideline value prevailing on the date of registration of the sale certificate cannot be applied.

7. The learned counsel further submitted that the sale certificate would not attract stamp duty and in fact, not required to be registered. He relied on the following case laws:

i) Order in WP No. 17328/09 dated 14.3.2012.

ii) A.J. Mapillai Mohadeen Vs. Sub-Registrar, Registration Department and Others, .

iii) Nalina Veeraraghavan v. Chennai Metropolitan Development Authority 2008(4) CTC 486 : LNIND 2008 MAD 2070 : (2008) 6 MLJ 913.

iv) Devi Narayanan Housing Development Pvt. Ltd. Vs. The Inspector General of Registration, Department of Registration, Government of Tamil Nadu, The District Revenue Officer (Stamps) and The Sub Registrar, .

v) K. Chidambara Manickam Vs. Shakeena and Others, .

8. On the contrary, Ms. M. Jayashree, learned Govt. Advocate (C.S.) for the respondents submit that the sale certificate is construed as the deed of conveyance and it attracts stamp duty. The learned counsel further pointed out that if it is undervalued the instrument has to be subjected under Sec. 47(A) of the Act and the authorities have rightly valued the instruments.

9. The learned Government Advocate relied on an order passed in W.A. Nos. 2407 and 2408 of 2010 dated 1.4.2011.

10. Heard and perused the materials available on record.

11. The effect and status of sale certificate issued by Recovery officers in pursuance to the proceedings of the SARFAESI Act has been under judicial scrutiny on several times. It is now well settled that the sale certificate cannot be

termed as an instrument of sale but only evidencing a sale effected under the operation of an Act.

12. Sec. 54 of Transfer of Property act defines a Sale as "Sale is a transfer of ownership in exchange for a price paid or promised or part paid or part promised" and further states that "such transfer in the case of tangible immovable property of the value of one hundred rupees and upwards or in the case of reversion or other intangible things can be made only by a registered instrument".

13. A transfer of ownership can be effected only by a rightful owner under an instrument of sale. However, by an operation of Act, certain authorities, viz., the Court or the Revenue Authorities can effect the sale on behalf of the judgment debtor. Similarly, in an auction sale under the operation of any Act, the sale is completed on an offer and acceptance and on payment of the sale price. Only thereafter, the sale is confirmed and becomes absolute. Thereafter sale certificate is issued. Therefore, issuance of a sale certificate is only to confirm the sale effected and therefore, it is not an instrument of sale.

14. In K. Chidambara Manickam v. Shakeena (supra), a Division Bench of this Court had dealt with the sale of secured assets in public auction in terms of Sec. 13(4) of the SARFAESI Act which had culminated in issuance of certificate under Rule 9(7) of SARFAESI Rules. The Division bench found that the sale certificate does not require registration with the Registrar of Assurance and non-registration does not affect the sale of property in public auction. The Division Bench has relied on various case laws.

15. Sec. 17 of the Registration Act deals with Documents of which registration is compulsory. Sub clause (1) gives an exhaustive list of such document. However, sub clause (2) exempts certain document and 17(2)(xii) would state as follows:

(xii) any certificate of sale granted to the purchaser of any property sold by public auction by a Civil or Revenue Officer.

16. The Division Bench in K. Chidambara Manickam v. Shakeena (supra), cited supra had held that the sale certificate issued in favour of the appellant does not require any registration in view of Sec. 17(2)(xii) of the Registration Act as the same has been granted pursuant to the sale held in public auction by the authorised officers under SARFAESI Act. Therefore, the Division Bench held that the Recovery Officer under RDBI Act is to be treated as Revenue Officer.

Sec. 89(2) of the Registration Act reads as follows:

89. Copies of certain orders, certificates and instruments to be sent to registering officers and filed:

(1).........

(2) Every Court granting a certificate of sale of immovable property under the Code of Civil Procedure, 1908, shall send a copy of such certificate to the

registering officer within the local limits of whose jurisdiction the whole or any part of the immovable property comprised in such certificate is situate and such officer shall file the copy in his Book No. 1.

17. In an unreported judgment passed in WP No. 17328 of 2004 dated 14.3.2012, this court considered Sec. 17(2)(xii) and 89(2) of the Registration Act and held that.

I am of the view that it would be suffice if the Sale Certificate in question is entered by the third respondent in Book No. 1 and he need not register the same. Section 17(2)(xii) of the Registration Act, 1908 specifically provides that Certificate of Sale granted to any purchaser of any property sold by a public auction by a Civil or Revenue Officer does not fall under the category of non-testamentary documents, which require compulsory registration under subsections (b) and (c) of Section 17(1) of the said Act. Thus, the registration is purely optional in respect of a Certificate of Sale issued by a Civil or Revenue Officer. The only legal implication is, if the Certificate of Sale is not registered, it is not admissible in evidence u/s 35 of the Indian Stamp Act and Section 49 of the Registration, in my view of the law laid down by the Hon''ble Supreme Court in Raghunath and Others Vs. Kedar Nath, .

18. Therefore, the sale certificate per se does not require registration. However, if such sale certificate is opted to be registered, then the provisions of the Indian Stamps Act come into play. Article 18 of the Indian Stamps Act reads as follows:

Art. 18. Certificate of Sale (in respect of each property put up as a separate lot and sold), granted to the purchase of any property sold by public auction by a Civil or Revenue Court or Collector or other Revenue Officer-

19. Art. 18 deals with Stamp Duty to be collected on certificate of sale. However, if the value is more than Rs. 1000/- a stamp duty is payable as a conveyance under Article 23. Under Article 23 the present Stamp Duty payable is 7% of the market value.

20. However, in Devi Narayanan Housing Development Pvt. Ltd. rep. by its Managing Director N. Nandakumar v. Inspector General of Registration (supra) this Court has held that

10. On a reading of the explanation to Section 47A(1), it is clear that 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). In the instant case, as discussed earlier, the value of the property has been fixed in the Court auction sale and therefore, the amount fixed by this Court for the property is the value to be taken to determine the market value and this is in accordance with the explanation to Section 47A(1) of the Act.

12. A harmonious construction and interpretation of the provision of Section 47A and also the rules has made it clear that the value fixed by the Court cannot be deviated. When a property is purchased in a Court auction, the value fixed thereon should be the value truly fixed based on material consideration. If any value other than the value fixed by the Court is taken into consideration, then, it tantamounts to exceeding the jurisdiction made under the law. The authorities concerned cannot sit on Appeal over the Court''s decision unless an Appeal is preferred from such an order. Therefore, the value of the property in question for the purpose of determining the stamp duty to be paid by the purchaser is the value fixed in the Court auction purchase which is arrived at after an offer and acceptance and the amount offered during the auction and accepted by the Court would represent the real market value of the property. In the instant case, the authority concerned has exceeded his jurisdiction by going beyond the value fixed by the Court. In the absence of any other principle, contrary to the above settled proposition of law, I am obliged to follow the proposition laid down by this Court in the case referred to above.

21. Therefore, in any Court auction sale, including an auction sale in SARFAESI and RDBI proceedings, if a sale certificate is opted to be registered, the stamp duty payable is under Article 18 r/w. 23 of the Stamps Act. However, such stamp duty will be collected on the sale price fixed in the sale certificate.

22. In the judgment reported on V. Sivakumar and Others v. Inspector General of Registration (supra) the question before the Division Bench was whether such sale certificate will be subjected for determination of value under Sec. 47(A) of Stamps Act. In that case, the Division Bench found that the sale certificate was issued after a compromise entered into between the parties. Therefore, it is not issued in pursuant to an auction sale and moreover, the paid value of the property was higher than the amount reflected in the sale certificate and therefore, held, that the reference under Sec. 47(A) of the Stamps Act for determination of market value is proper. Therefore, the above said decision is not applicable to the case on hand.

23. The appellate authority has found that Article 18 of the Stamp Act is not applicable. As discussed above, Article 18 is applicable and if value exceeds, the stamp duty will be payable as conveyance under Article 23 for a consideration equal to the amount of purchase money, in other words, auction sale price. Therefore, the authorities are not correct in fixing the market value as on 2011 and demand the stamp duty.

24. For the reasons stated above, the order passed by the first respondent in Pa.Mu. No. 50681/N1/2012 dated 26.2.2013 is not sustainable and liable to be set aside. In the result, the Civil Miscellaneous Appeal is allowed and the order passed by the first respondent in Pa.Mu. No. 50681/N1/2012 dated 26.2.2013 is set aside and the third respondent is directed to register the sale certificate. No costs. Consequently, connected MP is closed.