

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30/11/2004

CORAM

THE HON'BLE MR.JUSTICE P.SATHASIVAM
AND
THE HON'BLE MR.JUSTICE AR.RAMALINGAM

C.M.A.No.391 of 2004
and
C.M.P.No.1946 of 2004

D.Devaraj
... Appellant

-vs-

1. The Inspector General of Registration-cum-
Tamil Nadu Chief Revenue Controlling Authority,
Santhome High Road, Chennai - 28.

2. The Special Deputy Collector (Stamps)
Salem, Namakkal and Dharmapuri District @
Salem. ... Respondents

The Civil Miscellaneous Appeal is filed under section 47 A (10) of the Indian Stamp Act, 1899 as amended by Tamil Nadu Act 1 of 2000 against the order of the 1st respondent in Mu.Mu.Lr.No.8951/N1/2003, 1, dated 20.10.2003, signed by the appellate authority on 31.10.2003 and received by the appellant on 31.10.2003.

!For Appellant : Mr.R. Krishnan for
A.Sivaji

^For Respondents : Mr. S.Senthilnathan,
Addl. Govt. Pleader

:J U D G M E N T

(Order of the Court was made by P.Sathasivam, J)

By consent of all the parties, the main appeal itself is taken up for disposal.

2. Aggrieved by the order of the Inspector General of Registration-cum- Tamil Nadu Chief Revenue Controlling Authority, Chennai-28 (first respondent herein) dated 20.10.2003, signed by the said authority on 31.10.2003 and received by the appellant on 31.10.2003, the appellant has

preferred the above appeal before this Court under section 47 -A (10) of the Indian Stamp Act, 1899 as amended by Tamil Nadu Act 1 of 2000.

3. It is seen that the appellant purchased an extent of 5490 sq.ft. in Survey No.60/4A of Meyyanur Village, Salem Taluk for a total consideration of Rs.4,49,740/-. Rs.80/- per sq.ft. was adopted as market value for getting the document registered by the Registering Authority viz., Sub Registrar, Suramangalam, Salem-5. The Registering Authority referred the document for determining the market value under Section 47-A of the Indian Stamp Act. Accordingly, the second respondent, the Special Deputy Collector (Stamps), Salem, Namakkal and Dharmapuri District fixed the value at Rs.22,06,600/- and made a demand of differential stamp duty of Rs.2,28,387/-, fixing the value of the land in question at Rs.400/- per sq.ft. Aggrieved by the order of the second respondent, an appeal was filed before the first respondent, by the impugned order dated 20.10.2003, the same was rejected as time barred one. As against the said order, the present appeal has been filed.

4. Heard the learned counsel for the appellant as well as the respondents.

5. It is the claim of the appellant that though the second respondent Special Deputy Collector (Stamps) has passed an order on 8.7.2002, the same was not served on him. It is also his claim that after coming to know about the order passed by the second respondent, on making an application, certified copy of the order dated 8.7.2002 was furnished by the Special Deputy Collector, Salem on 23.1.2003, for which the learned counsel for the appellant heavily relies on an endorsement made by the said officer, which is available at page No.13 of the typed set of papers filed along with the appeal. It is also the claim of the appellant that after getting the order copy on 23.1.2003, the appellant preferred an appeal and sent the same by RPAD to the appellate authority, first respondent herein on 21.2.2003. It is also his claim that the said appeal was received by the appellate authority on 22.2.2003. However, by the impugned order dated 20.10.2003, the appellate authority rejected the appeal as time barred.

6. Learned counsel for the appellant by drawing our attention to the relevant provisions namely Rule 9(1) of the Tamil Nadu Stamp (Prevention of Under Valuation of Instruments) Rules, 1968 would contend that the copy of the order passed by the second respondent under section 47-A was not served/communicated and only on his application, the same was supplied on 23.1.2003.

7. The appeal sent by the appellant on 21.2.2003 and received by the appellate authority on 22.2.2003 is well within time. In support of his claim, he very much pressed into service the decision of the Division Bench of this Court in the case of P.Ramadosh and another vs. The Revenue Divisional Officer, Sivakasi and others, reported in (2004) 3 M.L.J. 280, and another decision of us (PSJ & ARRJ) dated 14.10.2004 rendered in C.M.A.No.1129 of 2003. Both the decisions relate to the interpretation of the very same rule, namely Rule 9 referred above. After considering the language used therein and of the fact that an appeal to the first respondent namely Inspector General of

Registration is a statutory remedy, the Division Benches have held that the date of the order under Sec.47-A for the purpose of deciding the limitation for filing appeals should be construed to mean the date of the service of the order. They further held that the date of order under Rule 9 of the said Rules shall be construed to mean the date of service of the order for the purpose of determining the time limit to prefer the appeals.

8. Eventhough such assertion has been made by the appellant that the order of the second respondent has not been either communicated or served and only after coming to know of the same, approached the second respondent and obtained copy on 23.1.2003 which is evident from page No.13 of the typed set of papers, no material was produced by the respondents before this Court to substantiate that the appellant was served / communicated by the second respondent, immediately after his order dated 8.7.2002. In the absence of such material before us by the Respondent and in the light of the assertion by the appellant as discussed above and in view of the dictum laid down by two Division Benches referred to above, we have no other option except to accept the claim of the appellant.

9. Accordingly, we hold that the appeal sent by the appellant to the first respondent herein (appellate authority) on 21.2.2003 and received by the said authority on 22.2.2003 is well within time. The contrary conclusion arrived by the first respondent in the impugned order dated 20.10.2003 cannot be sustained, accordingly the same is set aside. The first respondent is directed to dispose of the appeal of the appellant on merits in accordance with law within a period of three months from the date of receipt of a copy of this order.

10. The appeal is allowed to the extent mentioned above. No costs. Consequently, C.M.P.No.1946 of 2004 is closed.

Index : Yes

Internet: Yes

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To

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