

Shree Vijayalakshmi Charitable Trust Vs Sub-Registrar

Court: Madras High Court

Date of Decision: Sept. 7, 2009

Acts Referred: Registration Act, 1908 " Section 17

Stamp Act, 1899 " Section 2(10)

Transfer of Property Act, 1882 " Section 53A

Citation: (2010) 155 CompCas 549

Hon'ble Judges: N. Kirubakaran, J

Bench: Single Bench

Advocate: K. Ramakrishna Reddy, for the Appellant; D. Srinivasan, Additional Government Pleader, for the Respondent

Judgement

N. Kirubakaran, J.

The writ petition has been filed challenging the order dated July 29, 2009, issued by the respondent calling upon the

petitioner to pay a sum of Rs. 10,39,122 towards deficit stamp duty for entering the sale certificate dated December 22, 2006, in Book No. 1.

2. The case of the petitioner-trust is that one Mr. P.S. Ramachandran was the successful bidder of the property to an extent of 59.25yA acres of

lands situate in Irumburai and Ayyampalayam Villages, Sathyamangalam Taluk and Mettupalayam Taluk, Erode District in an auction. By an order

dated August 25, 2006, made in C.A. No. 370 of 2006, the sale was confirmed in favour of Mr. P.S. Ramachandran for a sale consideration of

Rs. 1,73,43,642. Through in the order dated December 20, 2006, passed in C.A. No. 2458 of 2006, this Court directed the official liquidator to

issue "certificate of sale" in favour of the nominee of Mr. P.S. Ramachandran in respect of the said lands, Mr. P.S. Ramachandran nominated the

petitioner to be the auction purchaser and the auction consideration was paid. Possession of the property was given to the petitioner and certificate

of sale was issued to the petitioner by the Official Liquidator, High Court, Madras on December 22, 2006.

3. The office of the official liquidator of this Court sent a copy of the sale certificate dated December 22, 2006, to the office of the respondent to

file the same in Book No. 1 as per Section 89 of the Registration Act, 1908. However it is seen that after a lapse of more than two years, the

respondent sent the impugned order dated July 29, 2009, demanding a sum of Rs. 10,39,122 which was said to be the deficit stamp duty payable

for filing the sale certificate in Book No. 1 as per the year 2008 audit objection. Against the said order dated July 29, 2009, only, the present writ

petition has been filed on the ground that the said communication was issued in contravention of Section 17(2)(xii) and Section 89 of the

Registration Act, 1908.

4. Mr. Ramakrishna Reddy, learned Counsel for the petitioner, relied on a judgment of the honorable Supreme Court in B. Arvind Kumar Vs.

Government of India and Others, , to state that the sale certificate does not require registration. Paragraph 12 of the judgment is extracted

hereunder:

12. The plaintiff has produced the original registered sale certificate dated August 29, 1941, executed by the Official Receiver, Civil Station,

Bangalore. The said deed certifies that Bhowrilal (father of the plaintiff) was the highest bidder at an auction-sale held on August 22, 1941, in

respect of the right, title, interest of the insolvent Anraj Sankla, namely, the leasehold right in the property described in the schedule to the

certificate (suit property), that his bid of Rs. 8,350 was accepted and the sale was confirmed by the District Judge, Civil and Military Station,

Bangalore on August 25, 1941. The sale certificate declared Bhowrilal to be the owner of the leasehold right in respect of the suit property. When

a property is sold by public auction in pursuance of an order of the court and the bid is accepted and the sale is confirmed by the court in favour of

the purchaser, the sale becomes absolute and the title vests in the purchaser. A sale certificate is issued to the purchaser only when the sale

becomes absolute, the sale certificate is merely the evidence of such title. It is well settled that when an auction-purchaser derives title on

confirmation of sale in his favour, and a sale certificate is issued evidencing such sale and title, no further deed of transfer from the court is

contemplated or required. In this case, the sale certificate itself was registered, though such a sale certificate issued by a court or an officer

authorised by the court, does not require registration. Section 17(2)(xii) of the Registration Act, 1908, specifically provides that a 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 registration under Sub-sections (b) and (c) of Section 17(1) of the said Act. We therefore hold that the

High Court committed a serious error in holding that the sale certificate did not convey any right, title or interest to plaintiff's father for want of

registered deed of transfer.

5. In another judgment the Division Bench of this Court in K. Chidambara Mankkam v. Shakeena reported in [2008] 1 CTC 660 : [2009] 152

Comp Cas 196, relying upon the judgment of the hon"ble Supreme Court mentioned above held that the sale certificate issued by the authorised

officer under the SARFAESI Act does not require registration as per Section 17(2)(xii) of the Registration Act.

6. Mr. D. Srinivasan, learned Additional Government Pleader submits that even though there is no necessity for the sale certificate to be registered,

when it is submitted for registration, necessarily stamp duty has to be paid for registration of the document.

7. It is relevant to note Section 17 of the Registration Act, 1908, which is extracted as follows:

17. Documents of which registration is compulsory.--(1) The following documents shall be registered, if the property to which they relate is situate

in a district in which, and if they have been executed on or after the date on which, Act No. 16 of 1864, or the Indian Registration Act, 1866 (20

of 1866), or the Indian Registration Act, 1871 (8 of 1871), or the Indian Registration Act, 1877 (3 of 1877), or this Act came or comes into

force, namely:

(a) instruments of gift of immovable property;

(b) other non-testamentary instruments which purport operate to create, declare, assign, limit or extinguish, whether in present or in future, any

right, title or interest whether vested or contingent, of the value of one hundred rupees and upwards, to or in immovable property;

(c) non-testamentary instruments which acknowledge the receipt or payment of any consideration on account of the creation, declaration,

assignment, limitation or extinction of any such right, title or interest;

(d) leases of immovable property from year to year, or for any term exceeding one year, or reserving a yearly rent;

(e) non-testamentary instruments transferring on assigning any decree or order of a court or any award when such decree or order or award

purports or operates to create, declare, assign, limit or extinguish, whether in present or in future, any right, title or interest, whether vested or

contingent, of the value of one hundred rupees and upwards, to or in immovable property; and

(f) Instruments of agreement relating to construction of multi-unit house building on land by several persons as referred to in Clause (i) of Article 5

of the Schedule I to the Stamp Act, 1899 (Central Act 2 of 1899):

Provided that the State Government may, by order published in the Official Gazette, exempt from the operation of this Sub-section any leases

executed in any district, or part of a district, the terms granted by which do not exceed five years and the annual rents reserved by which do not

exceed fifty rupees.

(1A) The documents containing contracts to transfer for consideration, any immovable property for the purpose of Section 53A of the Transfer of

Property Act, 1882 (4 of 1882) shall be registered if they have been executed on or after the commencement of the Registration and Other

Related Laws (Amendment) Act, 2001 and if such documents are not registered on or after such commencement, then, they shall have no effect

for the purposes of the said Section 53A.

(2) Nothing in Clauses (b) and (c) Sub-section (1) applies to--

(i) any composition-deed; or

(ii) any instrument relating to shares in a joint stock company, notwithstanding that the assets of such company consists in whole or in part of

immovable property; or

(iii) any debenture issued by any such company and not creating, declaring, assigning, limiting or extinguishing any right, title or interest, to or in

immovable property except in so far as it entitles the holder to the security afforded by a registered instrument, whereby the company has

mortgaged, conveyed or otherwise transferred the whole or part of its immovable property or any interest therein to trustees upon trust for the

benefit of the holders of such debentures; or

(iv) any endorsement upon or transfer of any debenture issued by any such company; or

(v) any document other than the documents specified in Sub-section (1A) not itself creating, declaring, assigning, limiting or extinguishing any right,

title or interest of the value of one hundred rupees and upwards to or in immovable property, but merely creating a right to obtain another

document which will, when executed, create, declare, assign, limit or extinguish any such right, title or interest; or

(vi) any decree or order of a court except a decree or order expressed to be made on a compromise and comprising immovable property other

than that which is the subject-matter of the suit or proceeding; or

(vii) any grant of immovable property by the Government; or

(viii) any instrument of partition made by a Revenue Officer; or

(ix) any order granting a loan or instrument of collateral security granted under the Land Improvement Act, 1871 (26 of 1871), or the Land

Improvement Loans Act, 1883 (19 of 1883); or

(x) any order granting a loan under the Agriculturists Loans Act, 1884 (12 of 1884), or instrument for securing the repayment of a loan made

under that Act; or

(xa) any order made under the Charitable Endowments Act, 1890 (6 of 1890), vesting any property in a Treasurer of Charitable Endowments or

divesting any such Treasurer of any property; or

(xi) any endorsement on a mortgage deed acknowledging the payment of the whole or any part of the mortgage money and any other receipt for

payment of money due under a mortgage when the receipt does not purport to extinguish the mortgage; or

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

Explanation.--A document purporting or operating to effect a contract for the sale of immovable property shall not be deemed to require or ever to

have required registration by reason only of the fact that such document contains a recital of the payment of any earnest money or of the whole or

any part of the purchase money.

(3) Authorities to adopt a son, executed after the 1st day of January 1872, and not conferred by a will, shall also be registered.

8. Section 17(1) of the Act speaks about the documents of which registration is compulsory. Documents mentioned in Section 17(2) of the Act are

not compulsorily registrable and do not fall under the category of non-testamentary documents which require registration under Clauses (b) and (c)

of Section 17(1) of the said Act.

9. Certain documents are specifically given in Section 89 of the Act and the copies of those documents are required to be filed in Book No. 1 by

the Registrar, when sent by the court/officer Section 89 reads as follows:

89. Copies of certain orders, certificates and instruments to be sent to registering officers and filed.--(1) Every officer granting a loan under Land

Improvement Loans Act, 1883 (19 of 1883), shall send a copy of his order to the Registering Officer within the local limits of whose jurisdiction

the whole or any part of the land to be improved or of the land to be granted as collateral security, is situate, and such registering officer shall file

the copy (in his Book No. 1 or get it scanned).

(2) Every court granting a certificate of sale of immovable property under the Code of Civil Procedure, 1908 (5 of 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 or get it scanned.

(2A) Every court passing an order for effecting or raising an attachment of immovable property under the Code of Civil Procedure, 1908 (Central

Act 5 of 1908) shall send a copy of such order together with the memorandum giving the details of properties to the Registering Officer within the

local limits of whose jurisdiction the whole or any part of the said immovable property is situated and such registering officer shall file the copy of

such order in his Book No. 1 or get it scanned.

10. What is Book No. 1 Details regarding register-books to be kept in several offices are given in Section 51 of the Act. Book No. 1 to Book

No. 5 are mentioned in Section 51(1)A. Book No. 1, ""Register of non-testamentary documents relating to immovable property"". 51(2) reads as

follows:

(2) In Book No. 1 shall be filed, (i) true copies of all documents, and

(ii) all memoranda registered under Sections 17, 18 and 89 which relate to immovable properties, and are not wills.

11. Article 18 of the Indian Stamp Act, 1899 states about stamp duty for the registration of certificate of sale, which is extracted as follows:

18. Certificate of sale.--(In respect of each property put up as a separate lot and sold), granted to the purchaser of any property sold by public

auction by a Civil or Revenue Court or Collector or other Revenue Officer--

(a) Where the purchase money does not exceed Rs. 10 : one rupee

(b) Where the purchase money exceeds Rs. 10 but does not

exceed Rs. 25 : two rupees.

(bb) Where the purchase money exceeds Rs. 25 does not exceed

Rs. 50 : three rupees.

(c) In any other case.

The same duty as a conveyance (No. 23) for a market value equal to the amount of the purchase money only.

12. Moreover Section 51(2) distinctly mentions Sections 17 and 89 separately. Apart from that, documents mentioned in Section 17(1)(b)(c) are

to be registered by the Registrar as per the procedures mentioned in Sections 52 to 67 of Part XI of the Registration Act. On the other hand the

procedure for filing copy of the sale certificate finds place in Section 89. Hence both procedures are different. For registration, stamp duty is a

must whereas for filing no stamp duty is necessary.

13. The Legislature consciously used the word ""register"" in Section 17 whereas the word ""file"" was employed in Section 89 of the Act. Only when

the purchaser goes for registration of sale certificate issued by the court officer, Article 18 of the Indian Stamp Act would be attracted and stamp

duty is to be paid as per Article 23 of the Registration Act treating it as conveyance, i.e., market value of the property. When the instrument is not

submitted for registration and is being sent to the Registrar only for the purpose of filing in Book No. 1, it does not attract any stamp duty.

14. The earliest decision in this regard is by a Division Bench of this Court comprising Mr. Justice Kindersley and Mr. Justice Mutchins in Tirrappa

Chetty v. Murugappa Chetti ILR 7 Mad : 7 Mad 107, which held that:

the certificate of purchase must be regarded as a registered document and a copy having been transmitted by the court and filed by the Registrar

u/s 89 of the Act, that being the method of registration prescribed by the Act for sale of the certificate.

15. The judgment of the Supreme Court in B. Arvind Kumar Vs. Government of India and Others, , states (page 752):

when a property is sold by public auction in pursuance of the order of the court and the bid is accepted and the sale is confirmed by the court in

favour of the purchaser, the sale becomes absolute and the title vests in the purchaser.. The sale certificate is merely evidence of such title. No

further deed of transfer from the court is contemplated. In this case, the sale certificate itself was registered, though such a sale certificate issued by

a court or an officer authorised by the court, does not require registration.

16. In view of the above judgment and exemption granted u/s 17(2), the copy of the document is only required to be filed in Book No. 1 under the

special procedure u/s 89 of the Act. If stamp duty is required even for filing of the copy of instrument u/s 89 of the Act, the exemption given u/s

17(2) of the Act would become meaningless. In that event, there is no necessity for the special procedure u/s 89 of the Act and it would amount to

violation of the Act. The Hon"ble Supreme Court in similar circumstances in Shanti Devi L. Singh Vs. Tax Recovery Officer and Others, , after

comparing ""registration"" u/s 17 with ""filing"" u/s 89 of the Act held that though the processes are different, the purchaser at a court or revenue sale is

under no disadvantage because of lack of registration and transfer of title is not vitiated by non-registration of certificate and directed the Registrar

to file the copy of the sale certificate in Book No. 1.

17. The office of the Official Liquidator, High Court, Madras wrote a letter dated March 15, 2007, to the respondent/Registrar enclosing a copy

of the certificate of sale dated December 22, 2006, to be filed in Book No. 1 as per Section 89 of the Act. Section 89 of the Act is very

categorical that the Registering Officer has to file the copy of such certificate in Book No. 1 and it is the bounden duty of the officer to file the copy

in his Book No. 1 or get it scanned.

18. When such is the position, the sale certificate would have come u/s 17(2)(xii) of the Registration Act, 1908. As long as Sections 17(2) and 89

are there in the Registration Act, the court can only go by the statute and quash the Order which are ultra vires the Act. In view of the categorical

pronouncement of the judgment of the Supreme Court and also the judgment of this Court and also in view of provisions given in the Registration

Act, the court holds that Court auction sale certificate sent to the Registration for filing in Book No. 1 would not attract stamp duty. The

respondent has got no power and jurisdiction to issue the impugned order because of Sections 17(2)(xii) and 89(2) of the Registration Act and

cannot demand stamp duty. Hence the impugned order is liable to be set aside.

19. As the copy of the document is sought to be filed u/s 89 of the Act in Book No. 1 of the Registrar Office, it is in a way amounting to registering

the document which will be reflected in the encumbrance certificate of the property. Though the transaction through sale certificate is a "sale" as per

Section 54 of the Transfer of Property Act, the sale certificate is exempted as compulsorily registrable document u/s 17(2) of the Act. It is an

instrument of conveyance as defined u/s 2(10) of the Indian Stamp Act, 1899, passing of right, title, interest in the immovable property and this

Court opines that the sale certificate should be treated as normal sale deed which is compulsorily registrable u/s 17(1) of the Act. Merely because

the property was purchased in court auction, it does not fail to convey the title of the property, i.e., it conveys title to the purchaser as held by the

apex court in Shanti Devi L. Singh Vs. Tax Recovery Officer and Others, .

20. The Registration Act, 1908 (Act No. XVI of 1908) received assent of the Governor General on December 18, 1908 and the Act came into

force on January 1, 1908. During that time, the people might not have shown interest to purchase court auctioned property, as it was considered to

be a distress sale. There is a saying in Tamil.... I Portion vernacular not printed here.-Ed. (the house in which the turtle entered and the property

which was attached by ameena cannot prosper). Hence this Court feels that above should have been the reason why the policy makers at that

point of time, would have encouraged the people to participate in the court auction by giving concession through exemption u/s 17(2) of the Act.

21. Today the Indian economy is robust and the country is advanced in many fronts including industries and technology. Information technology

has made the country to have steady growth. Transactions in commerce and trade are more. Many multinationals and financial institutions have

come into existence. For speedy recovery of loans, Acts like the Securitisation and Reconstruction of Financial Assets and Enforcement of

Security Interest Act, 2002 (54 of 2002) and the Recovery of Debts Due to Banks and Financial Institutions Act, 1993, have been enacted by

Parliament and through which banks can auction the mortgaged properties by simple procedures. In view of that every day, we are coming across

many advertisements in the newspapers regarding court sales. Nowadays people are not fighting shy to purchase those properties in the court

auction. In fact there has been heavy competition to buy the court auctioned properties. Hence, the concession which was believed to have been

given by the policy maker during the enactment of the Act 1908, is no more necessary.

22. The object of the registration is not only to give notice to the world that the documents have been executed by registering the said documents

under the Stamp Act, but also one of the important sources of revenue to the State. Many properties are sold by court auction regularly and

because of exemption given under Sections 17(2) and 89, heavy loss occurs to the Government. If the revenue is lost by Section 17(2) and

Section 89 of the Registration Act, suitable steps should be taken in the public interest by the Legislature/Parliament to plug the loop-hole in the

Act by way of suitable amendment. In this case, the value of the property is Rs. 1,73,43,642. If the said transaction is done in the normal course, it

would have earned a revenue of Rs. 10,39,122 which is being sought to be levied by the respondent. However in view of Section 17(2)(xii) and

Section 89 of the Act, the ex-chequer loses Rs. 10,39,122. This Court hopes that this case would be an eye opener and expects

Legislature/Parliament to bring suitable amendments in Sections 17 and 89 of the Registration Act.

23. With the above observations, the impugned order is quashed and the respondent is directed to file the copy of the sale certificate dated

December 22, 2006, in Book No. 1. Accordingly the writ petition is allowed. No costs. Consequently the connected M.P. Nos. 1 and 2 are

closed.