

ORIGINAL JURISDICTION

Mr. Justice Sathish Ninan, Mr. Justice T. R. Ravi and Mr. Justice M.A. Abdul Hakhim

ICR (WA) No. 28 of 2025, WA No. 1520 of 2025, WA No. 1823 of 2025 and WA No. 601 of 2026

2026 May 19

State of Kerala & Others . . . Appellants

v.

Ramakrishnan Sunil Babu . . . Respondent

Issues for consideration

- (1) Whether a certificate of sale issued pursuant to an auction under the SARFAESI Act is liable to stamp duty at the time of its issuance or execution ?.
- (2) Whether a Registering Officer can refuse to file a copy of an unstamped sale certificate in Book No. 1 under Section 89 of the Registration Act, 1908 ?.

Stamp Act, 1959 (Kerala Act 17 of 1959)—Schedule, Article 16 - Sale Certificate, whether exigible to stamp duty—A certificate of sale issued to an auction purchaser (including under the SARFAESI Act) is merely evidence of title, does not transfer title by itself, and is not liable to stamp duty at the time of its issuance—Stamp duty is only attracted if the original certificate is voluntarily presented for regular registration or used for other specific legal purposes.

The matter was referred to a Full Bench due to conflicting views expressed by two coordinate Division Benches of the Kerala High Court. In **Sub Registrar, Ernakulam v. C.M. Nadirsha** [A.I.R. 2009 Ker 130], a Division Bench held that a sale certificate is liable to stamp duty and that a Registering Officer can decline to file an unstamped copy. Conversely, in **The Revenue Divisional Officer v. Thomas Daniel** [2025 (4) K.L.T. 534], another Division Bench answered both questions in the negative, ruling that a sale certificate does not attract stamp duty unless presented for registration. To resolve the conflict, the Appeal was referred to full bench. The State, contended that Entry 16 of the Schedule to the Kerala Stamp Act, 1959 explicitly subjects a “Certificate of sale” to stamp duty and that under Section 17 of the Stamp Act, instruments must be stamped at or before execution (signing), and under Section 34, a public officer is legally barred from “acting upon” an unstamped instrument. They further contended that entering a copy into Book No. 1 and updating indexes constitutes “acting upon” the document. The respondents maintained that an auction sale is complete when the bid is accepted and confirmed; thus, the title passes by force of law and the sale certificate is merely evidence of an already concluded transaction, which does not independently create a right or liability. Answering

the reference and finding that the Judgment in **The Revenue Divisional Officer v. Thomas Daniel** [2025 (4) K.L.T. 534] lays down the correct law, the Court;

Held:

It has been held that the consistent view for more than 150 years is that, a certificate of sale is not liable to payment of stamp duty. It was held that the Registering Authority is bound under Section 89 of the Registration Act, to file in Book No.1, a copy of the duly validated sale certificate. It was also held that a certificate of sale is not compulsorily registrable. (*Paragraph 21*)

That, a certificate of sale is not liable for payment of stamp duty, has been held by the Apex Court in **Madhurambal and connected cases**. That, stamp duty need be paid on a sale certificate only when it is presented for registration or used for other purposes, has been held in **Madhurambal and Ferrous Alloy Forgings**. It is not for this Court to have a re-look into the issues settled by the Apex Court. (*Paragraph 32*)

Case Law Cited:

(1) 2025 (4) K.L.T. 534—*Approved*.

(2) A.I.R. 2009 Ker. 130—*Held not good law*.

Registration Act, 1908 (Central Act 16 of 1908)—Section 89—Registering Officer is not entitled to decline filing of an unstamped sale certificate in his Book No.1.

Held:

That, the Registering Officer is not entitled to decline filing of an unstamped sale certificate in his Book No.1, has also been held by the Apex Court in **Shanti Devi, Esjaypee Impex and Madhrambal**. (*Paragraph 32*)

Case Law Cited:

(3) 1990 (3) S.C.C. 605; (4) A.I.R. 1883 Allahabad 568; (5) (2021) 11 S.C.C. 537—*Followed*.

(6) 2025 (4) K.L.T. 534; (7) (2024) 6 S.C.C. 1; (8) (2023) 17 S.C.C. 455; (9) (1991)) S.C.C. 633; (10) (2007) 5 S.C.C. 745; (11) 2024 S.C.C.Online S.C. 3372; (12) 2022 S.C.C. OnLine S.C. 2079; (13) 2018 (3) T.N.C.J. 541 (D.B.); (14) MANU/T.N./6621/2022; (15) 2025 (3) K.L.T. 367 (F.B.); (16) (2002) 2 S.C.C. 42 —*Referred to*.

List of Acts and Rules:

(1) Kerala Stamp Act, 1959.

(2) Registration Act, 1908.

List of Key Words:

Sale Certificate, Stamp duty payable, Registering officer, Book No. 1, Unstamped sale certificate.

Appearance of Parties:

Sri. Mohammed Rafiq (Spl. G.P.) . . . for appellant

Sri. T.M.Abdul Azeez, Smt. P.V.Parvathy, Smt. Reena Thomas, Smt. Nigi George, Sri. Ananthu V.Lal, Smt. Sherin Varghese, Sri.Brahma R.K., Sri. Antony Thomas Mohan, Smt. Fabi Abdul Latheef, Sri. Varghese Parambil, Sri. Albert Joseph, Sri.Boban Varghese, Sri.T.K.Kunjumon, Sri. Arun Paul (Kaprassery), Sri. M.R. Jayaprasad, Sri. Bobby J.Arakunnel, Sri. Ajmal V.A., Sri.M.Gopikrishnan Nambiar, Sri. K.John Mathai, Sri. Joson Manavalan, Sri. Kuryan Thomas, Sri. Paulose C.Abraham, Sri. Raja Kannan, Sri. Sajeev Kumar K.Gopal and Smt. Gopika S.Nair . . . for respondents

JUDGMENT

The Judgment of the Court was delivered by **Sathish Ninan. J**—(i) Is a certificate of sale issued pursuant to a sale under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act (*for short, SARFAESI Act*) liable to stamp duty?

(ii) Can the Registering Officer decline to file the copy of the sale certificate in his Book No.1 for the reason of the original being unstamped?

2. In **Sub Registrar, Sub Registrars's Office, Ernakulam and Anr v. C.M. Nadirsha and Anr** [A.I.R. 2009 Ker 130], a Division Bench of this Court answered both in the affirmative. However, in **The Revenue Divisional Officer and Ors v. Thomas Daniel and Others** [2025 (4) K.L.T. 534], another co-ordinate bench answered both in the negative. This has lead to the reference.

3. We had the benefit of the exhaustive arguments addressed before us by Sri.Mohammed Rafiq, the learned Special Government Pleader (Taxes), Sri.S.Sreekumar, the learned senior counsel, Adv. Sri.Varghese Parambil, Adv. Sri.Sajeev Kumar K. Gopal, Adv. Sri. Mohan Jacob George and Adv. Sri.Gopikrishnan Nambiar, in addition to the compilations of materials provided.

4. The arguments of the learned Special Government Pleader(Taxes) were in two stages: initially based on the relevant statutory provisions, and thereafter with reference to the precedents. We proceed to discuss accordingly.

5. The Kerala Stamp Act, 1959 (for short, "the Stamp Act") deals with the law relating to stamps in the State of Kerala. It is a fiscal statute, intended to raise revenue for the State. Section 3 thereof is the charging Section, which imposes duty on instruments. It reads thus:-

"3. Instruments chargeable with duty.— Subject to the provisions of this Act and the exemptions contained in the Schedule, the following instruments shall be

chargeable with duty of the amount indicated in that Schedule as the proper duty therefor, respectively, that is to say—

(a) every instrument mentioned in the Schedule which, not having been previously executed by any person, is executed in the territories of the State of Kerala on or after the commencement of this Act; and

(b) every instrument mentioned in that Schedule which, not having been previously executed by any person, is executed out of the State of Kerala on or after that day, relates to any property situate, or to any matter or thing done or to be done, in the territories of the State of Kerala and is received in the territories of the State of Kerala :

Provided that no duty shall be chargeable in respect of—

(1) Any instrument, executed by, or on behalf of, or in favour of, the

Central Government or this or any other State Government, in cases where, but for this exemption, the Central Government or the State Government, would be liable to pay the duty chargeable in respect of such instrument;

(2) any instrument for sale, transfer or other disposition either absolutely or by way of mortgage or otherwise of any ship or vessel or any part, interest, share or property of or in any ship or vessel.”

Going by the Section, every instrument mentioned in the schedule to the Act is chargeable with the duty as indicated in the corresponding entry in the schedule. The format of the schedule reads thus: -

Sl. No.	Description of instrument	Proper stamp duty
(1)	(2)	(3)

Column No.2 refers to the “Description of instrument”, and Column No.3 mentions the stamp duty payable for the instrument. Entry No.16 in the schedule is, Certificate of sale and the stamp duty payable for the same. It reads thus:

Sl. No.	Description of instrument	Proper stamp duty
(1)	(2)	(3)

16.	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 by the Government, Collector or other Revenue Officer	The same duty as on a conveyance (No.21 or 22, as the case may be) for a consideration equal to the amount of the purchase money only
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Looked at it plainly, a certificate of sale is liable to stamp duty.

6. Section 17 of the Stamp Act stipulates that instruments are to be stamped before or at the time of its execution. Section 17 reads thus: -

“17. Instruments executed in the State of Kerala.— All instruments chargeable with duty and executed by any person in the State of Kerala shall be stamped before or at the time of execution.”

Section 2(f) of the Stamp Act defines the words “executed” and “execution” thus: -

“(f) “executed” and “execution” used with reference to instruments, mean “signed” and “signature”

Therefore, in terms of Section 17 read with Section 2(f), an instrument is liable to be stamped before or at the time of its signing. The above indicates that, stamp duty is payable on a certificate of sale at the time of its signing.

7. Sri.Mohan Jacob George contended that Section 3 of the Stamp Act refers to the “instruments” chargeable to stamp duty and that the term “instrument” has been defined under Section 2(j). It reads thus: -

2(j) “instrument” includes every document by which any right or liability is, or purports to be, created, transferred, limited, extended, extinguished or recorded but does not include a bill of exchange, promissory note, bill of lading, letter of credit, policy of insurance, transfer of share, debenture, proxy and receipt”.

As per the definition, to qualify as an instrument, a right or liability must be created or purported to be created. No right is created under a sale certificate and hence it is not an “instrument” falling within Section 3. The learned counsel relied on the following observations in **Thomas Daniel** in support of his contention:-

“..... as already noticed, the definition of ‘instrument’ under the Kerala Stamp Act, takes within its fold only such documents by which “any right or liability is, or purports to be, created, transferred, limited, extended, extinguished or recorded”. Accordingly, it is only if and when the sale certificate in question creates, transfers, limits, extends, extinguishes or records a right or liability in praesenti that it becomes an ‘instrument’ for the purposes of levy of stamp duty. A sale certificate,

at the time of its issuance to an auction purchaser, does none of the above since it only records the fact of a transaction of sale having been concluded between the parties, without going further to adjudicate or express any opinion on the rights or liabilities of the parties to the said transaction. We are therefore clear in our minds that, at the time of its issuance to an auction purchaser, a sale certificate cannot be seen as an “instrument”, and consequently will not attract the levy of stamp duty under the Kerala Stamp Act.”

8. We are unable to lightly brush aside the argument of the learned Special Government Pleader. Section 3 refers to the “instruments” enumerated in the schedule to the Stamp Act. The word “instrument” as occurring under Section 3 of the Stamp Act has reference to the nature/character of the document and which are included in the schedule to the Act for the purpose of admissibility to stamp duty. It is the recitals in a document which determine its character; of course, the nomenclature would also be of relevance. The schedule specifically mentions a certificate of sale. Further, the definition of “instrument” under Section 2(j) is an inclusive definition, wide in its connotation. When Section 2(j) is considered along with Section 3, which makes specific reference to the instruments mentioned in the schedule, a sale certificate is also an ‘instrument’ under the Stamp Act. A document always remains what it purports to be. Its character does not change when it is being registered. In **Interplay between Arbitration Agreements under Arbitration and Conciliation Act, 1996 and Stamp Act, 1899, In Re.** (2024) 6 S.C.C. 1), a Constitution Bench of the Apex Court, referring to the Stamp Act held,

“The term “instrument” is defined broadly, in an inclusive sense. It includes electronic documents. Schedule I to the Stamp Act contains descriptions of various instruments along with the stamp duty payable on each of them.”

The term ‘instrument’ under the Stamp Act cannot be restricted to documents which create any right or liability, or records a right or liability *in prasenti*, is further exemplified by the fact that various documents which do not create or extinguish right or liability are also included in the schedule to the Stamp Act. The learned special Government Pleader illustrated 16 such entries like, Affidavit, Copy or extract certified to be true copy.

9. The next argument of the learned Special Government Pleader is with regard to the second question posed in the reference. Section 89 of the Registration Act, 1908, mandates that a Court or a Revenue Officer granting a certificate of sale shall, send a copy of such certificate to the concerned Registering Officer. The Section further mandates the Registering Officer to file such copy in his Book No.1. The Section 89 (2) and (4), which alone are relevant here, read thus:-

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

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.

(4) Every Revenue Officer granting a certificate of sale to the purchaser of immovable property sold by public auction shall send a copy of the certificate to the Registering Officer within the local limits of whose jurisdiction the whole or any part of the immovable property comprised in the certificate is situate, and such officer shall file the copy in his Book No.1”

The question is, when a copy of an unstamped certificate of sale is forwarded to the Registering Officer, can he refuse to file it on the ground of it being unstamped.

10. Section 34 of the Stamp Act provides that, unless an instrument is duly stamped, it shall be inadmissible in evidence. The Section also prohibits any public officer from acting upon an instrument which is not duly stamped. The Section, excluding the proviso (being irrelevant for the present purposes), reads thus: -

“34. Instrument not duly stamped inadmissible in evidence, etc.— No instrument chargeable with duty shall be admitted in evidence for any purpose by any person having by law or consent of parties authority to receive evidence, or shall be acted upon, registered or authenticated by any such person or by any public officer, unless such instrument is duly stamped.”

It is beyond dispute that a Registering Officer is a “public officer” under Section 34. In terms of Section 89 of the Registration Act, all that the Registering Officer is required to do is to file the copy forwarded to him, in Book No.1; does it amount to “acting upon” the instrument? The attempt of the learned Special Government Pleader is to convince us that, it is.

11. Section 51 of the Registration Act specifies the Register-book and Indexes to be maintained in the registration office. Section 51 reads thus: -

“51. Register-books to be kept in the several offices.— (1) The following books shall be kept in the several offices hereinafter named, namely:—

A—In all Registration offices—

Book 1. “Register of non-testamentary documents relating to immovable property”,

Book 2. “Record of reasons for refusal to register”.

Book 3. “Register of wills and authorities to adopt”; and

Book 4. “Miscellaneous Register”.

B—In the offices of Registrars—

Book 5. “Register of deposits of wills”.

(2) In Book 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 property and are not wills.

(3) In Book 4 shall be [filed true copies of all documents] registered under Clauses (d) and (f) of Section 18 which do not relate to immovable property.

(4) Nothing in this section shall be deemed to require more than one set of books where the office of the registrar has been amalgamated with the office of a sub-registrar.”

Book No.1 is the register of non-testamentary documents relating to immovable property. Section 51(2) mandates true copies of all documents and memoranda specified under Section 89 also, to be filed in Book No.1. Section 54 of the Registration Act stipulates for preparation of indexes and the making of entries therein. The Section reads thus: -

“54. Current Indexes and entries therein.— In every office in which any of the books hereinbefore mentioned are kept, there shall be prepared current indexes of the contents of such books; and every entry in such indexes shall be made, so far as practicable, immediately after the Registering Officer has filed a true copy or memorandum of the document to which it relates.”

Section 55 requires maintaining of four indexes viz. Index Numbers I, II, III and IV. Section 55(2) mandates entering of the details of the executant and claimant under every document filed in Book No.1, to be entered in Index No.I. Section 55(1) and (2) which alone are relevant read thus: -

“55. Indexes to be made by Registering Officers and their contents.— (1) Four such indexes shall be made in all Registration Offices, and shall be named, respectively, Index No.I, Index No.II, Index No.III and Index No.IV.

(2) Index No.I shall contain the names and additions of all persons executing and of all persons claiming under every document of which a true copy, or a memorandum, is filed in Book No.I.”

Evidently, on receipt of a copy of the certificate of sale from a Court or Revenue Officer, the Registering Officer is bound to follow the procedure as noted above. The performance of such act is a statutory mandate. Therefore, it may not be appropriate to hold that, while performing such act, he is not “acting upon” the document.

12. As noted supra, Section 34 of the Stamp Act prohibits the Registering Officer from acting upon an instrument which is not duly stamped. It is the law that when the primary evidence is inadmissible, the fate befalls the secondary evidence [**See: Vijay v. Union of India** (2023 (17) S.C.C. 455)]. Therefore, when a Registering Officer finds that the certificate, a copy of which is forwarded to him, is unstamped, Section 34 of the Stamp Act disables him from acting upon the instrument.

13. The arguments as above seem to suggest that, a certificate of sale is liable to stamp duty, that it is payable at the time of its execution; and also that the Registering

Officer can decline to file copy of an unstamped sale certificate, in Book No.1. The above supports the view adopted in **Sub Registrar v. Nadirsha** (*supra*).

14. In **The Revenue Divisional Officer and Others v. Thomas Daniel and Others** (*supra*) while answering both the questions in the negative, the following judgments of the Apex Court were relied upon: -

- (1) **Municipal Corporation of Delhi v. Pramod Kumar Gupta** [(1991) 1 S.C.C. 633]
- (2) **Shanti Devi L. Singh v. Tax Recovery Officer and Ors.** [(1990) 3 S.C.C. 605]
- (3) **B.Aravind Kumar v. Government of India and Ors.** [(2007) 5 S.C.C. 745]
- (4) **State of Punjab & another v. Ferrous Alloy Forgings (P) Ltd. & Others** [2024 S.C.C. Online S.C. 3372].

The Revenue Divisional Officer and Others v. Thomas Daniel and Others held that, a certificate of sale, unless it is presented for registration or is used for some other purpose, is not liable to stamp duty. It was held that, “*a sale certificate which is not an instrument at the time of its issuance, can nevertheless metamorphose into one when its original is presented for registration before a registering authority*”. It was also held that the Registering Officer cannot refuse to file the copy of the certificate of sale in Book No.1 on the ground of it being unstamped.

15. The learned Special Government Pleader took us elaborately through each of the judgments referred to in **Thomas Daniel** (*supra*), and also the judgments relied upon in such judgments. His endeavour was to impress upon the Court that the Apex Court had not declared the law in the manner as stated in **Thomas Daniel**. We proceed to consider the said judgments.

16. **Municipal Corporation of Delhi v. Pramod Kumar Gupta** (*supra*), was a case dealing with the recovery of surcharge under the Delhi Municipal Corporation Act, on the duty imposed by the Indian Stamp Act, upon the instruments specified therein. One of the instruments so specified was, “instrument of sale of immovable property”. The question that arose was, whether a sale certificate issued in execution of a decree by the civil court under the Code of Civil Procedure is an “instrument of sale of immovable property”, liable to payment of such surcharge. The Apex Court noted that, in an auction held under the Code of Civil Procedure, the sale becomes absolute upon the order of confirmation of the sale under Order XXI Rule 92, and that title passes under the auction sale by force of law. The issuance of a sale certificate under Order XXI Rule 94 is only a subsequent event after the sale has become absolute and the title had passed. It was held that, to be an “instrument of sale of immovable property”, title to the property has to be conveyed under the document. The Apex Court observed,

“The document has to be a vehicle for transfer of the right, title and interest”.

Accordingly it was held that, the certificate of sale of the civil court is not an “instrument of sale of immovable property” liable to levy of surcharge under the Delhi Municipal

Corporation Act.

17. We deem it appropriate to notice here that, the State does not have a case that a certificate of sale issued by the civil court or under the SARFAESI Act is an instrument of sale of immovable property. In other words, there is no contention that, the passing of title and the sale is under the instrument.

18. In **Shanti Devi L. Singh v. Tax Recovery Officer and Ors.(s)**, the Apex Court held that the Registering Officer is, in terms of Section 89 of the Registration Act, required to file the copy of the certificate of sale in Book No.1. Therein, the certificate of sale involved was an unstamped one. The question as to whether the certificate of sale is liable to payment of stamp duty was left open. The Apex Court observed,

“We shall therefore leave the issue of stamp duty to be adjudicated upon in the normal course, as and when found necessary, and express no views thereon at this stage”.

While observing so, the Apex Court referred to Section 31 of the Stamp Act which enables production of the document before the authority concerned, for adjudication as to whether the document is liable to be stamped, and Section 33 which enables the Registrar to impound the document produced before him for registration, and also to Section 33, which empowers a Court of law or an authority entitled to take evidence, to impound the document when produced before it. **Shanti Devi (supra)** answered question No.2 posed in the reference, in the negative.

19. In **Aravind Kumar v. Govt. of India (supra)**, it was held that, (i) an auction sale is complete when the bid is accepted and sale is confirmed, (ii) when the sale is confirmed, title passes and vests with the purchaser, (iii) certificate of sale only evidences such title, and (iv) certificate of sale does not require registration.

20. In **State of Punjab & another v. Ferrous Alloy Forgings (P) Ltd. & Others (supra)**, the Apex Court, after referring to the judgments in **Municipal Corporation of Delhi, Shanti Devi and Arvind Kumar (supra)** held,

“17. The position of law is thus settled that a sale certificate issued to the purchaser in pursuance of the confirmation of an auction sale is merely evidence of such title and does not require registration Under Section 17(1) of the Registration Act. It is not the issuance of the sale certificate which transfers the title in favour of the auction purchaser. The title is transferred upon successful completion of the sale and its confirmation by the competent authority after all the objections against the sale have been disposed of.”

Further, relying upon its earlier judgment in **The Inspector General of Registration and others v. G. Madhurambal and Anr.** [2022 S.C.C. OnLine S.C. 2079], the Apex Court held:-

- (i) **A certificate of sale is not liable to stamp duty.**
- (ii) **A certificate of sale is not compulsorily registrable, and,**

(iii) Stamp duty would be payable on the certificate if it is presented for registration or is used for some other purpose.

21. In **The Inspector General of Registration and others v. G. Madhurambal and Anr.** [2022 S.C.C. OnLine S.C. 2079] the Apex Court held:-

“ Learned counsel for the petitioner(s) has made a valiant endeavor to persuade us to interfere with the impugned judgment(s) but not successfully. It is logically so as this issue has been repeatedly settled and if one may say, a **consistent view followed for the last 150 years. We may refer to the judgments by the Madras High Court in the Board of Revenue No.2 of 1875 (In Re: Case Referred) dated 19.10.1875 opining that a certificate of sale cannot be regarded as a conveyance subject to stamp duty**, by the Allahabad High Court in Adit Ram v. Masarat-un-Nissal opining that a sale certificate is not an instrument of the kind mentioned in clause (b) of Section 17 of Act III of 1877 and is not compulsorily registrable and this Court’s view in Esjaypee Impex Pvt. Ltd. v. Asst. General manager and Authorised Officer, Canara Bank opining that the mandate of law in terms of Section 17(2)(xii) read with Section 89(4) of the Registration Act, 1908 only required the Authorised Officer of the Bank under the SARFAESI Act to hand over the duly validated Sale Certificate to the Auction Purchase with a copy forwarded to the Registering Authorities to be filed in Book I as per Section 89 of the Registration Act and order of this Court in M.A. No.19262/2021 in SLP(C) No.29752/2019 dated 29.10.2021 opining that once a direction is issued for the duly validated certificate to be issued to the auction purchaser with a copy forwarded to the registering authorities to be filed in Book I as per Section 89 of the Registration Act, it has the same effect as registration and obviates the requirement of any further action.

It is time that the authorities stop filing unnecessary special leave petitions only with the objective of attaining some kind of a final dismissal from this Court every time. Costs this time has been spared but will not be spared the next time. The needful be done in terms of the impugned judgment(s) within 15 days from today. The special leave petitions are dismissed. Pending applications stand disposed of.”

It has been held that the consistent view for more than 150 years is that, a certificate of sale is not liable to payment of stamp duty. It was held that the Registering Authority is bound under Section 89 of the Registration Act, to file in Book No.1, a copy of the duly validated sale certificate. It was also held that a certificate of sale is not compulsorily registrable.

22. The learned Government Pleader took us through the decisions referred to in **Madhurambal** to contend that the said decisions were rendered in the context of the then existing Stamp Act and the Code of Civil Procedure, and has stark distinction with the present Acts. We proceed to advert to the same.

23. In **Board of Revenue No.2 of 1875 M.H.C.R. 112**, the question was, whether the Sale Certificate issued under the Madras Act, Act VIII of 1865 is liable to stamp duty. The Act dealt with the process for recovery of rent due to landlords under Ryotwari settlement. It was held that the sale certificate issued pursuant to an auction held under the

Act was not liable for stamp duty, it being not a conveyance. Therein the Court noted that, in the case of a certificate of sale issued under S.259 of the Code of Civil Procedure then in force, it was expressly provided that a sale certificate has the effect of an instrument of transfer, which made it liable to stamp duty; whereas, such a provision was not there in the Madras Act, Act of VIII 1865. The relevant portion of the judgment reads thus:-

“The certificate under Section 259 of the Code of Civil Procedure has, by virtue of the express provisions of that section, the effect of an instrument of transfer or conveyance. In the absence of any such provisions, a certificate under the Act of 1865 of the fact of sale and other matters therein mentioned, cannot be converted into a conveyance.”

The learned Special Government Pleader also argued that, the Stamp Act then in force did not include a certificate of sale as an instrument liable to duty; it was included only subsequently. To substantiate the same, he provided us with copies of the Stamp Act, 1869 and the Stamp Act, 1879. A perusal of the Stamp Acts of 1869 and 1879 show that, a certificate of sale was not included as an instrument liable to stamp duty under the schedule to the Stamp Act of 1869, and that it was included in the schedule only in the Stamp Act of 1879. The learned Government Pleader points out that, it was under such context and in the absence of a deeming provision that a certificate of sale shall be deemed to be an instrument of transfer, that the Court in **Board of Revenue No.2 of 1875** held that sale certificate was not liable to stamp duty.

24. The learned Special Government Pleader then drew our attention to the next judgment referred to in **Madhurambal viz. Adit Ram v. Masarat-un-Nissal** [A.I.R 1883 Alahabad 568]. Therein it was held that a sale certificate issued under the Code of Civil Procedure is not compulsorily registrable.

25. Yet another decision referred to in **Madhurambal is, Esjaypee Impex Pvt. Ltd. v. Asst. General manager and Authorised Officer, Canara Bank** [(2021) 11 S.C.C. 537]. In **Esjaypee Impex**, the Apex Court affirmed the mandate under Section 89(4) of the registration Act thus:-

“16. We are of the view that the mandate of law in terms of Section 17(2)(xii) read with Section 89(4) of the Registration Act, 1908 only required the Authorised Officer of the Bank under the SARFAESI Act to hand over the duly validated Sale Certificate to the Auction Purchaser with a copy forwarded to the Registering Authorities to be filed in Book I as per Section 89 of the Registration Act.”

26. **Madhurambal's** case arose from the judgment of the Madras High Court dated 22.11.2021. Therein the High Court held that a sale certificate is not liable to stamp duty and that it is liable to be stamped only when it is used for any other purpose, including registration. The High Court relied on its earlier judgment in **MBN Naresh Kumar v. the Inspector General of Registration and Others** [2018 (3) T.N.C.J. 541 (DB)]. Therein, the Division Bench observed that, in **Aravind Kumar v. Government of India (supra)**, the Apex Court held that payment of Stamp Duty on sale certificate is not warranted. The relevant para 16 reads thus:-

“16. In B. Arvind Kumar Vs. Government of India and others reported in MANU/SC/2834/2007 : JT 2007 (8) SC 602, it is held that a property sold in public auction pursuant to an order of the Court and once the sale is confirmed it becomes absolute and the title vests with the auction purchaser. The subsequent sale certificate issued to the purchaser is the evidence of such title which does not require registration under Section 17(2) (xii) of the Registration Act. In the case on hand also the property was purchased in public auction on 16.05.2008 and the sale certificate was issued on 31.08.2008. Therefore, the appellant/purchaser automatically becomes title holder of the property by virtue of the sale certificate. The payment of stamp duty on the sale certificate is not warranted as it is only a sale certificate issued which has to be filed or scanned in Book No.1 as per Section 89(4) of the Registration Act.”

However, a reading of **Aravind Kumar’s case** shows that there was no such finding or observation by the Apex Court therein. The High Court proceeded to hold that when the sale certificate is used for any other purpose, including registration, stamp duty is liable to be paid. The High Court observed,

“The Honourable Division Bench of this Court (Naresh Kumar) concluded that, as long as the sale certificate remains as it is, it is not compulsorily registrable. If the document is used for any other purpose, it requires stamp duty. Section 89(4) contemplates only filing of the sale certificates and therefore, the question of stamp duty does not arise”.

The Court also referred to the judgment of the Apex court in **Esjaypee Impex Pvt. Ltd. v. Asst. General manager and Authorised Officer, Canara Bank** referred to supra, with regard to the filing of copy of sale certificate in Book No.1.

27. The learned Special Government Pleader would point out that, the High Court of Madras had found that a sale certificate is liable to stamp duty but has held that it is payable only when it is presented for registration or is used for any other purpose. Therefore, a sale certificate is required to be stamped under the Stamp Act. If that be so, Section 17 of the Stamp Act mandates that the stamping has to be before or at the time of execution. It was also argued that, the theory of the sale certificate transforming into an instrument requiring stamp, when it is used for some purpose, has no legal backing. The character of a document cannot change. The word “instrument” is used in the Stamp Act to describe the nature of the document and to prescribe the duty payable thereon, it is argued.

28. Sri.Mohan Jacob George would point out that, the Apex Court had disposed of **Madhurambal’s case** along with Special Leave Petitions against the judgment of the Madras High Court in **Sub Registrar Neelangarai and Ors v. Tripower Enterprises Pvt. Ltd and Ors** (MANU/T.N./6621/2022), wherein also the High Court had relied on its earlier judgment in **Naresh Kumar** and also of the Apex Court in **Esjaypee Impex Pvt. Ltd. v. Asst. General manager and Authorised Officer, Canara Bank** (*supra*).

29. We have already noted that the view expressed by the High Court of Madras in **Madhurambal’s case** was accepted by the Apex Court in **The Inspector General of Registration and others v. G. Madhurambal and Anr.** (2022 S.C.C. OnLine S.C. 2079).

In **State of Punjab & another v. Ferrous Alloy Forgings (P) Ltd. & Others**, the Apex Court relied upon its earlier judgment in **Madhurambal**.

30. It is brought to our notice that, the identical question was considered by another Full Bench of this Court in **Fathima v. Canara Bank and Ors** [2025 (3) K.L.T. 367(F.B.)]. Therein, the Full Bench after referring to the judgment in **M/s Ferros Alloy and Esjaypee Impex and Madhurambal**, held: -

“76. therefore, the law is settled that the sale certificate issued on behalf of the secured creditor is not compulsorily registrable. It is required only that the sale certificate is filed before the registering authority as provided in Section 89(4) of the Registration Act. **No stamp duty is leviable on such a sale certificate.** Once a sale certificate is so submitted, the registering authority is required to enter the same in Book No.1 maintained under Section 51 of the Registration Act.”

31. The learned Senior Government Pleader would argue that, while it is beyond cavil that a sale certificate is not an instrument of transfer and it only evidences an already concluded sale, and that it is not compulsorily registrable, in the light of the statutory provisions and the inclusion of certificate of sale in the schedule to the Stamp Act, it is to be held that a sale certificate is liable to stamp duty, that the duty is liable to be paid at the time of its issuance, and that the subregistrar is not bound to file a copy of an unstamped sale certificate in his Book No.1. As demonstrated, the foundational judgments relied on in **Madhurambal**, which was followed in **Ferrous Alloy Forgings**, were based on the statutory provisions then existing, which were different from the present ones. **Shanti Devi** has not taken note of Section 17 of the Stamp Act regarding the time of stamping and also Section 60 which provides for imposition of fine on the executant of an unstamped instrument which was chargeable with duty. Hence the said decisions cannot be relied upon, it is argued.

32. That, a certificate of sale is not liable for payment of stamp duty, has been held by the Apex Court in **Madhurambal** and connected cases. That, the Registering Officer is not entitled to decline filing of an unstamped sale certificate in his Book No.1, has also been held by the Apex Court in **Shanti Devi, Esjaypee Impex and Madhrambal**. That, stamp duty need be paid on a sale certificate only when it is presented for registration or used for other purposes, has been held in **Madhurambal and Ferrous Alloy Forgings**. It is not for this Court to have a re-look into the issues settled by the Apex Court.

33. In **Sugandhi v. Jagadeesan** [(2002) 2 S.C.C. 420] the Apex Court cautioned that the High Court shall not desist from following its decision on the view that the law was laid down by the Apex Court without considering a particular point. It was held,

“It is not only a matter of discipline for the High Courts in India, it is a mandate of the Constitution as provided in Article 141 that the law declared by the Supreme Court shall be binding on all courts within the territory of India”.

It was pointed out by the Apex Court in **Anil Kumar Neotia v. Union of India** [A.I.R. 1988 S.C. 1353] that, the High Court cannot question the correctness of the decision of the Supreme Court, even though the point urged before the High Court was not considered by

the Supreme Court.

Thus, we find that the judgment in, **The Revenue Divisional Officer and Others v. Thomas Daniel and Others** [2025 (4) K.L.T. 534], is in consonance with the law laid down by the Apex Court and is liable to be followed. The reference is answered accordingly.

Result of the Case:

Reference answered.

Headnote Prepared by M.S.
