

In the High Court of Judicature at Madras

Dated: 11.12.2015

Coram

The Honourable Mr.JUSTICE M.M.SUNDRESH

Writ Petition No.36851 of 2015

1.A.Mohammed Khalid
2.Mohammed Lukhman
3.A.Mohamed Akram
4.A.Mohammed Mukarram
5.S.N.Mohammed Farook ... Petitioners

Vs.

1. The District Registrar,
Chennai South,
Purasaiwalkam,
Chennai-600 007.
2. The Sub Registrar,
Purasaiwalkam,
Chennai-600 007. ... Respondents

PRAYER: Petition is filed under Article 226 of the Constitution of India praying for issuance of Writ of Mandamus directing the respondents to release the deed of partition registered as Document No.4724/2014 on the file of the 2nd respondent.

For Petitioner : Mr.Mohammed Fayazali

For Respondents : Mr.P.Sanjay Gandhi,
Addl. Government Pleader

ORDER

The petitioners presented the document, which is a deed of partition, for registration before the second respondent. After registration, the said document in No.4724 of 2014 was not returned to the petitioners on the ground of pendency of the proceedings under Section 33-A(1) of the Indian Stamp Act, 1899 (hereinafter referred to as "the Act"). The petitioner said to have given a reply to the show cause notice issued by the first respondent on 11.06.2006. Now, seeking to release the said document during the pendency of the proceedings under Section 33-A(1) of the Act, the present writ petition has been filed by the petitioner.

2. The learned counsel appearing for the petitioner has made reliance upon the judgment of this Court in T.PANEER SELVAM V. THE INSPECTOR GENERAL OF REGISTRATION AND OTHERS ((2012) 2 CTC 59), wherein considering the very same issue, this Court has held as follows:

"12. In any case, Section 33-A does not speak about the retention of a document after registration. In fact the scheme of Section 33-A shows that the proceedings thereunder, can be initiated even after registration. A look at Section 33-A(1) would show that it begins with a non obstante clause and it uses the expression "after the registration". Since the proceedings can be initiated even after registration, but within a period of 3 years as per the second proviso, there is no indication in Section 33-A about the power of the Sub Registrar to retain the document.

13. Perhaps the power to retain the document was considered unnecessary, in view of the fact that what is contemplated under Section 33-A(1) is a Certificate of Recovery to enable the recovery of the deficit stamp duty as an arrear of land revenue. Therefore, even if the document is released, it would make no difference and the respondents would still be able to recover the deficit stamp duty as an arrear of land revenue.

14. In view of the above, the writ petition is allowed and a direction is issued to the respondents to release the Deed of Dissolution executed and presented on 17.10.2001 by the petitioner and assigned document No.600/2003,, within two weeks from the date of receipt of a copy of this order, subject to verification whether the amounts of Rs.19,575/- and Rs.16,081/- sent by the petitioner on 26.2.2011 and 21.3.2011 respectively have been received and accounted for in his Office or not. If these cheques have not been received or received but not encashed, the petitioner shall do the needful, to enable the respondent to receive these amounts towards the demand earlier made by the third respondent on 14.3.2002. After releasing the document, It is open to the respondents to proceed further in terms of the Certificate of Recovery dated 31.1.2005. It is also open to the petitioner to defend any such action in terms of the first as well as the second proviso to Section 33-A(1)."

3. As the said ratio is applicable to the case on hand, the writ petition is allowed with a direction to the respondents to release the the document in No.4724 of 2014 within a period of four weeks from the date of receipt of a copy of this order. It is open to the respondents to pass appropriate final orders under Section 33-A (1) of the Act within a period of eight weeks. The document will have to be released with an endorsement indicating the pendency of the abovesaid proceedings. No costs.

Raa

Sd/-

Assistant Registrar (CS-II)

/True Copy/

Sub-Assistant Registrar

To

1. The District Registrar,
Chennai South,
Purasaiwalkam,
Chennai-600 007.

2. The Sub Registrar,
Purasaiwalkam,
Chennai-600 007.

+1 C.C. To MR.Mohammed Fayaz Ali, Advocate in SR.NO.66686

+1 C.C. To The Government Pleader in SR.NO.66934

W.P.No.36851 of 2015

CA (CO)

sd : 30/12/2015

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