



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED :11.08.2015

CORAM
THE HONOURABLE MR.JUSTICE R.SUBBIAH

W.P(MD) .No.14297 of 2015
and
M.P(MD)No.1 of 2015

K.Krishnamoorthi

... Petitioner

Vs.

1.The Deputy Inspector General of Registration,
Madurai.

2.The Deputy Collector(Stamps),
Trichy.

... Respondents

This Writ Petition has been filed praying for a Writ of Mandamus directing the respondents to register the Member of Family Arrangement by accepting the fixed Registration Fee for the registration of the Family Arrangement, dated 31.03.1983 as per the Govt. Order and the Registration Manual forthwith as per the order of the Honourable High Court in C.R.P.(MD)No.2062 of 2009, dated 03.11.2010.

For petitioner : Mr.R.Singaravelan for
Mr.D.Sevanayagam

For Respondents : Mr.K.Mahesh Raja
Government Advocate

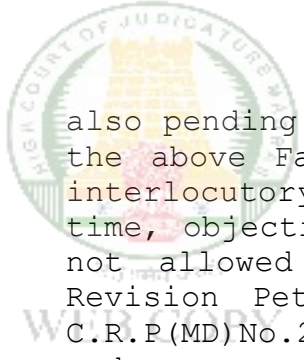
ORDER

This Writ Petition has been filed praying for a Writ of Mandamus directing the respondents to register the Memorandum of Family Arrangement by accepting the fixed Registration Fee for the registration of the Family Arrangement, dated 31.03.1983, as per the Govt. Order and the Registration Manual, forthwith, as per the order of the Honourable High Court in C.R.P.(MD)No.2062 of 2009, dated 03.11.2010.

2. Mr.K.Mahesh Raja, learned Government Advocate takes notice for the respondents.

3. By consent, this Writ Petition itself is taken up final disposal.

4. The case of the petitioner is that a memorandum of family arrangement was entered into between himself, his mother and his cousin brother namely Vaithilingam Chettiar to speak about the properties allotted to each one's share, by way of a oral partition. On the basis of the said family arrangement, his cousin brother Vaithilingam Chettiar sold away lot of immovable properties allotted to his share and one of the sale deeds dated, 05.12.1984 was marked as Ex.A3 before the Sub-Court, Trichy in O.S.No.35 of 1989, which is now pending in O.S.No.385 of 1996 on the file of the learned District Munsif Court, Musiri. Apart from O.S.No.35 of 1989 another one suit filed by the sons of the petitioner's cousin brother, is



also pending before the said Court. When both the suits came up for trial, the above Family Arrangement which was marked at the time of hearing of interlocutory application as Ex.A1, was attempted to be marked. At that time, objections were raised by his cousin brother's side and hence, it was not allowed to be marked. Thereafter, the petitioner filed a Civil Revision Petition against the order declining to mark the document in C.R.P(MD)No.2062 of 2009 and in which, this Court has passed the following order:

".....19.In this case, the document has been typed on stamp papers of the value of Rs.5/- only. In other words, they are not 'duly stamped' in terms of Section 35 of the Indian Stamp Act. Therefore, as per the decision, in A.C.Lakshmipathi, the documents cannot be looked into for any purpose, though it is a family arrangement recording only a past transaction. However, the proviso(a) to Section 35 provides a gateway. It reads as follows:

"35. Instruments 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:

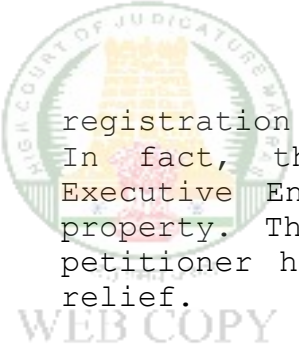
Provided that -

(a) any such instrument shall be admitted in evidence on payment of the duty with which the same is chargeable or, in the case of any instrument insufficiently stamped, of the amount required to make up such duty, together with a penalty of five rupees, or, when ten times the amount of the property duty or deficient portion thereof exceeds five rupees, a sum of equal to ten times such duty or portion. "

It is up to the petitioner to take advantage of the said proviso. Though the same would not cure the defect of non-registration, it would cure the defect of deficit stamp duty. Once this is done, the documents can be looked into at least for collateral purposes, as held in clause (VII) of the summing up portion of the decision of the Division Bench in A.C.Lakshmipathy.

20. Therefore, in the light of what is stated above, the order of the Court below, dismissing the application cannot be assailed. Hence, this Civil Revision Petition is dismissed. However, it will be open to the petitioner to take recourse to the remedy indicated as above. There will be no order as to costs. Consequently, connected miscellaneous petition is also dismissed."

Hence, based on the observation made in the order passed in C.R.P(MD)No.2062 of 2009, the petitioner has taken steps to pay required stamps and document fees for the registration of the same, which was just Rs.10,000/- once and now Rs.25,000/- (the fixed charges) as per the circular of the Government. Though, the petitioner has taken steps as early as in the year 2013 to pay required stamps and document fees for the



registration of the same, till date the said document was not registered. In fact, the second respondent addressed a letter to the Assistant Executive Engineer, Registration Department to assess the value of the property. The matter is pending for the past three years. Hence, the petitioner has come forward with this Writ Petition for the above stated relief.

5. It is the submission of the learned counsel for the petitioner that so far as the family arrangement is concerned, the Authority has to fix the charge of Rs.25,000/-. But the second respondent has sent a communication to the Assistant Executive Engineer, Registration Department, to assess the value of the property, which is not necessary in this matter and hence, a direction may be given to register the Family Arrangement and to accept the fixed registration fee for registration of the Family Arrangement.

6. I am of the considered opinion that such a positive direction cannot be given in this Writ Petition. However, the second respondent cannot keep the document pending for a long time and hence, the petitioner is directed to give a fresh representation by making request to fix the registration fee for registration of the Family Arrangement, within a period of one week from the date of receipt of a copy of this order, along with a copy of this order and on receipt of the same, the second respondent is directed to pass appropriate orders, on merits and in accordance with law, within a period of three weeks thereafter.

With the above direction, this Writ Petition is disposed of. No Costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar

\\True copy\\

Sub Assistant Registrar

pm

To

1.The Deputy Inspector General of Registration,
Madurai.

2.The Deputy Collector(Stamps),
Trichy.

1CC TO MR. D. SELVANAYAGAM, ADV SR: 45469

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