HON'BLE SRI JUSTICE S.V.BHATT

W.P.Nos.10078 & 16264 OF 2014

COMMON ORDER:

W.P.No.10078 OF 2014

The petitioner prays for Mandamus declaring the action of 2nd respondent in refusing to register the final decree dated 29.01.2014 in I.A.No.1783 of 2012 in O.S.No.730 of 2010 presented by the petitioner, as illegal, arbitrary and the petitioner further prays for a direction to the 2nd respondent to register the final decree dated 29.01.2014 forthwith.

W.P.No.16264 OF 2014

The petitioner prays for Mandamus declaring Letter No.87/2014 dated 06.04.2014 of 2nd respondent, impounding document P104/2014, as illegal, arbitrary and without jurisdiction.

The petitioner is same in these two writ petitions. The consideration of substantive prayer in W.P.No.16264 of 2014 would suffice the disposal of both writ petitions.

The circumstances leading to filing of the writ petition are substantially same and for convenience, the pleadings stated in W.P.No.16264 of 2014 are referred to.

The petitioner filed O.S.No.730 of 2010 in the Court of the II-Additional District Judge, Ranga Reddy District at L.B.Nagar against G.Indramma and 14 others for the relief of partition of plaint schedule properties into 16 shares and allot 1/16th share to the plaintiff. The plaint schedule property consists of Ac.11.23 gts in Sy.No.222 of Gaganpahad Village, Rajendranagar Mandal, Ranga Reddy District.

The case of petitioner is that the petitioner is the daughter of G.Indramma (1st defendant in O.S.No.730 of 2010). On 18.07.1961, the plaint schedule property was purchased in the names of G.Indramma and G.Lakshmi Narasamma (2nd defendant in O.S.No.730 of 2010) by the grandfather of petitioner late G.Babaiah. The petitioner claimed the plaint schedule property as joint property of the family of the said G.Indramma and G.Lakshmi Narasamma.

On 18.01.2012, a preliminary decree was passed in O.S.No.730 of 2010 allotting 1/16th share to the plaintiff.

The petitioner filed I.A.No.1783 of 2012 for passing final decree in terms of the preliminary decree dated 18.01.2012. On 29.01.2014, the learned trial Judge passed the final decree by dividing the shares and allotted separate shares to the parties to O.S.No.730 of 2010. In terms of the decrees dated 18.01.2012 and 29.01.2014, the petitioner claims to have got 3043.2 sq. yards. On the valuation details and rate of stamp duty furnished by the 2nd respondent,

the petitioner deposited a sum of Rs.91,695/- for engrossing the final decree through challan dated 04.04.2014.

The final decree engrossed on stamp papers was

presented for registration before the 2nd respondent. As there was inaction or anticipated refusal of the final decree, the petitioner filed W.P.No.10078 of 2014. This Court through interim order

dated 03.04.2014 directed the 2nd respondent to receive the

final decree dated 29.01.2014 in I.A.No.1783 of 2012 in O.S.No.730 of 2010 presented by the petitioner and process the same for registration. With the instant order of this Court, the writ prayer for all purposes does not subsist for consideration. The 2nd respondent through the letter impugned communicated as follows:

> "With reference to the application made by the applicant, it is informed that on perusal of the copy of the orders issued by Hon'ble High Court of A.P., this office admitted execution of the document on 0404.2014 and process of registration is commenced immediately as per the above orders.

On verification of the recitals of the pending document, this office opines that the present document requires stamp duty of Rs.4,56,450/- since chargeable value is Rs.4,56,45,000/-, which is value of separated shares in the context of Art.40 of Sch.IA to Indian Stamp Act. But the present document is borne with stamp duty of Rs.91,695/-. Deficit stamp duty of Rs.3,64,755/- is to be collected to get the document sufficiently stamped.

It is informed that as per provisions of the Indian Stamp Act, the Registering Officer has to keep the document pending and impound the same for submission to the Collector under Section 33 (1) of Indian Stamp Act, if it appears that the document is not duly stamped.

Therefore, the applicant is informed that the pending document bearing No.P.104 of 2014 of Sub-Registrar Office, Rajendranagar is impounded and forwarded to the Collector & District Registrar, Rangareddy."

Hence, the writ petition.

The case of petitioner is that the final decree is passed for partition of shares between the family members of Indramma and G.Lakshmi Narasamma and that the stamp duty payable on the deed of partition effected through final decree is governed by Article 40 of Schedule I A of the Indian Stamp Act. According to the petitioner, the parties in O.S.No.730 of 2010 are family members and the stamp duty payable is 0.5% on the separated share of the schedule property subject to a maximum of Rs.20,000/-. The case on hand cannot be treated as partition of property by others. If the partition is in favour of others, it is not disputed by the learned counsel appearing for the petitioner that the stamp duty payable is 1% on the separated share. For reference Article 40 of Schedule I
is reproduced.

Article of Schedule 1-A	**Nature of Document**	**Existing stamp duty**	**Rate of stamp duty now fixed**

Article 40	Partition Deeds In favour of family members In favour of others	1% of the market value of the separated shares or share of the property 3% of the market value of the separated shares or share of the property	.5% of the market value of the separated shares or share of the property (subject to maximum of Rs.20,000/-) 1% of the market value of the separated shares or share of the property

Therefore, the impugned communication levying 1% stamp duty is challenged as illegal, arbitrary and without jurisdiction.

The 2nd respondent filed counter affidavit opposing the writ prayers on all fours. The case of 2nd respondent is that the plaint schedule property or schedule of property covered by the deed presented for registration is abutting the national highway.
The applicable Article for levy of stamp duty is Article 40 of Schedule I A. The division effected through the subject document is not amongst the family members. Therefore, the stamp duty payable on the subject document is 1% on the separated share. The further plea of 2nd respondent is that the market value of separated share of petitioner is Rs.4,56,45,000/- on which stamp duty of Rs.4,56,450/- is chargeable. The petitioner having paid a sum of Rs.91,695/- is required to pay the deficit stamp duty of Rs.3,64,755/-. The 2nd respondent, having seen that the document presented for registration is insufficiently stamped, exercised the jurisdiction under Section 33(1) of the Indian Stamp Act, impounded the same and sent the document to the District Registrar for further action. Therefore, according to the respondent, the stamp duty payable is 1% on the separated share but not 0.5% as contended by the petitioner.

The learned counsel appearing for the parties have substantially reiterated the stand taken in the respective pleadings. For brevity, the contentions are not reiterated.

From the pleadings and material available on record, the issue that arises for consideration is whether in the facts and circumstances the stamp duty payable is 0.5% on the separated share, subject to a maximum of Rs.20,000/- or 1% on the separated share of the property.

The facts relevant for the purpose are that the petitioner filed O.S.No.730 of 2010 against her mother and paternal aunt along with other children of Indiramma and Lakshmi Narasamma. G.Indiramma and G.Lakshmi Narasamma are daughters-in-law of late G.Babaiah. The subject matter of the document presented for registration was purchased through registered sale deed dated 18.07.1961. The vendees under the document, though are co-sisters, it is not clear whether the property was purchased by family consisting of G.Babaiah and others. The vendees are each entitled to half share in the schedule of property covered by registered document dated 18.07.1961.

Article 40 of Schedule I A deals with payment of stamp duty on partition deeds executed firstly amongst family members and secondly in favour of others. Through G.O.Ms.No.585 dated 30.11.2013, the rate of stamp duty is modified as follows:

Article 40:-

Existing stamp duty	**Rate of stamp duty now fixed**
1% of the market value of the separated shares or share of the property 3% of the market value of the separated shares or share of the property	.5% of the market value of the separated shares or share of the property (subject to maximum of Rs.20,000/-) 1% of the market value of the separated shares or share of the property

The other details of Article 40 of Schedule I A remain unchanged. For the purpose of Article 40, there is no definition for the word “family”. However, in Article 49 Explanation of schedule I A, “family” is defined as follows:

> “For the purpose of this Article “family” means father, mother, husband, wife, brother, sister, son, daughter and includes grandfather, grandmother, grandchildren, adoptive father, or mother, adopted son

or daughter.”

The word “family” is the subject matter of consideration in **STATE OF GUJARAT v. SAVITRI DEVI** and **K.V.MUTHU v. ANGAMUTHU AMMAL**. The Apex Court had under different circumstances, keeping in perspective the scope of respective enactments, defined the meaning of word “family” and the same may not be aptly applicable to the case on hand.

Considering the nature of partition in the case on hand, had the partition been between the petitioner herein and the successors-in-interest of Indiramma, such partition can be treated as a partition in favour of family members. The meaning of the word family in the context of Article 40 of Schedule I A of the Stamp Act neither can be liberally construed nor the meaning expanded by this Court. The final decree dated 29.01.2014 in the first place notionally effects partition of ½ share each to G.Indramma and G.Lakshmi Narsamma and further thereto a share is carved out to petitioner. The comprehensive partition and allotment of separate shares cannot be in the fact situation treated as partition in favour of family. In other words, if a division had already taken place between Indiramma and Lakshmi Narasamma and in respect of separated half extent of one of them if the petitioner has obtained the decree of partition, it can be brought under Article 40 of Schedule I A.

For the above reasons, no exception can be taken to the impugned communication.

The writ petitions are, accordingly, dismissed. The petitioner is at liberty to apply to the Sub-Registrar if so advised for payment of balance of stamp duty and the Sub-Registrar on receipt of such request communicates the amount payable and passes appropriate orders in accordance with law if the difference of stamp duty is paid. There shall be no order as to costs.

Miscellaneous petitions, if any, pending in these writ petitions shall stand closed.

S.V.BHATT, J

1st June, 2015

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