HON'BLE SRI JUSTICE P.NAVEEN RAO

WRIT PETITION No.16523 of 2012

Date: 02.02.2015

Between:

Dhanraj Soni s/o. Shri Shrikishan Soni, Aged about 48years, Occu:Business, R/o. 11-3-949, Mallepally, Hyderabad.

.. Petitioner

AND

The Sub-Registrar, Qutubullahpur, R.R. District and Two others.

.. Respondents

The Court made the following:

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ORDER:

Smt. Geeta Bai Soni, smt. Bidami Bai Soni, Smt. Champa Bai Soni, Shri Shivraj Soni, Shri Goverdhanlal Soni and Shri Dhanraj Soni have purchased land to an extent of Ac.9.10 guntas in Sy.Nos.65, 70, 71 and 72 of Jeedimetla Village, Qutubullahpur Mandal, Ranga Reddy District, vide document No.5315 of 1988 dated 26.04.1987. Bidami Bai Soni executed will bequeathing her 1/6th share in favour of petitioner. On 05.09.2008, partition deed was drawn whereby Ac.9.09 guntas was allotted to the petitioner and his mother and Ac.0.01 gunta was allotted to Champa Bai Soni, Shivraj Soni and Goverdhanlal Soni. This deed of partition was presented for registration before the District Registrar (2nd respondent). Petitioner calculated the stamp duty payable by treating the market value on the smaller share excluding the larger share for determination of stamp duty payable for registration of the document. The 2nd respondent assigned P.No.101/2008 and the document was kept pending. The registering authority raised objection on the stamp duty payable. On a reference by the District Register, the Commissioner and Inspector General of Registration and Stamps vide his Memo dated 02.06.2010 clarified that two parties are having half share each and stamp duty be levied on the separate share as per Article 40, Schedule-1A of the Indian Stamps Act, 1899. All the six persons who purchased the property in issue were treated as co-owners having equal shares and petitioner and Bidami Bai Soni were treated as 50% share holders of the property and remaining three persons are having another 50% of the share. Accordingly, the stamp duty was directed to be paid by treating the shares as 50:50. Since the document was kept pending for long time and the issue was not resolved, there was urgency for the petitioner to register and release the document, under protest petitioner paid the stamp duty as demanded by the respondent authorities and document was accordingly registered and released.

2. The decision of the Commissioner dated 02.06.2010 was challenged before this Court in W.P.No.33577 of 2010. By judgment dated 30.01.2012, this Court sets aside the orders of the Commissioner and directed to decide the matter afresh after issuing notice to the petitioner.

3. After affording opportunity of hearing as directed by this Court, the Commissioner passed orders on 16.04.2012 rejecting the claim of the petitioner. The Commissioner held that six individuals have joined together and purchased the property and all of them have equal shares. In the document through which property was purchased, no declaration was made showing the status of the person as belonging to Hindu Undivided Family. On account of bequeathing the property by Bidami Bai Soni to the extent of her share, petitioner has become 2/6th shareholder. Smt. Geeta Bai (mother of petitioner) holds 1/6th share. The Commissioner, therefore, holds that petitioner and his mother together were holding half share of the property and other three persons are

shareholders of remaining half share of the property and, therefore, the stamp duty has to be calculated on 50% of the property by exempting remaining 50%. Aggrieved thereby, this writ petition is instituted.

4. Heard Sri Vedula Venkata Ramana, senior counsel for the petitioner and learned Assistant Government Pleader for Revenue (Telangana) for respondents.

5. Learned senior counsel contended that in accordance with the provisions contained in Section 2(15) of Stamps Act read with Article 40 of Schedule-1A of Stamp Act, small share alone has to be taken into consideration for the purpose of determination of stamp duty payable on a document of partition presented for registration. This smaller share being Ac.0.01 gunta, the stamp duty payable has to be calculated on the market value of the said property. Learned senior counsel further contended that contents of the document has to be seen and not about the legal entitlement of the individuals. Manner of assessment made by the respondent authorities amounts to interpreting the partition deed contrary to the intendment of the parties, which is *ex facie* illegal, without jurisdiction and competence.

6. Learned senior counsel fairly submitted that though in the writ petition, petitioner also contested the determination of market valuation of the property for arriving at appropriate stamp duty payable, petitioner is not pressing the same and is confining the relief in the writ petition to the issue of how to determine the stamp duty payable in view of the provision contained in Section 2(15) read with Article 40 of Schedule-1A of Stamp Act. Thus, the issue in the writ petition is confined to the scope of application of above provision to the document in issue.

7. Learned senior counsel placed reliance on the following decisions in support of his contentions:

i) **T.G.Thimmaiah Chetty and others v. The District Registrar, Kurnool**[1]

ii) **Secretary, Board of Revenue, Madras v. Pl.N.Rn.Alagappa Chettiar and another**[2]

iii) **Sowjanya and another v. Chinna Chikkanna**[3]

iv) **Cochin Naval Base Civilian Employees Co-operative Society Ltd., Cochin v. M.Rajan Kurup and others**[4]

v) **R.Narayanaswamy Reddy v. State of Karnataka and others**[5]

vi) **Poduri Satyavathi v. District Registrar, East Godavari District at Rajahmundry**[6]

8. Learned Assistant Government Pleader submitted that no material is brought on

record to show that six persons who purchased the property in issue were part of Hindu Undivided Family and the property was purchased in the said manner. Six individuals have jointed together and purchased the property and all six of them have equal shares i.e., $1/6^{th}$ share. He, therefore, contended that it is not a case of partition of the property belonging to Hindu undivided family by virtue of the document under issue and therefore the petitioner cannot rely on the nature of the apportionment of the property. He contended that the apportionment was deliberately made only to escape the higher stamp duty payable.

9. Learned Assistant Government Pleader further contended that it is competent for the registering authority to calculate the stamp duty payable by looking into the shareholding of each of six persons and demand the payment of higher stamp duty by treating the shares of the petitioner and his mother as 50% and other partitioners 50% and, therefore, stamp duty was computed as per the entitlement. The petitioner is trying to escape the stamp duty by showing Ac.0.01 gunta in the second limb of partition.

10. Learned Assistant Government Pleader further contended that once stamp duty is paid, there is no provision for refund of the stamp duty and no such relief can be sought in the writ petition. Petitioner having paid the stamp duty, it is not open for him to ask for refund of the stamp duty paid by him. There was no compulsion on the petitioner to pay stamp duty as demanded by the respondent authorities.

11. Learned Assistant Government Pleader placed reliance on the following decision in support of his contention.

i) **Pothula v. Pothula alias Gaddam Seshireddy and others**[7]

ii) **N.Pentayya v. Baratam Appanna**[8]

12. In reply, learned senior counsel for the petitioner contended that as stamp duty was illegally collected, the writ petition is maintainable praying for refund of stamp duty illegally collected. The writ court can direct refund of excess stamp duty collected. Learned senior counsel relied on the judgment of the Supreme Court in **ABL International Limited and another vs. Export Credit Guarantee Corporation of India Ltd. and others**[9] and the decision of this Court in **T.G.Thimmaiah Chetty** *(supra)*.

13. The issue for consideration in this writ petition is what is the rate of stamp duty payable on a document of partition effected by the co-owners of an immovable property ?

14. The provision in Art. 40 Schedule-IA read with Section 2(15) of the Stamp Act is very clear. The principle of law on the subject is well settled.

15. Full Bench of this Court in **T.G.Thimmaiah Chetty** (supra) held as under:

> "7. …….. Article 40 recites that in cases of instruments of partition, the duty chargeable is on the value of the separated share or shares of the property and

> the note thereto explains that the largest share remaining after the property is partitioned shall be the property from which the order shares are separated."

16. In **Secretary, Board of Revenue** (supra), the Special Bench of Madras High Court held as under:

> "The true antithesis is between the original common ownership and the subsequent cessation of that common ownership. Whether the substituted ownership is created by way of allotments to each individual amongst the original common owners or to groups of individuals is not really the point for consideration but whether the original common ownership has ceased to exist or not. "

17. The fact that document presented for registration is a document to partition the property is not denied. How shares are apportioned among the parties cannot be the concern of registering authority. Even assuming that parties who have entered into agreement are not forming part of Hindu Undivided Family, but are co-owners, it is for the co-owners to apportion the property as per their free will and consent. It is their prerogative to deal with the property in the manner they desire. As the recitals of the document would show, the owners of the property, decided to apportion in the ratio of Ac.9.09 guntas and Ac.0.01 gunta between two sets of persons. The correctness of the said decision cannot be the concern of the Registering Authority. The provision in Section 2(15) read with Article 40 of Schedule-IA of Stamp Act is very clear and unambiguous. It mandates collection of stamp duty on the value of the separated share. What is the volume of separated share can not be the issue for determination of stamp duty.

18. The largest share remaining after the property is partitioned shall be deemed to be that from which the other share is separated. In this case the property has been partitioned into only two shares and the bigger share shall be deemed to be one from which the other share has been separated. Required stamp duty has to be collected on the smaller share only. Strangely, the respondents treated the shareholding of petitioner and his mother as 50% and the shareholding of other three persons as 50% and directed payment of stamp duty for 50% excluding the first 50%. This amounts to rewriting the document presented before registering authority for registration and same is without competence and jurisdiction. The action of collecting higher stamp duty to register document No.4872 of 2012 is illegal.

19. As noted above erroneously higher stamp duty was collected from petitioner to register document No.4872 of 2012 than what is required to be paid by him. No provision seeking for refund of excess stamp duty is envisaged in the Stamp Act. As held by Supreme Court in **ABL International Limited** in a given case, relief of refund of excess stamp duty collected can be granted by writ Court.

20. Thus, while holding that only on the smaller share of the land in issue i.e., Ac.0.01 gunta, stamp duty is liable to be paid, the respondents are directed to refund the excess

stamp duty collected from the petitioner after adjusting the stamp duty payable on Ac.0.01 gunta in Sy.Nos.65, 70, 71 and 72 of Jeedimetla Village, Qutubullahpur Mandal, Ranga Reddy District, within a period of eight weeks from the date of receipt of copy of this order.

21. The writ petition is allowed accordingly. No costs. Miscellaneous petitions if any pending in the writ petition shall stand closed.

JUSTICE P.NAVEEN RAO

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[1] AIR 1986 AP 14

[2] AIR 1987 Madras 308

[3] 2000 (6) ALT 769

[4] AIR 2005 Kerala 46

[5] AIR 2004 Karnataka 119

[6] 2007 (5) ALD 556

[7] AIR 1976 AP 45

[8] 1997 (2) APLJ 75 (SN)

[9] (2004) 3 SCC 553