IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.04.2016

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THE HONOURABLE MR. JUSTICE R.SUBBIAH

Writ Petition No.19540 of 2009

and

MP.No.1 of 2009

1.R.B.Vatsal

2.R.Bhama
rep. by her power agent
Ramesh Raghavan, fourth petitioner herein

3.Radha

4.Ramesh Raghavan ... Petitioners

vs.

1.The Commissioner and Secretary
Revenue Department,
Govt. of Tamil Nadu,
Fort St. George,
Chennai 600 009.

2.The Inspector General of Registration
and Chief Controlling Revenue Authority,
No.120, Santhome High Road,
Santhome, Chennai 600 028.

3.The District Registrar Acting as
Sub Registrar,
Purasawalkam,
Perambur Barracks Road,
Chennai. ... Respondents

Writ petition has been filed under Article 226 of the Constitution of India, praying for a Writ of Certiorarified Mandamus to call for the records in No.17702/P1/2007 dated 09.03.2009 and quash the said proceedings as it is vitiated by an error apparent on the face of the record and direct the second and third respondents to return the document i.e., the deed of partition dated 11.10.2002 in Ref.Doc.No.3868 of 2003 (Sub Registrar, Purasawalkam) registering it as if it is a partition deed among family members.

For Petitioners : Mr.S.A.Rajan

For Respondents : Mr.V.Jayaprakash Narayanan, SGP

ORDER

The petitioner has come up with the present writ petition for a mandamus, challenging the order dated 09.03.2009 passed by the second respondent and consequently directing the respondents 2 and 3 to return the deed of partition dated 11.10.2002 bearing Document No.3868 of 2003 on the file of the Sub Registrar, Purasawalkam, after registration.

2. It is the case of the petitioners that they are the brothers and sisters in relationship. Originally, the property in R.S.No.35/2, Block No.2, measuring to an extent of 14 grounds and 721 sq.ft. of Purasawalkam Taluk, Chennai, presently bearing Door Nos.10 and 11, Flowers Road, belonged to one Raghavan, who is none else than the father of the petitioners. After the demise of their father, the petitioners and their mother Kanagavalli inherited the said property. On 24.05.1976, when the petitioners 3 and 4 were minors, a partition deed was executed and the same was duly registered. After the death of their mother on 27.04.1992, a deed of cancellation dated 11.10.2002 was executed, by cancelling the earlier partition deed dated 24.05.1976, for the purpose of readjusting the shares among the petitioners and the same was registered as Document No.666 of 2003. Subsequently, they effected a fresh partition deed dated 11.10.2002 among themselves and the same was presented for registration before the third respondent along with the stamp duty of Rs.2,40,000/- under the provisions of the Indian Stamp Act, 1899 (hereinafter shortly referred to as 'Act'). Though the third respondent registered the same as Document No.3868 of 2003, he refused to return the document and he referred the same to the second respondent for determination of the stamp duty under section 33A of the Act, which compelled the petitioners to file WP.No.28872 of 2004. By order dated 07.10.2004, the said writ petition was allowed by setting aside the impugned order dated 23.08.2004 and directing the respondent authorities to pass orders by following the statutory provisions, if they so advised.

3. It is the further case of the petitioners that pursuant to the order of this Court, the third respondent passed an order 28.04.2006 by confirming the order of payment of deficit stamp duty by the petitioners. Challenging the same, the petitioners preferred an appeal before the second respondent. Thereafter, a notice was issued, calling upon the petitioners to make their oral and written submissions. Accordingly, the petitioners appeared and made their written submissions. Based on the same, the second respondent passed an order dated 09.03.2009, rejecting the appeal filed by the petitioners, on the ground that as the petitioners 2 and 3 are married women, they would not fall within the ambit of family members to have partition and the deed in question executed in respect of their shares would be construed as settlement under Article 58(A)(ii)(A) of the Schedule-I appended to the Act. Aggrieved over the same, the petitioners have filed the present writ petition for the above stated relief.

4. Though notice was ordered on the respondents as early as on 29.09.2009, till date, no counter affidavit has been filed on behalf of the respondents.

5. Today, when the matter came up for consideration, learned counsel for the petitioners submitted that the entire property was jointly enjoyed by all the petitioners, who are the members of the family and therefore, the document executed for division of the same among the family members shall be construed as partition deed and the stamp duty payable for the same would only fall under Article 45 of the Schedule -I appended to the Act. In support of his contention, the learned counsel for the petitioners relied on the clarification for Family and Family members, issued by the Government vide Letter No.4860/J1/98-A dated 1.3.1999 of the Secretary to Government, Commercial Taxes (J1) Department, Secretariat, Chennai-9 and G.O.Ms.No.85 Commercial Taxes and Registration Department, dated 10.08.2006, with respect to Explanation to Article 58 of the Schedule-I appended to the Act.

6. For better appreciation, the said clarification is extracted as follows:

> "Clarification for Family and Family members as clarified by the Government to benefit the concession for the transaction between brothers and sisters also:
>
> Because of the explanation to the word 'family', transfer between brothers and sisters are largely affected by paying higher stamp duty in executing the deed of partition, Release and settlement. Therefore, the Government clarified the word 'family' as follows:

"Family includes brothers and sisters. Therefore, in case of partition, release, settlement between brothers and sisters also entitled to concession to pay the stamp duty considering them as family members. An instrument of partition, settlement and release executed in favour of brothers and sisters is an instrument in favour of a member of a family as defined in Article 58" [See Lr.No.4860/J1/98-A, dated 1-3-1999, Secretary to Government, Commercial Taxes (J1) Dept., Secretariat, Chennai - 9 and Lr.Ms.No.85, Commercial Taxes and Registration Dept., dated 10-08-2006]."

In my considered view, in the light of the said clarification, the petitioners herein would fall within the ambit of 'family'. Therefore, the impugned order dated 09.03.2009 passed by the second respondent by treating the petitioners 2 and 3 as not family members and as outsiders and accordingly directing the petitioners to pay the deficit stamp duty for registration of the partition deed in question, is not sustainable in law and the same is liable to be set aside.

7. Hence, the impugned order passed by the second respondent is set aside and the matter is remitted back to the second respondent for passing fresh orders, with regard to return of the partition deed dated 11.10.2002 bearing Document No.3868 of 2003 on the file of the third respondent, on merits and in accordance with law and also in the light of the clarification as extracted above. The said exercise shall be completed within a period of four weeks from the date of receipt of a copy of this order.

8. The writ petition is ordered accordingly. No costs. Consequently, connected Miscellaneous Petition is closed.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

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To
1.The Commissioner and Secretary
Revenue Department,
Govt. of Tamil Nadu,
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Chennai 600 009.

2.The Inspector General of Registration
and Chief Controlling Revenue Authority,
No.120, Santhome High Road,
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3.The District Registrar Acting as
Sub Registrar, Purasawalkam,
Perambur Barracks Road,
Chennai.

+3 ccs to M/s.S.A.Rajan Advocate sr.24532
+1 cc to Government Pleader sr.24561

W.P.No.19540 of 2009

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