BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED 01.07.2016
CORAM
THE HONOURABLE MR.JUSTICE M.VENUGOPAL
W.P(MD)No.11693 of 2016
and
W.M.P(MD)No.8975 of 2016

G.Renganayaki ..Petitioner

Vs

1.The Inspector General of Registration,
Department of Registration,
No.100, Santhome High Road,
Chennai-28.

2.The District Registrar,
Department of Registration,
Madurai North,
Madurai.

3.The Sub-Registrar,
Chokkikulam,
Department of Registration,
Madurai. ..Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus calling for the records of the impugned proceedings of the second respondent vide I.No.4/AA1/2015, dated 31.12.2015 and to quash the same and further to direct the third respondent to refund the excess stamp duty and registration fees of Rs.1,96,500/- collected from the Petitioner for the registration of document No.323 of 2016 at Chokkikulam Sub-Registrar's Office, Madurai with interest at 18% per annum from the date of registration I.e., 12.1.2016.

For Petitioner :M/s.N.Karthik Kanna

For Respondents :Mr.S.Sadesh Kumar
Addl.Govt.Pleader

ORDER

Heard both sides.

2.By consent of both sides, the main Writ Petition itself is taken up for final disposal.

3.No counter is filed on behalf of the Respondents 1 to 3.

4.According to the Petitioner, some properties were purchased out of resources from her husband's income in favour of her deceased son Dr.G.Kannan, even when he was not employed and earning. As such, even before his death, she herself, the parents of the said Dr.G.Kannan has rights over the property, since the same was purchased only out of their resources. Further, as per the settlement terms, a Release Deed was executed by Umadevi(daughter-in-law) in favour of the Petitioner (mother-in-law) and as such, all the registration expenses are borne out by the Petitioner.

5.The clear-cut case of the Petitioner is that on 28.09.2015, the said Release Deed was presented before the Third Respondent/The Sub-Registrar, Chokkikulam,Department of Registration, Madurai and because of the fact that the said Release Deed was within the family members, stamp papers to the worth of Rs.25,000/- was endorsed and registration fees of Rs.4,000/- was paid. Further to the utter shock and dismay of the Petitioner, the Third Respondent with-held their Release Deed (Document No.98 of 2015) for the deficit stamp duty fees. In fact, on 8.1.2016, they received communication from the Second Respondent, dated 31.1.22015, wherein, it was held that this conveyance in nature of release between mother-in-law and daughter-in-law over the estates of the deceased person does not fall within ''Release among Co-Parcenors' and classified the same as ''Release between non-family members'' and hence, attracts the stamp duty of 8% of value of the property and 1% of registration fees, as per the Schedule I in Section 58(a) of the Indian Stamp Act, 1899.

6.It transpires that the value of the properties was assessed as Rs.25 Lakhs. Therefore, an additional stamp duty to an extent of Rs.1,75,500/- was demanded from the Petitioner for registering the deed. Moreover, the market value of the properties was assessed at Rs.50 Lakhs and even though, it was a little bit excess, they had not disputed the same.

7.At this stage, the Learned Counsel for the Petitioner brings it to the notice of this Court that on 11.01.2016, the Petitioner furnished a reply objecting the demand in person and stating that it is a clear case of release among co-parcenors within the family. But the Second and Third Respondents refused to the Petitioner's request. Added further, since the Petitioner was in emergent situation and was in need of the document to be registered at the earliest point of time, she paid the deficit stamp duty as demanded by them through two Demand Drafts, dated 11.01.2016 and 12.01.2016 for a sum of Rs.1,75,500/- and Rs.21,000/- respectively and made a request to the Respondents 2 and 3 to register the Release Deed without prejudice to her right to appeal before the appellate forums for refund, if it later found as excess.

8.The grievance of the Petitioner is that the Respondents 2 and 3 received her representation and accepted the stamp duty paid and registered the document on 23.03.2016(vide Document No.323 of 2016). Further, on 23.03.2016, She had sent an appeal to the First Respondent assailing the correctness of the proceedings of the Second Respondent, dated 31.12.2015 and demanded refund of excess amount for registration of Document No.323/2016. It appears that till date, no action has been taken in respect of the appeal projected by the Petitioner.

9.As far as the present case is concerned, the prime legal plea taken on behalf of the Petitioner is that the disputed document is the product of settlement arrived at in the Lok-Adalat Proceedings and earlier case before the Family Court and therefore, it is a settlement between the family members, which attracts the concessional stamp duty fees according to the Indian Stamp Act.

10.It is not in dispute that the revision/appeal filed by the Petitioner, dated 23.3.2016 addressed to the First Respondent/The Inspector General of Registration, Department of Registration, No.100, Santhome High Road, Chennai-28 is pending till date. A cursory perusal of the contents of the said appeal latently and blatantly indicates that an excess stamp duty and fees of Rs.1,96,500/- purported to have been collected from the Petitioner for registering the Document No.323/16 at Chokkikulam Sub-Registrar's Office, Madurai at the earliest was sought for. When the Petitioner is resorted to the remedy of going before the First Respondent and has projected an appeal in regard to her claim of excess stamp duty and fees collected for registering the document No.323/16, then, this Court is of the considered view that the said remedy granted under the Law is to be availed and exhausted by her.

11.In this connection, this Court points out that the appeal preferred by the Petitioner, dated 23.03.2016 is an alternative, effective, efficacious and viable remedy and viewed in that perspective, when that appeal filed by the Petitioner is very much pending and alive on the file of the First Respondent, then this Court comes to a resultant conclusion that it is not open to the Petitioner in Law to seek a parallel remedy of filing the present Writ Petition and seeking necessary reliefs thereto. In short, when the appeal filed by the Petitioner, dated 23.03.2016 is very much pending on the file of the First Respondent, then filing of the present Writ Petition by the Petitioner is impermissible in Law.

12.Be that as it may, considering the fact that the Petitioner's appeal, dated 23.3.2016 is pending on the file of the First Respondent till date, without any progress or disposal, at this stage, this Court without dwelling deep into the merits and contents of the appeal projected by the Petitioner, to secure the ends of justice, simpliciter, directs the First Respondent to look into the appeal/petition filed by the Petitioner, dated 23.3.2016 within a period of two weeks from the date of receipt of a copy of this order and thereafter, the First Respondent is to pass a speaking order on merits (of course after providing adequate opportunity to the Petitioner and others concerned, if any, by adhering to the principles of natural justice in true letter and spirit) within a period of eight weeks thereafter. It is open to the Petitioner to produce copies of all necessary/relevant documents before the First Respondent/The Inspector General of Registration, Department of Registration, No.100, Santhome High Road, Chennai-28 and the First Respondent shall take into consideration of the same at the time of disposal of the appeal filed by the Petitioner, dated 23.3.2016. If the First Respondent passed necessary orders on the appeal filed by the Petitioner, dated 23.3.2016 and if the Petitioner feels aggrieved about the same, then it is open to him to challenge the orders passed in the appeal, in the manner known to Law and in accordance with Law.

13.With the aforesaid observations and directions, the Writ Petition stands disposed of. Consequently, connected Miscellaneous Petition is closed. No costs.

Sd/
Assistant Registrar(Crl.Side)

/TRUE COPY/

Sub Assistant Registrar

To

1.The Inspector General of Registration,
Department of Registration,
No.100, Santhome High Road,
Chennai-28.

2.The District Registrar,
Department of Registration,
Madurai North,
Madurai.

3.The Sub-Registrar,
Chokkikulam,
Department of Registration,
Madurai.

+1cc to M/S.N.Karthick Kanna, Advocate in SR.No.34610
+1cc to Special Government Pleader in SR.No.34515

W.P(MD)No.11693 of 2016
and
W.M.P(MD)No.8975 of 2016
01.07.2016

vsn
PA/SK-SKN/13.07.2016/4P/6C