BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 20.12.2016

CORAM:
THE HONOURABLE MR.JUSTICE M.S.RAMESH
W.P.(MD)No.15000 of 2011

Y.Yasmine .. Petitioner

Vs.

1.The Special Deputy Collector (Stamps),
Office of the Tahsildar (Upstair),
Kokkirakulam,
Tirunelveli - 9.

2.The Joint Sub-Registrar-II,
Tirunelveli. .. Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India, to issue a WRIT OF MANDAMUS directing the 1st Respondent to release the sale deed bearing Document No.3137 of 2008 registered on 30-06-2008 on the file of the 2nd Respondent in respect of the lands covering extent of 99 cents of land in Survey No.553/3B at Pudur Village Tirunelveli District.

For Petitioner : Mr.M.P.Senthil
For R1 to R2 : Mr.M.Alagathevan
Special Government Pleader

O R D E R

The case of the petitioner is that when she had presented a document for registration before the second respondent, on 30.06.2008, the same was taken on file in document No.3137 of 2008. However, the respondent had retained the said document, on the ground that it is insufficiently stamped and that the matter has been referred to the first respondent for initiating proceedings under Section 47(A) of the Indian Stamp Act. Aggrieved against the action of the second respondent, the petitioner is before this Court.

2.It is a settled position of law that under the Registration Act, once a document is presented for registration, the registering authority has no power to retain the document for the purpose of recovering the deficit stamp duty. The procedure for recovering the deficit stamp duty is contemplated under the Indian Stamp Act as well as under the Tamil Nadu Stamp and Valuation of Instruments Rules. The copy of the document presented is also available with the registering authority for the purpose of further course of action to be taken for the recovery of the deficit stamp duty. Hence, there would be no justification on the part of the respondents to retain the registered document and simultaneously take proceedings for recovery of stamp duty.

3.This Court in a catena of Judgments have held that the registering authorities have no power to retain the documents, if it is otherwise found in order.

4.In the Judgment in W.A.No.1346 of 2016 (INSPECTOR GENERAL OF REGISTRATION v. ASWIN EXIM INDIA PVT. LTD.), dated 17.10.2016, the Hon'ble Division Bench of this Court, has held as follows:-

> "10.Rule 4 of Tamil Nadu Stamp (Prevention of Undervaluation of Instruments) Rules, 1968, speaks about Procedure on receipt of reference under Section 47-A and Rule 7 speaks about final order determining the market value.
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> 11.It is pertinent to point out at this juncture that the copy of the document is also available with the fourth appellant, which contains description of the property and also other details such as subject matter of conveyance, the sale consideration, the stamp duty paid as well as the registration charges and in the light of the fact that all the particulars are available, it is not necessary on the part of the third appellant to retain the document for the purpose of dealing with the issue under Section 47(A)(1) and A(2).
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> 13.It is also well settled position of Registration Act, 1908, Section 61(2) also says that once the document is registered, the document should be returned to the person, who presented the same for registration, or to such other person (if any) nominated in writing in that behalf on the receipt mentioned in Section 52."

5.The above proposition clearly applies to the facts of the present case. Under these circumstances, the impugned order passed by the first respondent, dated 09.09.2011, is liable to be set aside and is accordingly quashed. The first respondent is directed to release the sale deed bearing No.3137 of 2008 on the file of the second respondent within a period of six weeks from the date of receipt of a copy of this orders.

6.In the result, the writ petition is allowed. No costs.

Sd/-
Assistant Registrar(CS-I)

/True Copy/

Sub Assistant Registrar

To
1.The Special Deputy Collector (Stamps),
Office of the Tahsildar (Upstair),
Kokkirakulam,
Tirunelveli - 9.

2.The Joint Sub-Registrar-II,
Tirunelveli.

Rj2
ms/rr/me/20.01.2017/3p.3c

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