IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.10.2017

CORAM :

THE HONOURABLE MR. JUSTICE K.K.SASIDHARAN

and

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

WA.No.85 of 2015
and MP.No.1 of 2015

1.Inspector General of Registration and
Chief Revenue Controlling Authority,
100, Santhome High Road,
Chennai – 28.

2.The Sub Registrar,
District Registrar Cadre,
SRO, Santhome High Road,
Mylapore, Chennai – 28. ... Appellants

Vs.

1.R.Santhosh
2.R.Kaushik
represented by their
power of Attorney Agent
K.Ganesan ... Respondents

PRAYER : Appeal filed under Clause 15 of the Letters Patent to set aside the order of the learned single judge made in WP.No.29811 of 2013 dated 25.08.2014.

For appellants : Mr.N.Sakthivel, GA.
For respondents : Mr.A.V.Arun.

JUDGMENT

(Judgment of this Court was made by P.VELMURUGAN, J.)

The writ appeal is directed against the order of the learned single judge dated 25.08.2014 made in WP.No.29811 of 2013 filed by the respondents/petitioners.

2. The respondents/petitioners filed the writ petition challenging the order passed by the Inspector General of Registration/first appellant dated 27.06.2013 made in D.Dis.8022/P1/2013 confirming the order passed by the Sub Registrar, Mylapore/second respondent dated 11.01.2013.

3. The brief facts for filing the writ petition is as follows :-

The respondents/petitioners are sons of one R.Jayanthi, she died intestate on 29.05.1992 leaving behind her husband and the the respondents/petitioners who are her sons. The house and premises bearing plot No.17, Door No.98, Dr.Subbarayan Salai, Mylapore, Chennai-4 originally belonged jointly to the mother of the respondents/petitioners and their maternal grandmother by name Rukumani. After the death of R.Jayanthi, her husband and the respondents/petitioners herein are entitled to 1/3 of undivided share in the half share of R.Jayanthi. The respondents/petitioners' father executed a deed of settlement dated 23.07.2008, settling his 1/3 share upon the respondents/petitioners herein. Therefore, the respondents/petitioners herein became entitled to the half share of their mother in the aforesaid property. The other half share belonged to the maternal grandmother of the petitioner herein. In order to enable the maternal grandmother to have the property in entirety, the respondents/petitioners executed a deed of settlement dated 14.06.2012 in favour of the maternal grandmother. The settlement deed dated 14.06.2012 was presented for registration before the second appellant. The second appellant kept pending the document No.65 of 2012, on the ground that the respondents/petitioners cannot claim the benefit of a concessional rate of stamp duty as per Article 58(a)(i) under Schedule-I of the Indian Stamp Act (Tamil Nadu Amendment) Act 31 of 2004.

4. The respondents/petitioners approached this Court by way of writ petition in WP.No.23323 of 2012. The said writ petition was disposed of on 05.11.2012, directing the petitioners to file objections before the second appellant. In pursuance to the said order, the respondents/petitioners filed their objection before the second

appellant, the second appellant passed an order overruling the objections. Aggrieved against the said order, the respondents/petitioners filed revision before the first appellant under Section 56(1) of the Act. The said revision was dismissed by the first appellant by an order dated 27.06.2013. Challenging the said order, the respondent/petitioners filed WP.No.29811 of 2013.

5. The learned single judge after hearing the arguments of both sides, allowed the writ petition filed by the respondents/petitioners, while concluding the order the learned single judge observed as follows:-

> "11. If a grandchild is included within the definition of the expression "family" I do not know how a grandmother or grandfather will stand excluded. There can be no quarrel about the proposition that if person executes settlement in favour of his grandchild, the case will be covered by Article 58(a). But to hold that the converse cannot be accepted, would militate against the very purpose of the provision. A settlement need not flow in a hierarchal fashion of the provision. A settlement need

not flow in a hierarchal fashion from the elders to the younger ones. It can also flow in the reverse direction. If a gift in favour of a grandchild is covered by Article 58(a), the gift in favour of the grandparent should be equally covered as a corollary. Therefore, the writ petition is allowed. The impugned order is set aside. The respondents are directed to register the sale deed by treating as one filing under Article 58(a). No costs. Consequently, MP.Nos.1 of 2013 and 1 of 2014 are closed."

6. Aggrieved against the order passed by the learned single judge in WP.No.29811 of 2013, the appellants/Registration department preferred the present writ appeal.

7. Heard the rival submissions made on both sides and perused the available records.

8. The learned counsel for the appellants/respondents submits that the learned single judge failed to consider the earlier decisions of this Court while passing the order. The settlement deed executed by the grandsons/grandchildren in favour of the grandmother is to be

treated as settlement deed in favour of the strangers/non family members and stamp duty has to be paid as per Article 58(a)(ii) of Schedule-I of the Indian Stamp Act. It is further contended that the settlement deed executing by the grandson in favour of the grandmother is not included in the Act. The settlement deed executed by the grandson to and in favour of the grandmother not comes under the meaning of family under the explanation to the Article 58(a)(i) of the Act and the order of the learned single judge warrants interference.

9. The learned counsel further submits that the grand mother will not comes under meaning of family under explanation to Section 58(a)(i) of the Act and placed his reliance on the following decisions of this Court.

1. **WP.No.23094 of 2009 – J.Chelladurai and another V. District Registrar, Periyakulam & another dated 09.06.2010.**
2. **WP.No.20561 of 2007 – K.S.Ravichandran v. Inspector General of Registration & another dated 04.01.2013.**

3. **WP.No.12233 of 2008 - K.Thilak Kumar and another v. Chief Controlling Revenue Authority dated 06.03.2013.**
4. **WP.(MD).No.58 of 2012 – T.Muthu Balu v. Inspector General of Registration dated 24.02.2014.**
5. **WP.No.2537 of 2013 – Indra Tuteja v. Inspector General of Registration & others dated 22.07.2014.**

10. The learned counsel for the respondents would submits that at the time of registration, as per Article 58(a)(i) under Schedule-I of the Indian Stamp Act, the respondents/petitioners seeks to avail concessional stamp duty extended for family members. The settlement deed was executed by the settlors/grandsons to and in favour of their grand mother (settlee).

11. On perusal of the documents available in the typed set of papers viz., the impugned order, citations, earlier order in WP.No.23323 of 2012 dated 05.11.2012, present writ petition and the

order passed by the learned single judge on 25.08.2014. It is seen from the settlement deed annexed in pages 5 to 10 of the typed set of papers, the settlement deed was executed by the respondents (grandsons) to and in favour of their maternal grandmother (K.Rukumani), therefore, the relationship between the parties to the settlement deed is not disputed.

12. For better understanding, it is pertinent to extract the Article 58(a)(i) under Schedule-I of the Indian Stamp Act, which reads as follows :-

> "58 – Settlement :- (a)Instruments of (including deed of dower)
>
> Explanation:-
>
> For the purpose of this Article, the word "family" mean father, mother, husband, wife, son, daughter, grandchild. In the case of any one whose personal law permits adoption, "father", shall include an adoptive father "mother" an adoptive mother. "son" and adopted son and "daughter" an adopted daughter."

13. The short point involved in this appeal is as to whether the maternal grandmother comes under the family as given in the explanation, the learned single judge has elaborately discussed in this aspect. K.Rukumani/Settlee is the maternal grandmother to R.Santhosh and R.Kaushik/Settlors who are parties to the settlement deed. Therefore, the authorities cited by the learned counsel for the appellants are not applicable to the present case on hands. Since, the learned single judge distinguished the authorities cited by the learned counsel for the appellants. We need not once again discuss the authorities elaborately.

14. Considering the discussions held above, we are of the view that the learned single judge has correctly dealt with the issues involved in the case on hand and we feel that there is no reason to interfere with the order passed by the learned single judge.

15. In the result, the writ appeal fails. No costs. Consequently connected miscellaneous petition is closed.

(K.K.S., J.) (P.V., J.)
23.10.2017

Index : Yes/No
Internet : Yes/No

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K.K.SASIDHARAN, J.
and
P.VELMURUGAN, J.
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To
The Government Pleader, High Court Madras.

WA.No.85 of 2015

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