IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.10.2017

CORAM:

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

W.P.No.3428 of 2010

1. M/s.Sheela Clinic
Represented by its partner,
Dr.Mrs.Christy Ganapathy,
East Power House Road,
Tatabad,Coimbatore 641 012.

2. Dr.Mrs.Christy Ganapathy

3. Dr.B.P.Ganapathy

4. Dr.Sheela Rajapandian .. Petitioners

Vs.

1. The Chief Controlling
Revenue Authority and
Inspector General of Registration,
Chennai 600 028.

2. The Sub Registrar,
(District Registrar Cadre),
Gandhipuram,
Coimbatore 641 012. .. Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus, calling for the records of the 1st respondent in Pa.Mu.No.13160/P1/2008 dated 23.11.2009 and quash the same and direct the 2nd respondent to return the document registered as pending document No.20 of 2003 after due registration.

For Petitioner : Mr.M.S.Krishnan, Senior Counsel
for M/s.Sarvabhauman Associates

For Respondents : Mr.Akhil Akbar Ali,
Government Advocate

ORDER

Petitioners are before this Court challenging the proceedings of the 1st respondent vide Pa.Mu.No.13160/P1/2008, dated 23.11.2009 and for a consequential direction to the 2nd respondent to return the document registered as pending Document No.20 of 2003 after due registration.

2. According to the petitioners, the 4th petitioner is the daughter of the 2nd petitioner, viz. Dr.Mrs.Christy Ganapathy. According to the 4th petitioner/Dr.Sheela Rajapandian, on 05.05.1977, her father Late. R.J.S.Ganapathy along with her mother Dr.Christy Ganapathy, i.e. the 2nd petitioner, constituted a partnership firm and were running a Hospital at Gandhipuram as a family partnership business. After the demise of the 4th petitioner's father, the partnership was reconstituted with the 4th petitioner and the 3rd petitioner viz. Dr.B.P.Ganapathy and they were inducted to the partnership firm in the name and style of "Sheela Clinic", by a Deed of Partnership, dated 11.07.1983.

3. In June 2003, the 4th petitioner decided to retire from the family firm and a deed of retirement was drawn up on 30.06.2003 between the 4th petitioner and the other petitioners and after scrutinizing the accounts for the period ending 30.06.2003, a deed of retirement was prepared, whereby, it has been agreed that amounts standing to the credit of the 4th petitioner to an extent of 25% share in the firm would be fully settled in cash and also in the form of three items of immovable properties. The time frame within which the cash component would be paid to the 4th petitioner was put forth in the Deed of Retirement along with the clauses for interest in case of any delay in such payments being effected. Further, a separate Release Deed was executed on 07.08.2003 in favour of the 4th petitioner, whereas, the 2nd and 3rd petitioners released their rights, title and interests in the properties mentioned in the Deed of Retirement and fully vested the properties in the name of the 4th petitioner and the same was presented before the 2nd respondent for registration.

4. It is the further case of the petitioners that the Release Deed was presented before the 2nd respondent and the same was kept pending vide Doc. No.20 of 2003. There was an inordinate delay in returning the document from the Sub-Registrar Office. Despite several visits to the Sub Registrar's office and sending a letter dated 04.11.2003 through Registered Post, the 2nd respondent issued a show cause notice dated 28.07.2004 vide Mo.1764/2003 to the petitioners, calling upon them to pay a sum of Rs.30,10,000/- as deficit amount in stamp duty and explain as to why proceedings should not be initiated

against them for violating Sections 27 and 64 of the Indian Stamp Act, 1899 (in short 'Act') and further stating that documents would attract only Article 55 (D)(ii) of Schedule I to the Act. The petitioners sent a detailed reply dated 12.08.2004 to the 2nd respondent, stating that no additional stamp duty can be paid by them for undervaluation, as the 2nd respondent had not chosen to proceed under Section 47-A of the Act, under which it is reiterated that the property has been correctly valued and stamp duty has been paid under Article 55 D(i) of Schedule I of the Act and the respondents cannot invoke other provisions, i.e. Article 55 (D)(ii) of Schedule I of the Act.

5. Pursuant thereto, the 2nd respondent passed an order on 30.08.2004 vide No.1764/2003 directing the petitioners to pay a sum of Rs.30,10,000/- within three weeks, failing which, proceedings under Section 27 read with Section 64 of the Act would be initiated against them. Challenging the aforesaid order, petitioners approached the Appellate Authority and filed a Writ petition in W.P.No.28641 of 2004 seeking to quash the order dated 30.08.2004 passed by the 2nd respondent and consequently return the document pending in Doc.No.20 of 2003. By an order dated 12.09.2007, this Court allowed the said Writ Petition, by setting aside the impugned order and directed the 2nd respondent therein to consider the case of the petitioners in the light of the communication issued by the Secretary to Government, Commercial Taxes (J1) Department, dated 01.03.1999 and the Letter in Ms.No.85, Commercial Taxes and Registration Department, dated 10.02.2006 and pass appropriate orders within a period of three months from the date of receipt of a copy of the order. Thereafter, the 2nd respondent, after hearing the petitioners, passed an order on 26.12.2007 stating that the 4th petitioner was not a partner at the time of execution of the Release Deed and hence, the petitioners are liable to pay stamp duty charges.

6. Aggrieved by the same, petitioners preferred a Revision Petition before the 1st respondent herein, enumerating all the grounds, but unfortunately, the 1st respondent rejected the Revision Petition vide order dated 23.11.2009 holding that the Release Deed was only a conveyance under Article 23 of Schedule I to the Act and therefore, would attract the relevant stamp duty. Challenging the same, petitioners are before this Court with the present Writ Petition.

7. Respondents have filed a detailed counter stating that the Release Deed dated 07.08.2003 was executed by the 1st petitioner/firm, represented by all the partners including retired as well as continuing partners viz. petitioners 2, 3, & 4, who are mother, son and daughter, respectively. The property has been valued and assessed and the petitioners have decided to

pay the stamp duty as per Article 55 (D)(i) of Schedule I to the Act, i.e. 3% of the value of the property. The document is kept pending in terms of Section 33 of the Act. The 2nd respondent being the notified 'Collector' under Section 2(9) read with Section 40 of the Act, issued orders to the petitioners to pay stamp duty as applicable to the conveyance on the value of the document and arrived at a sum of Rs.2,76,15,861/- and the petitioners were asked to pay a sum of Rs.30,10,000/- vide proceedings dated 26.12.2007. After the first round of litigation before this Court, petitioners aggrieved by the said order, filed a Revision Petition under Section 56(1) of the Act and an opportunity of personal hearing was given to the petitioners. Since the document was construed as 'conveyance' chargeable under Article 23 of Schedule I to the Act, the Revision Petition was dismissed.

8. It is the case of the Respondents that Article 55 D(i) of Schedule I to the Act will apply only in cases where the release and relinquishment of interest in the partnership is made in favour of existing partners, since the property belongs to the firm. Since the stamp duty to be levied upon the firm under Article 23 of Schedule I to the Act is also applicable to cases under Section 47-A, sub Section (1), was not invoked. It is further stated in the counter that Article 55 D(i) will be applicable only to those cases where the retiring partners release their rights and interest over the assets of the firm in consideration of money in favour of the existing partners and not vice versa. In support of their contentions, respondents have relied upon an order passed by this Court in W.P.No.18391 of 2000 on 08.01.2003 in the case of T.Dulip Singh vs. Chief Controlling Revenue Authority.

9. Learned counsel for the petitioner submitted that the decision relied on by the respondents in T.Dulip's case (cited supra) will not be applicable to the case on hand, as in the Release Deed, there is a categorical reference not only to the amount due to the 4th petitioner, but also to the Schedule of three properties that are going to be settled in favour of the petitioners. It is his further contention that the market value has not been questioned at any point of time and having accepted the same, petitioners have chosen to proceed on the basis of Article 55 (D)(i) of Schedule I of the Act. According to the learned counsel, the provisions of Article 55 (D)(ii) of Schedule I of the Act would be applicable, if the Release Deed is construed not among the family members.

10. Per contra, learned Government Advocate appearing for the respondents contended that the impugned order has been passed on the ground that the 4th petitioner was no longer a partner as on date of execution of the Release Deed. According

to him, since the partnership firm has no documents with regard to the release of the property belonging to the firm in favour of the retired partner, it has been construed only as 'conveyance' and not 'release' and Article 55 D(ii) of Schedule I of the Act was rightly applied.

11. The issue before this Court relates to the date of Release Deed. Admittedly, the husband of the 2nd petitioner is no more. The 1st petitioner/firm was re-constituted and the 4th petitioner and her brother, i.e. the 3rd petitioner were inducted into partnership by a Deed of partnership, dated 11.07.1983 in the name and style of 'Sheela Clinic'. The 4th petitioner decided to retire from the partnership firm and executed a Deed of Retirement on 30.06.2003, whereby, an extent of 25% share of the 1st petitioner firm was agreed to be settled in cash apart from three items of immovable properties, by the existing partners viz. petitioners 1, 2 and 3 in favour of the 4th petitioner.

12. By any stretch of imagination, the release made out to the 4th petitioner herein can be construed as a deed of conveyance. The reason given by the respondents to invoke Article 55(D)(ii) is not applicable to the facts of this case. The outgoing partner, i.e. the 4th petitioner is a family member and the document had been presented for registration pursuant to the Deed of Retirement dated 30.06.2003. The 1st respondent has completely misinterpreted the word 'release' with 'conveyance'. If any document with regard to parting of money and property in a partnership firm is based on a Deed of Retirement, then, it has got to be construed as only 'Release' and not 'Conveyance'. Based on the Deed of Retirement, the 4th petitioner has a share in the property.

13. For better appreciation of the case, Article 55(D)(i) of Schedule I relating to stamp duty on instruments under the Indian Stamp Act, 1899, explaining the terms of Release Deed between partners, who are family members, is extracted hereunder:

> "A release of right by a partner or partners in favor of other partners relinquishing his or their rights over the immovable property when the release is between family members who constitute the partnership or when the property is movable.
>
> Three rupees for every rupees hundred or part thereof of the market value of the immovable property which is the subject matter of release".

14. In the light of above discussion, I am of the view that the Release Deed entered into among partners, presented for registration cannot be construed as a Deed of Conveyance. As the 4th petitioner gets the benefit of amount and share in the properties based on the Deed of Retirement, the authorities cannot take the date of presentation of document in respect of the properties in terms of the Deed of Agreement subsequent to the date of Agreement as one of conveyance and demand stamp value as one of 'conveyance' only under Article 55-D(i) of the Schedule I to the said Act.

15. As stated supra, pursuant to the Deed of Retirement, properties have been settled in favour of the 4th petitioner and that the partnership consists of family members. The contention of the respondents that Article 55 D(ii) of Schedule I to the Act and Section 23 of the Act for the purpose of registering the Release Deed may not be correct.

16. The contention of the learned Senior Counsel appearing for the petitioners is also supported by a judgment of a Division Bench of this Court in the case of T.K.Subramaniam Vs. Chief Controlling Revenue Authority (Stamps) and Inspector General of Registration, Madras, reported in AIR 1987 Madras 260, wherein the Division Bench has held that even though the deed was stamped as a released deed, the release deed was not one among the co-owners, because, at the time of execution of the release deed, the releasors were not co-owners with the releasees. Though it has been styled as a release deed, and the authority held the same as conveyance, having perused the deed of dissolution as well as release deed, the Division Bench observed that even though, it cannot, by any stretch of imagination be treated as a conveyance of the properties, because the releasors had no right to the properties at the time of the release, the document cannot be treated as conveyance and stamp cannot be demanded on that basis. The Division Bench further observed that the view taken by the authorities that the document in question is a document of conveyance, is not correct and that the contentions of the appellant therein that it was release deed, was accepted by the Division Bench.

17. Similar view has been taken by another Division Bench of this Court in the decision reported in AIR 1994 Madras 317 = 1994 (1) LW 316 = 1994 (2) MLJ 1 = 1994 Writ L.R. 476 = MANU/TN/0046/1994 (T.T.Meenakshi Achi and others Vs. The District Registrar, Coimbatore and another), in which, the Division Bench of this Court followed the decision of the Apex Court reported in 1966 (3) SCR 400 = MANU/SC/0281/1966

(Narayanappa A. Vs. Bhaskara Krishnappa). The Division Bench held that in case of settlement of interest among the partners, it is settled position of law that there is no transfer of interest, nor there is any conveyance and the document presented cannot be construed to be a deed of conveyance.

18. In the above two judgments of the Division Bench of this Court, the Division Benches have categorically held that the documents presented can be construed as deed of release and not one of conveyance.

19. Further, since, in the case on hand, it is a release deed and the benefits have been extended to the outgoing partners, it can be treated as a release and it cannot be construed as conveyance.

20. Whether the terminology be it a release deed or conveyance, when a settlement is between the family members, and any amount of share of the outgoing partner is settled, more particularly, when all the partners are family members, the stamp duty has got to be paid only under Article 55-D(i) of Schedule I of the Indian Stamp Act and not under any other provision of law.

21. Thus, I find much force in the contention of the petitioners and the Writ Petition is allowed, thereby setting aside the proceedings of the 1st respondent vide Pa.Mu.No.13160/P1/2008 dated 23.11.2009. The respondents cannot invoke Article 55D(ii) of Schedule I to the Act and they are directed to accept the document and register the same as Release Deed, consequent upon the Retirement Deed dated 30.06.2003 and accept the stamp value in terms of Article 55 D(i) of Schedule I to the Act. No costs. Consequently, connected M.P.No.1 of 2010 is closed.

22. Before parting with the judgment, this Court appreciates Mr.Akhil Akbar Ali, learned Government Advocate appearing for the respondents in assisting this Court and also presenting the facts of law in a pleasant and pleasing manner.

Sd/-
Assistant Registrar(CS-IV)

//True Copy//

Sub Assistant Registrar

sts/aeb

To:

1. The Chief Controlling Revenue Authority
and Inspector General of Registration,
Chennai 600 028.

2. The Sub Registrar,
(District Registrar Cadre),
Gandhipuram, Coimbatore 641 012.

+ 1 cc to Mr. Sarvabhauman Associates, SR.72936
+ 1 cc to Government Pleader SR.73382

W.P.No.3428 of 2010

CS-IV
EU(13/10/2017)