

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.11.2018

CORAM

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

W.P.No.12611 of 2012

1.T.Ranganatha Mudaliar
2.Shanmuga Priyan .. Petitioners

Versus

1.The District Registrar (Administrative)
cum Asst.Registrar,
Registration, Pattinampakkam
Santhome, Chennai - 28.

2.Sub Registrar,
Sub Registrars office,
Kaladipattu,
Thiruvallur District

...Respondents

PRAYER: Petition under Article 226 of the Constitution of India, praying for the issue of a Writ of Certiorarified Mandamus, calling for the impugned proceedings No.4834/A1/2011 dated 20.09.2011 from the file of 1st respondent and quash the same and direct the 2nd respondent to return document No.7440/2010 to the petitioners.

For Petitioner :: M/s.R.T.Sundari

For Respondents ::Mr.P.Parashuraman, Govt.Advocate

ORDER

This Writ Petition has been filed in the nature of Certiorarified Mandamus for a direction to call for the impugned proceedings No.4834/A1/2011 dated 20.09.2011 on the file of the 1st respondent, namely The District Registrar (Administrative) cum Assistant Registrar, Registration Pattinampakkam, Santhome, Chennai and direct the 2nd respondent, namely Sub Registrar, Sub Registrars Office, Kaladipattu, Thiruvallur District to return the document No.7440/2010.

2. Heard both sides.

3. The first petitioner is aged about 70 years and he is the owner of the properties, for which, he had executed a settlement deed in Doc.No.5066 of 2009 in favour of the second petitioner-Shanmuga Priyan who is his grand-son. The properties are in Survey No.47/5 measuring 0.44 cents, Survey No.52/1 measuring 0.23 cents, Survey No.53/4 measuring 0.84 cents, Survey No.53/7 measuring 0.55 cents and Survey No.55/5 measuring 0.55 cents in Vellivoyal. The settlement deed was registered and possession was also given to the second petitioner. The first petitioner had also intended to give some properties to his grandson through his daughter. Consequently, the second petitioner had executed Document dated 22.10.2010 which was also engrossed in a stamp paper of Rs.10,000/-. The second respondent, after registering the Document as Doc.No.7440 of 2010, however, retained the document under Section 47 A Indian of Stamp Act and called upon the petitioners to pay stamp duty leviable on a conveyance document. The first petitioner made a representation on 20.08.2011 seeking return of the document which had been registered as Doc.No.7440 of 2010.

4. The learned counsel for the petitioners relied on a judgment of Hon'ble Mr.Justice K.Venkataraman dated 16.03.2009 in W.P.No.4663 of 2007 and M.P.Nos.1 of 2007 and 1 of 2009 (Dr.Usha Dorairajan Vs.The Sub-Registrar in the cadre of District Registrar, Anna Nagar, Chennai 40) wherein, under very similar circumstances, it had been held that the re-conveyance is legally permissible and the respondents cannot call upon the petitioners to pay the stamp duty as if it is stamp duty payable on a conveyance document.

5. In this connection, Article 58 (a), schedule I of the Indian Stamp Act reads as follows:-

Explanation:-

"For the purpose of this Article, the word "family" means father, mother, husband, wife, son, daughter, grand child. In the case of anyone whose personal law permits adoption, "father", shall include an adoptive father "mother" an adoptive mother, "son" an adopted son and "daughter" an adopted daughter." On a reading of the above provision, it is seen that the word "family" includes son and daughter, as also grand children. Consequently, on the facts of it, the action of the respondents in refusing to return the document is not legally permissible.

6. The learned counsel for the petitioners also relied on a decision of a Division Bench of this Court in W.A.No.85 of 2015, dated 23.10.2017, wherein the Division Bench consisting of

Hon'ble Mr.Justice K.K.Sasidharan and Hon'ble Mr.Justice P.Velmurugan had reiterated, the same stand and stated that a grand child is included in the definition of the "family".

7. In this case, the first petitioner is the grand-father and the second petitioner is the grand-son. Settlement deed was originally executed by the first petitioner in favour of the second petitioner. Thereafter, since the first petitioner also has a grand-son through his daughter, re-conveyance was sought. The second petitioner had in turn executed a settlement deed in favour of the first petitioner. Their relationship being grand-son and grand-father, they come under the category of "family". Consequently, I see no reason to accept the case of the respondents that they are entitled to withhold the document and deemed levy of stamp duty as if it is a conveyance. The respondents are directed to return to the petitioners, the document in Doc.No.7440 of 2010, now pending on the file of the second respondent.

8. With the above directions, this Writ Petition is allowed. No costs.

Sd/-

Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

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To

1.The District Registrar (Administrative)
cum Asst.Registrar,
Registration, Pattinampakkam
Santhome, Chennai - 28.

2.Sub Registrar,
Sub Registrars office,
Kaladipattu,
Thiruvallur District

+1cc to Mr.R.T.Sundari, Advocate, S.R.No.78803

+1cc to the Government Pleader, S.R.No.79563

W.P.No.12611 of 2012

SVN(CO)
GSP(12/12/2018)