IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on 31.1.2018	Delivered on 23.3.2018

CORAM:
THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN
AND
THE HONOURABLE MR.JUSTICE P.VELMURUGAN
W.A.Nos.43 and 44 of 2015

1.The Inspector General of Registration,
100, Santhome High road,
Chennai 4

2.The District Registrar,
Tiruppur ... Appellants /Respondent in both appeals

versus

Rajalakshmi Gengusamy Charities,
rep. By its Managing Trustee,
Venkatanilayam
Palani Road, Udumalaipettai,
Tiruppur District.
... Respondent/Petitioner in both appeals

Common Prayer: Appeal filed against the order passed by this Court dated 27.4.2012 passed in W.P.No.28017, 28018 of 2010.

Common Prayer in WP.28017 and 28018 of 2010: Writ petition filed under Article 226 of the constitution of India, Praying for issuance of Writ of Certiorarified Mandamus to call for the records of the 2nd respondent in Na. Ka.No. 6197 B.1/2010 and Na. Ka. No.6194 B.1/2010 dt 11.10.2010 and of the 1st respondent in his proceedings Pa. Mu. No. 32963/P.1/2006 dt 6.8.2010 and quash the said proceedings of the 1st and 2nd respondents dt 11.10.2010 and 6.8.2010 and consequently direct the respondents to return the documents which have been registered as Document No. 3523 and 3524 of 2006 on the file of the Sub Registrar udumalaipettai.

For appellant : Mr.Vijay Narayan,
Advocate General
Assisted by Ms.Srijayanthi, Spl.G.P.
In both WA's
For Respondents: Mr.AL.Somayaji, Senior Counsel,
for Mr.N.Umapathi, In both WA's

COMMON JUDGMENT

K.K.SASIDHARAN, J.

The issue:-

Whether transfer of property owned by a trust to another trust, without consideration, would fall under article 62(e) of the Indian Stamp Act or it would be a conveyance under Article 23 is the core issue that arises for consideration in this intra court appeal filed by the Inspector General of Registration, Tamil Nadu.

The relevant facts:-

2. The trust by name Raja Lakshmi Gengusamy Charities was established in the year 1980. The trustees are Dr.V.Gengusamy Naidu, who is also the Managing Trustee, and his wife G.Rajalakshmi Ammal. There is another trust by name G.V.Govindasamy Naidu Charities. The Managing Trustee of the said trust is G.Rajalakshmi Ammal and the other trustee is her husband Dr.V.Gengusamy Naidu.

3. The trust by name M/s.G.V.Govindasamy Naidu Charity (hereinafter referred to as “G.V.G. Naidu Charity”) owns property in S.No.202/A, Periyakothai Village, Udumalpet Taluk. The trust has given on lease, a portion of the land to Rajalakshmi Gendusamy Charities for housing a school by name Rajalakshmi Genuswamy Higher Secondary school.

4. The Board of Trustee of M/s.G.V.G. Naidu Charities, resolved to transfer the ownership of the land given on lease to the Rajalakshmi Gengusamy Charities to the said trust without consideration. The Trust therefore executed two documents of transfer and presented it for registration on 20 December 2005. The documents though kept initially as pending documents, were registered subsequently on the basis of the circular dated 25 March 1997. The Stamp duty was collected treating the documents as one falling under Article 62(e) of the Stamp Act.

5. Subsequently, the District Registrar, by notice dated 2 February 2007, informed the respondent that documents were treated as gift deeds and called upon the Trust to show cause as to why the amount determined as stamp duty should not be collected. The District Registrar notwithstanding the explanation given by the respondent, passed orders on 28 May 2008, treating the documents as gift deeds and determining the corresponding stamp duty and penalty. The revision petitions filed against the orders were dismissed by the Inspector General of Registration by order dated 6 August 2010.

6. The common order passed by the Inspector General of Registration was challenged in W.P.Nos.28017 and 28018 of 2010. The learned Single Judge allowed the Writ Petitions. The common order dated 27 April 2012 is under challenge at the instance of the Registration Department.

Summary of submissions :-

7. The learned Advocate General contended that Article 62 (e) has no application to the transaction in question, as it was not a transfer from one trustee to another trustee of the same trust. Since there was transfer of land from a particular trust to another independent trust, the transfer would fall under the classification "conveyance". The learned Advocate General contended that the respondent is liable to pay the stamp duty applicable to the gift deed.

8. The learned Senior counsel for the respondent contended that there is nothing like transfer of property from a trustee to another trustee of the trust. The Court has to adopt a purposeful and meaningful interpretation of the provisions of a statute. Article 62(e) must be interpreted to mean a transaction from a trust to another trust. According to the learned Senior counsel, the learned Single Judge has given reasons for the ultimate finding and the order is legally sound and sustainable.

Discussion :-

9. There are two trusts formed by the husband and wife for undertaking charitable and educational activities. The managing trustee of the Rajalakshmi Gengusamy Charities is Dr.V.Genusamy and his wife Mrs.G. Rajalakshmi Ammal is the trustee. The Managing Trustee of the other trust by name G.V.Govindasamy Naidu Charities is Mrs.G.Rajalakshmi Gengusamy and her husband is the Trustee.

10. The land owned by G.V.Govindasamy Naidu Charities in S.No.202/A was given on lease to Rajalakshmi Gengusamy Charities for housing the Higher Secondary School. Subsequently, a decision was taken to transfer the land to the lessee without consideration. This is the genesis of the litigation.

Position of a Trust:-

11. The legal position of a Trust was explained by the Hon'ble Supreme Court in Holsworth and others vs. State of Uttar Pradesh (AIR 1957 SC 887) in the following words:-

> 22. Whatever be the position in English Law, the Indian Trusts Act, 1882 (II of 1882) is clear and categoric on this point. Section 3 of that Act defines a Trust as an obligation annexed to the ownership of

property, and arising out of a confidence reposed in and accepted by the owner, or declared and accepted by him, for the benefit of another, or of another and the owner: the person who accepts the confidence is called the "trustee": the person for whose benefit the confidence is accepted is called the "beneficiary": "the beneficial interest" or "interest" of the beneficiary is his right against the trustee as owner of the trust property; the subject matter of the trust is called "trust property" or "trust money."

23. These definitions emphasize that the trustee is the owner of the trust property and the beneficiary only has a right against the trustee as owner of the trust property. The trustee is thus the legal owner of the trust property and the property vests in him as such. He no doubt holds the trust property for the benefit of the beneficiaries but he does not hold it on their behalf. The expressions " for the benefit of " and " on behalf of " are not synonymous with each other. They convey different meanings."

12. The question raised by the State must be considered with reference to Article 62(e) of Schedule I of the Indian Stamp Act.

The article reads thus.

Transfer : Whether with or without consideration of any Trust property from one trustee to another trustee or from a trustee to beneficiary	Thirty Rupees or such smaller amount as may be chargeable under clause (b) and (c) of this article.

13. The core question is when there is no specific inclusion of transfer of property from one trust to another trust, in Article 62(e), whether it would be within the province of the Courts to add a word to the provision and bring the transaction under the statutory umbrella.

Whether Court can re-frame legislation:-

14. The function of the court is confined to the interpretation of the statutory provisions and in that process, it would not be correct to add or substitute words to give a different meaning.

15. The Hon'ble Supreme Court in Indore Development Authority vs. Shailendra (dead) Through Lrs and Ors. (2018(2) Scale 1), indicated the rule of construction of Statutes.

The Supreme Court said.

> "The court cannot give extended meaning to the expression. It is not open to the Court to aid defective phrasing of the Act or to make up for the deficiencies. It is not open to the Court to recast, rewrite, or reframe the provision. The court cannot assume omission and add or amend words. Plain and unambiguous construction has to be given without addition and substitution of the words. The temptation of substituting words by explaining what it thought legislation is endeavoring is to be discouraged. Court has to consider what has been said and what has not been said. It is wrong and dangerous to proceed by substituting some other words for the words of the statute. When literal reading produces an intelligible result it is not open to read words or add words to statute. Making any generous addition to the language of the Act would not be a construction of the statutory provision; rather, would be an amendment thereof. While interpreting the provision the Court only interprets the law. The intention of the legislation must be found by the words used by the legislature itself. The legislative casus omissus cannot be supplied by judicial interpretative process. When language of the provision is clear, there is no scope for reading something into it. The scenario that thus emerges in relation to an interpretation of a statute can be explained as follows. It is a salutary principle that it is not open to the Court to add or substitute some words in place of the words of the statute. The court cannot reframe the legislation. The court cannot add to, or amend, the provisions;

neither can the expressions used in the statute be treated as fungible."

16. The transaction in question must fall under a particular entry or Article under the Stamp Act. The close relationship of the Trustees in the two trusts are immaterial. The document must come under a particular clause to avail the benefit of the particular provision. Since there is no express provision governing transfer of property from one trust to another trust, it would come under the General term, "conveyance".

17. Even if there is an error in drafting Article 62(e), the same cannot be corrected by substituting another word by the Court by resorting to interpretative process.

18. The transfer in the subject case is beyond the scope of Article 62(e) of the Stamp Act. In order to give a definition to "transfer" under Article 62(e) as suggested by the respondent, we must either add words to the provisions or read words into it which are not there at present. The courts cannot presume that there is an omission in the words used by the legislature, which needs incorporation of a suitable word, which in the opinion of the court would best suit to give a wise interpretation.

19. The learned Judge proceeded as if Article 62(e) would attract transfer of property from one trust to another trust. It is not possible to give such an interpretation to Article 62(e) in its present form. We are therefore of the view that the appellants are entitled to succeed.

Conclusion :-

20. For the reasons aforesaid, we hold that the transfer of property from one trust to another trust would not fall under Article 62(e) of the Indian Stamp Act.

21. The order dated 27 April 2012 is set aside. The Writ Petition in W.P.Nos.28017 and 28018 of 2010 are dismissed.

22. In the upshot, we allow the intra court appeals, without liability to pay costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS IV)

//True copy//

Sub Assistant Registrar

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To

1.The Inspector General of Registration,
100, Santhome High road, Chennai 4

2.The District Registrar,
Tiruppur

+1cc to Government Pleader SR.No.22885

+1cc to MR.N.Umapathi, Advocate SR.No. 23099(04/07/2018)

W.A.Nos.43 and 44 of 2015

SSV(CO)
GN(13/04/2018)