IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.04.2018

CORAM

THE HON'BLE MR.JUSTICE HULUVADI G.RAMESH
AND
THE HON'BLE MR.JUSTICE M.DHANDAPANI

W.A.No.848 of 2018 and
C.M.P.No.7428 of 2018

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. ... Appellants

-vs-

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

2. Dr.Christy Ganapathy

3. Dr.B.P.Ganapathy

4. Dr.Sheela Rajapandian ... Respondents

Appeal filed under Clause 15 of the Letters Patent, against the order passed by this Court in W.P.No.3428 of 2010 dated 11.10.2017.

W.P.No.3428 of 2010:-
Call for the records of the 1st respondent in Pa.Mu.No.13160/P1/2008 dt.23.11.2009 and quash the same

For Appellants :: Mr.T.N.Pappaiah,
Special Government Pleader

For Respondents:: Mr.AR.L.Sundaresan, Sr.Counsel
for Mr.C.A.Syed Ibrahim

JUDGMENT

(Made by HULUVADI G.RAMESH, J.)

The respondents herein have filed a writ petition in W.P.No.3428 of 2010 before this Court challenging the proceedings of the first appellant dated 23.11.2009 by which the revision petition filed by the respondents was rejected holding that the release deed was only a conveyance under Article 23 of Schedule I to the Indian Stamp Act, 1899 and therefore, it would attract the relevant stamp duty. The said writ petition was allowed by the learned single Judge by order dated 11.10.2017. Challenging the same the present appeal has been filed by the State.

2.The case relates to a release deed executed on 07.08.2003 in favour of the fourth respondent, whereas the second and third respondents have released their rights, title and interests in the properties mentioned in the Deed of Retirement which was drawn up on 30.06.2003 between the fourth respondent and the other respondents, whereby it has been agreed that amounts standing to the credit of the fourth respondent to an extent of 25% share in the firm M/s.Sheela Clinic would be fully settled to her in cash and also in the form of three items of immovable properties. When the release deed was presented before the second appellant for registration, the same was kept pending vide Doc.No.20 of 2003 and there was inordinate delay in returning the document from the Sub-Registrar's office. The second appellant issued a show cause notice to the respondents calling 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 ("Act" in short) and further stating that documents would attract only Article 55(D)(ii) of Schedule I to the Act. The respondents sent a detailed reply dated 12.08.2004 to the second appellant stating that no additional stamp duty can be paid by them for undervaluation; that the appellants cannot invoke other provisions ie., Article 55(D)(ii) of Schedule I to the Act, since the second appellant had not chosen to proceed under Section 47-A of the Act.

3.Pursuant to the same, the second appellant has passed an order on 30.08.2004 directing the respondents to pay a sum of Rs.30,10,000/- within three weeks, failing which proceedings under Section 27 r/w Section 64 of the Indian Stamp Act, 1899 would be initiated against them. On filing a writ petition in W.P.No.28641 of 2004 by the respondents herein, seeking to quash the order passed by the second appellant, the same was allowed with a direction to consider the case of the respondents 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 to pass appropriate orders. Pursuant to the same, an order was passed by the second appellant on 26.12.2007 stating that the fourth respondent was not a partner at the time of execution of the release deed and hence the respondents are liable to pay stamp duty charges as demanded. A revision petition filed by the respondents before the first appellant ended in dismissal, against which the writ petition in W.P.No.3428 of 2010 has been filed. The learned single Judge, after a detailed analysis of the matter, passed the impugned order allowing the writ petition, and the same is challenged in the present appeal by the State.

4.The learned Special Government Pleader appearing for the appellants has submitted that Article 55(D)(i) of Schedule I of the Indian Stamp Act, 1899 is not applicable to the above said document and it will apply only in cases where the release and relinquishment of interest in the partnership is made in favour of the existing partners since the property belongs to the firm.

5.The learned senior counsel appearing for the respondents has submitted that the outgoing partner, ie., the fourth respondent is a family member and it is a fact that the document had been presented for registration pursuant to the Deed of Retirement dated 30.06.2003; that 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 to be construed as only “release” and not “conveyance”, and hence, the demand of the appellants for additional stamp duty is illegal. He further submitted that the learned single Judge has considered the matter in proper perspective and has passed the impugned order and hence the same does not require any interference in the hands of this Court.

6.Heard the learned counsel on either side and perused the materials available on record.

7.Admittedly the husband of the second respondent is no more. The first respondent / firm was re-constituted and the fourth respondent and her brother, ie., the third respondent were inducted into partnership by a Deed of Partnership in the name and style of “Sheela Clinic”. The fourth respondent 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 said firm was agreed to be settled in cash apart from three items of immovable properties. Here, it has to be noted that the outgoing partner, ie., the fourth respondent is a family member and it is a fact that the document had been presented for registration pursuant to the Deed of Retirement dated 30.06.2003. 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 to be construed as only "release" and not "conveyance", as the fourth respondent has a share in the property based on the said Deed. The matter is with regard to settlement of properties between the family members, ie., between the third respondent and the fourth respondent.

8.The learned single Judge has discussed all the points relying upon various judgments and allowed the writ petition finding much force in the submission made by the learned senior counsel for the petitioners in the writ petition, which in the considered opinion of this Court does not require any information.

9.Thus, while dismissing the writ appeal, a direction is given to the appellants to comply with the impugned order passed by the learned single Judge in W.P.No.3428 of 2010 dated 11.10.2017, within a period of one month from the date of receipt of a copy of this judgment. No costs. Consequently the connected miscellaneous petition is closed.

Sd/-
Deputy Registrar

//True Copy//

Sub Assistant Registrar

KM

To

+1cc to Mr.C.A.Syed Ibrahim, Advocate, S.R.No.30782
+1cc to the Government Pleader, S.R.No.31217

W.A.No.848 of 2018
and
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CS/08/05/18