IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.08.2018

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THE HONOURABLE Mr. JUSTICE S.M.SUBRAMANIAM

W.P.No.1718 of 2017
and
W.M.P.No.1685 of 2017

Mr.Ankit Shah ..Petitioner

Vs.

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

2.The Registrar,
Purasawalkam District Registration Office,
Chennai - 07.

3.The Sub-Registrar (District Registrar Cadre)
Pursawalkam District Registration Office,
Chennai - 07. ..Respondents

Prayer : Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the impugned notices dated 04.11.2015 and 14.03.2016 relating to the Doc.No.4957 of 2013 from the office of the Sub-Registrar Purasawalkam, Chennai on the file of the third respondent and quash the same as nullity and pass a Writ of Mandamus or such other writ or order directing the third respondent to delete the entries of liability, respecting the deficit stamp duty from the index of register and make the properties covered under Doc.No.4957 of 2013 free from encumbrance.

For Petitioner : Mr.K.K.Sivasshanmugam
For Respondents : Mr.T.M.Pappiah, Spl GP

O R D E R

The impugned notice dated 04.11.2015 and 14.03.2016 in respect of the Document No.4957 of 2013 on the file of the Sub Registrar, Pursawalkam, Chennai, is under challenge in this writ petition.

2.The learned counsel appearing on behalf of the writ petitioner states that himself and his grandmother Mrs.Indira D.D.Shah were carrying on business of manufacturing and sale of paints in the name and style of M/s.Universal Corporation (India), which is a registered partnership firm. On account of certain misunderstanding, the registered partnership firm was dissolved by deed of dissolution of partnership dated 16.12.2013, which was registered as Document No.4951 of 2013 before the Sub Registrar, Pursawalkam. Appropriate Stamp Duty payable under Article 46B(ii) of the Indian Stamp Act, 1899 was paid and the dissolution of partnership was registered and the instrument was returned back to the writ petitioner. The immovable properties were distributed between the partners of the firm, who all are family members. However, the respondent/ The Sub Registrar issued a notice by stating that there is a deficit Stamp Duty in respect of the registration of the deed of dissolution of partnership in Document No.4957/2013. Challenging the said notice, the present writ petition is filed.

3.The learned counsel for the petitioner states that the respondents have not followed the procedures as contemplated under Section 33 of the Indian Stamp Act. This apart, the meaning of family has been erroneously interpreted, so as to deny the benefit of exemption of Stamp duty in respect of the deeds executed between the family members. The deed of dissolution of partnership was executed between the grandmother and the grandson. The petitioner is the grandson and was conducting business along with his grandmother. Thus, the same is to be treated as a business within the family and it cannot be treated in isolation. Thus, the very interpretation provided by the respondent/Sub Registrar is contrary to law and accordingly, the impugned notice is liable to be scrapped.

4.In support of the contention, the learned counsel for the petitioner cites the judgment of this Court, delivered in the case of K.Thilak Kumar and another Vs. Chief Controlling Revenue Authority & Inspector General of Registration, Chennai and Another, reported in 2013 (3) MLJ 359 and the relevant paragraph 15 is extracted hereunder:

> “15.On consideration, this Court finds that this Writ Petition deserves to be succeeded. Admittedly, under the Will the property had been bequeathed in favour of the petitioners. The step-grandmother of the petitioners was holding life interest in the property. She is the member of the family. The Hon'ble High Court of Andhra Pradesh has laid down that the family cannot be given restricted meaning as contended by the learned Government Advocate and therefore, it cannot be said that the transaction is not between the family and there is the impugned order. The impugned order cannot be sustained in law as it gives restrictive meaning to the family, which is not permissible in law, as grandmother will include step-grandmother and petitioners are to be treated as her grand children.”

5.This Court, while interpreting the Indian Stamp Act held that the grandmother is also to be treated as a family member for the purpose of registration of instruments before the Sub Registrar and adopting the ratio laid down in the judgment cited supra, this Court is of an opinion that the deed of dissolution of partnership registered by the writ petitioner, who is the grandson and the grandmother is to be treated as a Document registered within the family.

6.This being the legal principles settled, the writ petition deserves to be considered. Accordingly, the notice impugned issued by the 3rd respondent in proceedings dated 04.11.2015 and 14.03.2016 in relation to Document No.4957 of 2013 stands quashed and the writ petition stands allowed. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

-s/d-
Assistant Registrar(CS-IX)

True Copy

Sub-Assistant Registrar

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To

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

2.The Registrar,
Purasawalkam District Registration Office,
Chennai - 07.

3.The Sub-Registrar (District Registrar Cadre)
Pursawalkam District Registration Office,
Chennai - 07.

+1 CC to Mr.K.K.Sivasshanmugam , Advocate sr 58990.
+1 CC to The Govt. Pleader sr 59760.

W.P.No.1718 of 2017

GJII(CO)
SP(14/09/2018)