

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.03.2018

CORAM

THE HONOURABLE Mr.JUSTICE V.PARTHIBAN

W.P.No.28780 of 2010

- 1.T.Vivakaran
- 2.T.Kirubakaran
- 3.K.Meenambigai
- 4.T.Virthivirajan

... Petitioners

Vs

- 1.The Inspector General of Registration,
Tamil Nadu, cum Chief Controlling Authority,
Chennai 600 028.

- 2.The District Registrar, (Administration),
Office of the District Registrar,
72, Chamiers Road,
Teynampet,
Chennai 600 018.

... Respondents

PRAYER : Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari, to call for the records in the first respondent order dated 20.08.2010, made in Pa.Mu.No.14246/P1/2008, on the file of the Chief Controlling Authority, Chennai 600 028, viz., the first respondent confirming the order made in No.760/B1/2007, dated 14.12.2007 (signed on 23.01.2008), on the file of the District Registrar (Administration), Chennai, viz., the second respondent and to quash the said orders.

For Petitioners : Mr.R.Thirugnanam

For Respondents : Mr.T.M.Pappiah,
Special Government Pleader

O R D E R

Heard Mr.R.Thirugnanam, learned counsel for the petitioners and Mr.T.M.Pappiah, learned Special Government Pleader appearing for the respondents.

2. The petitioners have approached this Court, seeking the following relief:-

"To issue a Writ of Certiorari, to call for the records in the first respondent order dated 20.08.2010, made in Pa.Mu.No.14246/P1/2008, on the file of the Chief Controlling Authority, Chennai 600 028, viz., the first respondent confirming the order made in No.760/B1/2007, dated 14.12.2007 (signed on

23.01.2008), on the file of the District Registrar (Administration), Chennai, viz., the second respondent and to quash the said orders."

3. The case of the petitioners is as follows:-

The property at Door No.14, New Door No.34, Kutti Tambiran Street, Pulianthope, Chennai 600 012, was jointly purchased by the petitioners who were the brothers of one of their brother viz., T.Kathiresan, under the sale deed dated 06.05.1985 and registered as Document No.321/1986. The property was assessed for property tax and water tax and the electricity service connection was also transferred in the names of the co-owners of the property.

4. The eldest of the brothers Mr.T.Kathiresan died leaving behind his wife and three minor daughters as his legal heirs. The widow of the death Mr.T.Kathiresan is the third petitioner herein. Due to family reasons, a deed of partition was entered into between the co-owners on 31.03.2004 and the same was executed and registered as Document No.1399/2004, in the office of the Sub-Registrar, Purasawakkam. According to the partition deed, front portion of the property was allotted to the first petitioner Mr.T.Vivakaran and the rear portion of the property was allotted to Mr.T.Kirubakaran, the second petitioner herein. As far as the third and fourth petitioners are concerned, a sum of Rs.25,000/- was paid each.

5. According to the petitioners, under the partition deed, the only division among the co-owners was effected and there was no transfer or conveyance of the property in question and also there was no destruction of co-ownership by the deed of partition. While registering the partition deed, a sum of Rs.66,000/- was paid towards the stamp duty i.e., 4% of the market value of the property, valued at Rs.16,50,000/- and further sum of Rs.16,740/- was paid towards the registration fees on 31.03.2004, at the time of registration. After inspection of the said property, a further sum of Rs.15,840/- was paid towards stamp duty as demanded by the authority as compounding fee in terms of the provisions of the Indian Stamp Act.

6. While so, the second respondent issued a show cause notice dated 07.03.2007, directing the petitioners to show cause why a sum of Rs.1,59,680/- should not be collected towards deficit stamp duty. The said show cause notice was issued on the basis of the audit objection stating that the document should be treated as release deed and the market value of the property was fixed at Rs.19,96,600/- and the stamp duty was to be paid at 8% and it came to Rs.1,59,680/-. In response to the show cause notice on behalf of the petitioners an explanation was submitted on 09.04.2007, denying any liability in that regard. However, not considering the explanation in proper perspective, the second respondent by his proceedings dated 14.12.2007, directed the petitioners to pay the amount towards deficit stamp duty.

7. As against the order passed by the second respondent, a revision petition was filed before the first respondent, pointing out the error in the order passed by the second respondent, demanding the higher stamp duty by holding the document as release deed and not as partition deed. However, even the first respondent without appreciating the legal position in this regard, rejected the revision by proceedings dated 20.08.2010, thereby confirming the order passed by the second respondent. The orders of both the first and second respondents are put to challenge in the present writ petition.

8. The learned counsel for the petitioners would submit that the document which was registered before the second respondent was indeed a partition deed and not a release deed and the audit objections were raised on erroneous appreciation of the recitals in the partition deed as if it was a release deed. In any partition deed, according to the learned counsel there will be element of release of a coparcener's interest in the joint property and however such release cannot be construed to be one as release deed. According to the learned counsel that there need not be any division on equal terms in the partition deed. It is always open among the coparceners to settle one or two of the coparceners by payment of money instead of dividing the property and such payment cannot be construed to be one of release of co-sharer's right in the property.

9. Upon notice, learned Special Government Pleader appearing for the respondents entered appearance and filed a detailed counter affidavit. In the counter affidavit, it is clearly stated that the document in question was only a release deed and the stamp duty was chargeable under Article 55(c) of Schedule-I of Indian Stamp Act, 1899. The substance of the objection raised on behalf of the respondents is found in sub-paragraph 'e' of paragraph No.7 of the counter affidavit is reproduced below:-

"e) Regarding to the grounds (v) and (vi) it is respectfully submitted that the judgment of this Hon'ble Court reported in 1971 (1) MLJ 177 and another does not apply to the instant case. Since the legal heirs of the deceased brother and the fourth petitioner were not allotted any property and in reciprocation of their relinquishment of right in the property they were paid by 1st and 2nd petitioner herein, out of their pocket, the document in addition to as partition be classified as release by co-owner chargeable under Article 55-c as on the date of execution of the document in question provides that if any property purchased by family members and any relinquishment of right made should be construed as Release between co-owners chargeable under the above said Article. Hence, the petitioner's contention is not sustainable either on facts or on law."

10. The learned Special Government Pleader reiterated the contents of the affidavit and would resist the relief being granted to the petitioners, as both the respondents have appreciated the documents in proper perspective and have come to a right conclusion that the deed in question was only a release deed not a partition deed.

11. At this, learned counsel for the petitioners would submit that even the order passed by the first respondent dated 20.08.2010, while holding that the deed was a release deed, however, the authority himself has concluded that the deed could be termed as partition deed as well. In the said circumstances, merely holding the deed as release deed, despite the conclusion in favour of the petitioners, cannot stand the test of proper judicial scrutiny. The learned counsel would also draw the attention of this Court to the Hon'ble Full Bench decision of this Court in the case of The Chief Controlling Revenue Authority, Board of Revenue, Madras Vs. B.A.Mallayya, reported in 1971 MLJ 177. He would specifically draw the attention of this Court to the point of reference made before the Hon'ble Full Bench as found in paragraph 1, which is reproduced below:-

"This is a reference under Section 57 of the Indian Stamp Act, the question being whether the instrument under consideration is not liable to be stamped under Article 45 of the Stamp Act as a deed of partition, or chargeable to duty as a release. The Revenue contends that having regard to its terms and true intention, the deed is a partition. But, on the other hand, it is said that in as much as one of the sharers was not allotted any joint family property in specie as and for his share, but the agreement was that the other sharers who were to take the entire joint family properties should, in consideration of the sharer releasing his interest in the joint family properties pay a sum agreed upon, the deed operates as a release."

After advertng to various facts and decisions, the Hon'ble Full Bench of this Court has held as follows in paragraph Nos.5, 6, 7 and 8:-

"5.It is conceivable that in a partition between co-owners, one should go out of the co-ownership in lieu of a certain fixed sum to be paid to him by the others. If the test is applied from the standpoint of release in the sense that a person who has a claim against a person or property gives it up in consideration of something received by him, it may not be conclusive in deciding whether a document amounts to partition. In a partition of joint family property in a sense, there is a kind of release by one sharer of his interest in favour of

the other who is allotted that interest. But the true concept of a coparcenary is that it is peculiar in its character. It cannot be said that when coparcenary exists any one of the persons has any particular or definite interest in the coparcenary. The entire property is owned by the entire coparcenary as such, though practical exigency has necessitated attribution of an interest as inhering in a coparcener, where for instance he purports to alienate his share and justice has to be done between him and a third party or even as between the coparceners. The essence of partition, as we mentioned, is that the asset in co-ownership as it were, as in the case of a coparcenary, is split up into severalty, the process involving the destruction of the co-ownership and conversion of the same into several interests which are available for exclusive allotment to each sharer. Such allotment of the interests may be wholly in favour of one of the erstwhile coparceners without the other coparcener getting anything as and by way of share. That will be a partition and not a release. Release is not necessarily destruction of co-ownership. We think that those are the essential elements of distinction between a release and a partition of property owned in co-ownership. Merely because, as we said, in a sense a partition may involve release, it cannot on that account be said that what is partition is not that but only a release.

6. It is true that Sanjeev Mallayya and Srinivasa Mallayya were not allotted to their share in the deed any joint family property as such. For the respondent it is argued that unless such property as had formed a part of the property owned in common, had been allotted, there could not be any partition. We do not think it is necessary to pronounce on the correctness of this proposition because there is no doubt in this case that what was allotted to them was property that belonged to the joint family. In fact, as we had already extracted, the deed said that "the second parties hereby authorise the first party to sell any of the joint family properties" for the purpose of finding the money to pay Sanjeev Mallayya and Srinivasa Mallayya. Merely because the joint property was to be converted into money and such money was to be paid to them as and for their share it could not be said that it ceased to be joint family property and what was given to the two brothers as share was something which had nothing to do with the family properties.

7. In Nanjunda Setty V.State of Mysore, the facts were more or less similar as in the instant case before us. In that case the releaser expressed his desire to separate himself from the joint family in consideration of his being paid by the releasee a certain specified amount. The Mysore High Court held that the document amounted to partition. We are in entire agreement with the ratio of this case.

8. We are of opinion, therefore, that the document in question is a partition deed chargeable to duty under Article 45 of the Indian Stamp Act and the question referred to us is accordingly answered with costs."

12. The learned counsel for the petitioners would therefore submit that the issue is squarely covered by the ratio laid down by the Hon'ble Full Bench of this Court and in view of the same, it is not for the authorities to give a different interpretation to the document. The facts of the present case and the facts of the case which were the subject of reference before the Hon'ble Full Bench is almost similar and identical. Therefore, the ratio will apply to the present case in all fours.

13. This Court after going through the decision of the Hon'ble Full Bench, is in agreement with the learned counsel for the petitioner that the issue is squarely covered by the ratio laid down by the Hon'ble Full Bench as aforementioned. The Hon'ble Full Bench has clearly held that the co-sharer can exit from the coparcener's property after receipt of money and in such event, the deed cannot be construed as release deed but can only be construed as a partition deed. An elaborate reasoning has been given by the Hon'ble Full Bench as to why the deed must be construed as partition deed and not as a release deed.

14. As rightly contented by the learned counsel for the petitioners that the facts appear to be identical in the case which came up for reference before the Hon'ble Full Bench of this Court. Therefore, this Court is bound by the dicta pronounced by the Hon'ble Full Bench of this Court. Moreover, the authorities themselves were little doubtful about the conclusion of the deed as one of release deed or not, since the first respondent himself had observed in favour of the petitioners about the character of the deed, but, however proceeded to hold that it was a release deed ostensibly on the basis of the audit objection.

15. For the above said reasons, this Court has no hesitation in allowing the writ petition. The impugned orders passed in Pa.Mu.No.14246/P1/2008, dated 20.08.2010 and No.760/B1/2007, dated 14.12.2007 (signed on 23.01.2008), are hereby set aside and the writ petition is allowed as indicated above. No costs.

Sd/-
Assistant Registrar(CS -IV)

//True Copy//

Sub Assistant Registrar

gsk

To

1.The Inspector General of Registration,
Tamil Nadu, cum Chief Controlling Authority,
Chennai 600 028.

2.The District Registrar, (Administration),
Office of the District Registrar,
72, Chamiers Road,
Teynampet,
Chennai 600 018.

+ 1 cc to M/s. R.Thirugnanam, Advocate Sr.21342

+ 1 cc to Mr.the Government Pleader Sr.21425

W.P.No.28780 of 2010

MP(CO)
EU(19/04/2018)

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