BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 12.09.2018

CORAM:

THE HONOURABLE MRS.JUSTICE PUSHPA SATHYANARAYANA
AND
THE HONOURABLE MRS.JUSTICE T.KRISHNAVALLI

Writ Appeal (MD)No.900 of 2014
and
M.P(MD)No.1 of 2014

1.The District Registrar,
Registration Department,
Madurai South,
Madurai.

2.The Joint Registrar No.4,
Office of the Joint Registrar No.4,
V.M.R.Complex,
Bye Pass Road,
Vasanth Nagar, Madurai South,
Madurai.

3.The Inspector General of Registration,
Registration Department,
120, Santhome Highways,
Chennai 600 028. ... Appellants

Vs.

M.Shanmugasundaram,
President,
Sri Narayanaguru Industrial Training Institute,
Avaniapuram, Madurai, Madurai City ... Respondent

Writ Appeal filed under clause 15 of the Letters Patent against the order dated 15.04.2014 in W.P(MD)No.16357 of 2012.

Prayer in WP(MD). 16357/ 2012 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, calling for the records pertaining to the impugned order passed by the 3rd respondent in Pa.Mu.No.5520/P1/2012 dated 15.10.2012 by confirming the order passed by the 2nd Respondent in Na.Ka.No. 391/2011 dated

16.12.2011 and quash the same and direct the 1st respondent to register the transfer deed dated 18.01.2006.

For Appellants: Mr.M.Murugan,
Government Advocate.
For Respondent: Mr.N.Tamilmani

JUDGEMENT

PUSHPA SATHYANARAYANA,J

The appeal is preferred by the Registration Department aggrieved by the order dated 15.04.2014 made in W.P(MD)No.16357 of 2012.

2.The writ petitioner is one Tamil Nadu Sri Narayana Guru Industrial Training Institute, Avaniyapuram represented by its President. It is stated in the affidavit that the said Industrial Training Institute originally belonged to Tamil Nadu Sri Narayana Guru Trust which was registered on 24.04.1985. The said Industrial Training Institute was transferred to Tamil Nadu Illathu Pillaimar Sangam on 18.01.2006. It is further stated that Illathu Pillaimar Sangam itself is one of the trustees of the Sri Narayana Guru Trust. The said transfer deed was kept pending for registration. As the appellants treated it as sale deed and demanded payment of stamp duty, a representation was sent on 30.09.2011 contending that the said transfer would come under the purview of Article 62 (e) of the Indian Stamp Act, 1899 as it is a transfer of a trust property from one trustee to another trustee. It was further stated that the trust deed is very clear that Illathu Pillaimar Sangam is Managing Committee Trustee of Sri Narayana Guru Trust. Therefore, Sri Narayana Guru Industrial Training Institute owned by the trust was transferred to the Tamil Nadu Illathu Pillaimar Sangam. One K.V.Kanagambaram was the President of Tamil Nadu Illathu Pillaimar Sangam. However, the second appellant passed an order in Na.Ka.No.391/2011 on 16.12.2011 holding that a trust property should be transferred to another trust on payment of valid consideration. Therefore, it can only be treated as conveyance and hence, stamp duty has to be paid.

3.Aggrieved by the same, a revision was filed under Section 56(1) of the Act before the Inspector General of Registration, the third appellant herein. The third appellant, had held that the deed was a conveyance as it transfers title in favour of Tamil Nadu Illathu Pillaimar Sangam and the consideration is also mentioned as the existing debt of Rs.4,25,000/- and the arrears of salary for their employees to the tune of Rs.65,000/- and the said two amounts would be discharged by the purchaser which would be deemed as sale consideration. It was further held that for the applicability of Article 62(e), it should be the transfer of a trust property from one trust to another trust and the same should be only transferred in the name of trust and not in the individual's name. As in the present case, the transferee is shown as an individual, the order of the first appellant was confirmed by the third appellant. Aggrieved by the same, the petitioner has filed W.P(MD)No.16357 of 2012.

4.After considering the submissions made on either side, the learned single Judge, had passed the following order:-

> *"4.Without going into the claim of the petitioner and in order to avoid further litigation, this Court directs the first respondent to intimate the petitioner with regard to the correction to be made in the transfer deed, within a period of three weeks from the date of receipt of a copy of this order. Soon after the communication from the respondents, the petitioner is directed to present the transfer deed by making necessary correction, as required by the respondents, within a period of two weeks, thereafter. Consequently, the respondents are directed to register the transfer deed, if it is otherwise in order, within a period of two weeks from the date of the presentation of the transfer deed."*

5.Challenging the said order, the present writ appeal has been filed by the State.

6.The learned Government Advocate appearing on behalf of the appellants contended that it was never represented before the learned single Judge that if the corrections pointed out by the appellants and the same are carried out by the respondent/writ petitioner within three weeks, then the transfer deed would be registered. He would further contend that once the document is presented for registration, it cannot be returned for any kind of alteration or correction or modification and therefore, such representation could not have been even made before the learned single Judge. Hence, he prayed for the setting aside the order passed by the learned single Judge.

7.On the other hand, learned counsel for the respondent contended that they had not pointed out any mistake which should have been carried out by him and he was waiting for the appellants to point out the corrections. It is absolutely surprising that the writ petitioner had not preferred any appeal as it is not the duty of the appellants to point out the corrections or mistakes in the deed for rectification after it was presented for registration. As stated earlier, no modification or corrections can be done on a document which is presented for registration and is kept pending.

8.Be that as it may. Now, the question that has to be decided is as to whether the deed in question is sufficiently stamped and whether the same can be registered?

9.The deed in dispute is produced by the respondent which is styled as a title deed. A perusal of the said deed shows that the same is executed by the Managing Trustee of Tamil Nadu Sri Narayana Guru Trust as the first party in favour of the President of Tamil Nadu Illathu Pillaimar Sangam which is Managing Committee Trustee of Sri Narayana Gurut Trust, namely, Mr.K.V.Kanagambaram Pillai, as the second party.

10.It is stated in the said deed that Sri Narayana Guru Industrial Training Institute belonged to Tamil Nadu Narayana Guru Trust. The said Industrial Training Institute along with the schedule mentioned properties, movables and immovables were to be transferred to another trustee which is shown as second party, that is, Tamil Nadu Illathu Pillaimar Sangam. It is also stated that Sri Narayana Guru Industrial Training Institute had a debt to the tune of Rs.4,25,000/- and salary arrears for the employees to the tune of Rs.65,000/-. The said transfer has taken place only for the purpose of discharging the above said two amounts. Therefore, the appellants had treated the same as deed of conveyance and it is argued that the said deed is executed in favour of an individual and not a trust.

11.The learned counsel for the respondent pointed out that the Tamil Nadu Illathu Pillaimar Sangam itself is a Managing Committee Trustee of Sri Narayana Guru Trust and therefore, the Industrial Training Institute which belonged to the main trust namely, Sri Narayana Guru Trust is being transferred in favour of one of the trustees. Hence, the question of conveyance would not arise and the stamp duty is governed only as per Article 62 (e) of Indian Stamp Act, 1899.

12.It will be useful to refer Article 62 (e) which reads as follows:-

“62.Transfer whether with or without consideration,

(e) of any trust property from one trustee to another trustee or from a trustee to a beneficiary	(Thirty Rupees) or such smaller amount as may be chargeable under clauses (b) and (c) of this Article.

13.A close reading of the above provision makes it explicitly clear that if any trust property is transferred with or without consideration, from one trustee to another trustee or from a trustee to a beneficiary, only Rs.30/- chargeable.

14.When the recitals in the deed of transfer explicitly states that the transfer is from one trustee to another trustee as per the title deed, we have no hesitation to hold that the deed of transfer registered as Document No.P.11/2006, is not a conveyance but a deed of transfer covered by Article 62 (e) of the Indian Stamp Act, 1899. The third appellant was wrong in concluding that the said K.V.Kanagambaram Pillai, who is the purchaser has taken the property in his personal name whereas, it is stated that he is a representative on behalf of the Illathu Pillaimar Sangam.

15.A perusal of the trust deed dated 24.04.1985 shows that there are six classes of members in the trust. They are classified based on the grade from A to F. The Tamil Nadu Illathu Pillaimar Manila Sangam is a society registered under the Tamil Nadu Societies Registration Act, 1975. It is also deemed to be a A-Grade member. The General Body means and includes a body comprised of all the members of A,B,C,D,E and F-Grades as per Section 3 (a) of the trust deed. As the Illathu Pillaimar Sangam, a society, is a A-Grade member, constituting the board of trustees, we are of the opinion that the stamp duty applicable in the transfer of the title deed dated 18.01.2006 in favour of the trustee is only Article 62 (e) of the Indian Stamp Act, 1899.

16.In the result, the order passed by the learned single Judge is set aside and the writ appeal is disposed of. The orders impugned in the writ petition are also set aside. Consequently, the appellants are directed to register the transfer of title dated 18.01.2006 as Document No.P.11/2006, within a period of six weeks from the date of receipt of a copy of this order. No costs. Consequently, M.P(MD)No.1 of 2014 is closed.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

Sub Assistant Registrar(CS-I)

To

1. The District Registrar,
   Registration Department,
   Madurai South,
   Madurai.

2. The Joint Registrar No.4,
   Office of the Joint Registrar No.4,
   V.M.R.Complex,
   Bye Pass Road,
   Vasanth Nagar, Madurai South,
   Madurai.

3. The Inspector General of Registration,
   Registration Department,
   120, Santhome Highways,
   Chennai 600 028.

+ 1 CC TO MR.N.TAMILMANI , ADVOCATE IN SR NO.83932
+ 1 CC TO SPECIAL GOVERNMENT PLEADER, IN SR NO.84357

SMS
BU/PM/SAR-I :10.10.2018 : 6P/6C

Judgment made in
Writ Appeal (MD)No.900 of 2014
and
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12.09.2018