BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 07.09.2018

CORAM:

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

Writ Appeal (MD)No.72 of 2017
and
C.M.P(MD)No.633 of 2017

1. The Inspector General of Registration
   100, Santhome High Road,
   Foreshore Estate, Chennai 600 028.

2. The District Registrar (Adminstration),
   Registration Department,
   Palani.

3. The Sub Registrar,
   Nagalnaickenpatti Sub Registrar's Office,
   Dindigul. ... Appellants/Respondents

Vs.

D.Balan ... Respondent/Petitioner

Writ Appeal filed under clause 15 of the Letters Patent against the order dated 19.12.2016 in W.P(MD)No.17257 of 2013.

Prayer in WP(MD)No.17257/ 2013 :
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 culminating in the impugned order dated 10.05.2013 in proceedings Pa. Mu. No.32660/P1/2012 passed by the 1st respondent and quash the same as illegal, void abinitio without jurisdiction ultravires and direct the 3rd respondent to register the release deed No.133/2008 in Book in 1 by collecting the deficit stamp duty of Rs. 72,000/- and pass such other orders as this Honourable High Court.

For Appellants : Mr.M.Murugan,
Government Advocate.

For Respondent : Mr.K.S.Shankar Murali

JUDGEMENT

PUSHPA SATHYANARAYANA,J

Challenge in this writ appeal is to the order of the learned single Judge of this Court in W.P.(MD) No.17257 of 2013 dated 19.12.2016, wherein, the learned Single Judge quashed the proceedings of the first and second appellants and directed the third appellant to register the release deed No.133 of 2008 in Book No.1.

2.The brief facts of the respondent's care are as follows:-

A partnership firm under the name and style of 'Shan Theatre' was constituted by a deed dated 07.03.1988. The partners were M/s.I.Bahrudeen, I.Rafeeq and I.Abdul Salam. The aforesaid three also owned properties comprised in T.S.Nos.73/4 and 73/1A, Natham Road, Dindigul. Later, eight more persons were inducted into the said partnership firm as partners vide reconstitution partnership deed dated 27.03.2003. The property bearing No.27, Natham Road, Dindigul was shown as share capital of the said three persons. The said Shan Theatre was renamed as Vijay Theatre. The aforesaid three persons had relinquished their respective share in the partnership firm through a retirement deed dated 23.10.2008 and they received a sum of Rs.9,00,000/- towards their share in the firm. The said release deed was presented for registration before the Sub Registrar, Nagalnaickanpattai who is the third appellant herein who in his proceedings dated 08.11.2010 directed the outgoing partners to pay a sum of Rs.12,75,251/- (Rupees Twelve Lakhs Seventy Five Thousand Two Hundred and Fifty One only) towards deficit stamp duty on the basis of the market value of the properties situate at No.27, Natham Road, Dindigul. The Sub Registrar had treated the deed as a conveyance deed instead of release deed. Aggrieved by the said order, an appeal was preferred under Section 56(1) of the Indian Stamp Act, 1899 before the first appellant. The said appeal was allowed in part on 10.05.2013 by setting aside the proceedings of the third appellant, however, held that the value of the property has to be calculated as eight shares and the value of three shares out of eight shares has to be calculated for the purpose of levying stamp duty under Section 55-D of the Indian Stamp Act, 1899. However, the deficit stamp duty was calculated at Rs.6,37,476/-. Hence, W.P(MD)No.17457 of 2013 was filed by the respondent who is the Managing Partner of the Vijay Theatre.

3.After elaborate discussions, the writ petition was allowed by the learned single Judge quashing the orders passed by the first and second appellants. Aggrieved by the same, the present appeal is preferred by the Revenue.

4.The only question that arises for consideration is whether the document insofar as it releases the shares of the outgoing partners is a conveyance?

5.We are of the opinion that it is not and that part of it operated only as the release within the meaning of Article 55 of the Schedule I of the Indian Stamp Act, 1899. The scrutiny of the deed dated 23.10.2008 reveals that M/s.I.Bahrudeen, I.Rafeeq and I.Abdul Salam had relinquished their rights in the partnership firm, after receiving a sum of Rs.9 lakhs towards their share in the firm. They have only released their rights as retiring partners in the firm and by any stretch of imagination, it cannot be deemed to be a conveyance. Even under the Indian Partnership Act, 1932, all the properties vest with the partnership firm and that cannot be construed to be a property of the individual partners.

6.Article 55-D of Schedule I of the Indian Stamp Act will apply where the release and relinquishment of interest in the partnership is made in favour of the existing partners since the property belongs to the partnership firm.

7.Article 55-D deals with release of right in favour of a partner in favour of other persons relinquishing his or her, their rights over the immovable property when such release is between partners who are not family members. Hence, stamp duty can be levied on the value mentioned in the document and not on the market value. The appellants while passing the orders impugned in the writ petition failed to see the difference between the conveyance and release. In a release deed, there is no transfer of interest or right to another who had no preexisting right in it to any extent.

8.The difference between the conveyance and release has been discussed in a judgment of this Court reported in 1994-1-L.W.317 (T.T.Meenakshi Achi and others Vs.The District Registrar, Coimbatore and another) wherein this Court, after following the decision of the Hon'ble Supreme Court in Narayanappa Vs.Bhaskara Krishnappa reported in AIR 1966 SC 1300 held as follows:-

> "*....As per cl.(10) of S.2 of Stamp Act, conveyance includes a conveyance on sale and every instrument by which property, whether movable or immovable, is transferred inter vivos and which is not otherwise specifically provided for by Schedule I. As already pointed out, as regards the deed of the nature in question releasing the interests of some of the partners in favour of others who continue the partnership, there is no transfer inter vivos and there is no fresh right or interest being conveyed to others. This aspect is already pointed out, while referring to the aforesaid decision of the Supreme Court Art.23(b) is attracted only if the document is a conveyance as defined under S.2(10) of the Act. Therefore, we are of the view that the order passed by respondents 1 and 2 cannot be sustained.*"

9.The learned single Judge also relying on the above judgments has held that document in question is only a release deed and not a conveyance deed.

10.As stated earlier, the document in question is only a release deed and cannot be said to convey any immovable by a partner to another expressly or by necessary implication. The document dated 23.10.2008 is executed by three outgoing partners in favour of the existing partners records the fact that earlier partnership has come to an end and they have only given up their rights in the partnership business. There is no express reference to any immovable property in the document, though the document does mention about the properties. Therefore, it is clear that the deed of this nature cannot at all be construed to be a deed of conveyance. A deed of release can at the most be only an acknowledgement of title of the respondent to the immovable properties which was given to him by the deed of dissolution. Therefore, it cannot by any stretch of imagination, be construed as conveyance of the properties because the releasors have no right to the properties at the time of release deed dated 23.10.2008.

11.In that view of the matter, the document cannot be treated as a conveyance and stamp cannot be demanded on that basis. Therefore, the proceedings of the first and second appellants are wrong and the learned single has rightly set aside the same. Hence, we are in agreement with the view taken by the learned single Judge that the document is only a release deed and it is rightly stamped and it cannot be termed as a conveyance.

12.In the light of the above discussions, the writ appeal fails and the same is dismissed. No costs. Consequently, C.M.P(MD) No.633 of 2017 is closed.

Sd/-
Assistant Registrar (CO)

/True Copy/

Sub Assistant Registrar (CS-I)

To
1. The Inspector General of Registration,
   100, Santhome High Road,
   Foreshore Estate, Chennai 600 028.
2. The District Registrar (Adminstration),
   Registration Department, Palani.
3. The Sub Registrar,
   Nagalnaickenpatti Sub Registrar's Office,
   Dindigul.

+ 1 CC TO Mr.SHANKAR MURALI, ADVOCATE IN SR No. 83130
+ 1 CC TO SPECIAL GOVERNMENT PLEADER IN SR No. 83656

SMS
TE/RP/SAR-1 : 12/09/2018 : 4P/6C

Judgment made in
Writ Appeal (MD)No.72 of 2017 and
C.M.P(MD)No.633 of 2017
07.09.2018