

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	28/08/2019
Delivered on	16/09/2019

CORAM:

THE HONOURABLE MR. JUSTICE K.KALYANASUNDARAM

W.P.Nos.19978 & 19979 of 2010 &
connected miscellaneous petitions

Muthayammal Educational &
Charitable Trust,
Represented by its Managing Trustee,
R.Muthuvel,
D.No.64-No.5, Building Society Road,
VOC Nagar, Rasipuram,
Namakkal District. ... Petitioner in
W.P.No.19978 of 2010

Muthayammal Educational Trust &
Research Foundation,
Represented by its Managing Trustee,
K.Gunasekaran,
5/329A, Vinayagar Koil Street,
State Bank of Colony,
Five Road, Salem. ... Petitioner in
W.P.No.19979 of 2010

Vs

1.The Inspector General of Registration
Registration Department,
Santhome, Chennai - 600 004.

2.The District Registrar,
Namakkal District,
Namakkal.

3.The Sub Registrar,
Rasipuram,
Namakkal District.

... Respondents in
both Writ Petitions

Prayer in both Writ Petitions:- These Writ Petitions are
filed under Article 226 of the Constitution of India,
seeking for a Writ of Certiorarified Mandamus, to call
for the records comprised in Na.Ka.No.365/2010, dated
31.05.2010, on the file of the third respondent, quash
the same and consequently direct the third respondent to
release the document in Nos.P49 & 54 of 2010 (Book I) on
the file of the third respondent.

For Petitioner in
both W.Ps'

: Mr.V.Ayyadurai
Senior Counsel
For Mr.R.Bharanidharan

For Respondents in
both W.Ps'

: Mr.P.P.Purushothaman
Government Advocate

C O M M O N O R D E R

Muthayammal Educational & Charitable Trust and Muthayammal Educational Trust & Research Foundation have filed these Writ Petitions, seeking to quash the order of the Sub Registrar, Rasipuram, dated 31.05.2010 in and by which, the civil Court Decree was treated as conveyance and the documents were impounded for want of stamp duty and consequently, direct the third respondent to release the documents in Nos.P.49 & 54 of 2010, respectively.

2. The case of the petitioners is that one Muthayammal Educational Trust was administering various educational institutions at Kakaveri Village in Rasipuram Taluk, Namakkal District, viz., Muthayammal ITI, Muthayammal Polytechnic, Muthayammal Arts and Science College and Muthayammal Engineering College. Since the said Trust was not able to administer Muthayammal Arts and Science College and Muthayammal Engineering College, it decided to gift them to the petitioners' Trusts, which were also formed for the very same purpose and by a Resolution, dated 05.09.2009, gifted the lands and buildings to the petitioners' Trusts and the same were accepted by them, by a Resolution, dated 14.01.2010. Thereafter, the petitioners' Trusts have been administering the Muthayammal Arts and Science College and Muthayammal Engineering College respectively.

3. The petitioners would allege that the Trustees of Muthayammal Educational Trust, who are also Trustees of the petitioners' Trusts tried to interfere with the administration of the institutions and therefore, two suits in O.S.Nos.10 & 11 of 2010 were filed before the Principal District Judge, Namakkal for declaration, declaring that the properties belong to the petitioners Trusts and for permanent injunction. It is further stated that the petitioners valued the suit at Rs.4,38,80,200/- and Rs.4,69,09,700/- respectively and the suits were decreed on 22.02.2010 and they presented them before the

third respondent for the purpose of registration, after paying the fees at the rate of 1% of the suit value as per Section 78 of the Registration Act. The third respondent objected to the registration of the documents on the ground that the Decrees have to be treated as conveyance and stamp duty has to be paid under Article 23 of the Indian Stamp Act.

4. According to the petitioners, they made representations to the first respondent, dated 27.05.2010, for release of documents. Since no action was taken, Writ Petition Nos.11825 & 11826 of 2010 came to be filed for a direction to the first respondent to direct the third respondent to release the pending documents. However, during the pendency of the Writ Petitions, the impugned orders were passed, hence the earlier two Writ Petitions were withdrawn.

5. It is the case of the petitioners that the Civil Court Decree is not a compulsorily registrable document and the respondents have no authority to go behind the recitals and terms of the document. The petitioners also rely on the circular of the first respondent, dated 26.10.2002 in support of their case.

6. The third respondent has filed counter affidavits, disputing the case of the petitioners. It is stated that on 22.04.2010, the petitioners presented the civil Court Decrees and they were impounded under Section 33 of the Indian Stamp Act, since it not duly stamped as per Article 23 of Schedule-I to the Indian Stamp Act. The impounded documents were referred to the Registrar of the District under Section 40(b) read with 2(9) of the Indian Stamp Act to decide the nature of the document in question and to collect the deficit stamp duty and penalty thereon. It is the case of the third respondent that once a Trust intends to gift its properties to another Trust having similar objects, the same should be done by a registered deed alone under Section 123 of Transfer of Property Act. Further, the suit is collusive and it was filed to evade the stamp duty and if the documents are registered, it would amount to heavy loss of stamp duty to the Government.

7. It is further stated in the counter that the proper remedy for the petitioners is to offer explanation to the show-cause notice to be issued by the Registrar of the District under Section 40(b) of the Indian Stamp Act and if they are aggrieved over the final order, they have a statutory remedy of filing a revision under Section 56 (1) of the Indian Stamp Act and the impugned orders are nothing, but information to the petitioners with regard to the nature of the documents in question decided by the

second respondent and it was only an internal clarification and hence, the present Writ Petitions are premature in nature and liable to be dismissed.

8. Mr.V.Ayyadurai, learned Senior Counsel appearing on behalf of the petitioners would argue that the documents presented for registration fall under Section 17(2)(vi) of the Registration Act and they are not compulsorily registrable documents. According to the learned Senior Counsel, the civil Court Decree is not a conveyance and therefore, it is sufficient to pay registration fee at the rate of 1% on the value mentioned in the suit. He further added that the civil Court Decree by itself does not create any right in the immovable property and the pre existing right of the plaintiffs was declared by means of the Civil Court Decree and therefore, payment of registration fee under Section 78 of the Registration Act would be sufficient as the documents do not fall within the mischief of Article 23 of Schedule I of the Indian Stamp Act and therefore, the respondents are duty bound to register civil Court Decrees, dated 22.10.2010 which were presented for registration before the third respondent.

9. The following decisions have been relied upon by the learned Senior Counsel in support of his contentions:-

(i) Som Dev v. Rati Ram [2006 (10) SCC 788]

" 7. On an advertence to the circumstances leading to that decree, in the context of the pleadings in that suit, we are not in a position to agree with counsel for the contesting defendants that the decree was a compromise decree. It was really a decree on admission and the admission was of the pre-existing right set up by the plaintiffs as created by Sheo Ram. The decree by itself did not create any right in immovable property. It only recognised the right set up by the plaintiffs in that suit in respect of the property involved in that suit. It is one thing to say that that decree is vitiated by collusion or by fraud or some such vitiating element but it is quite another thing to say that such a decree could be excluded from consideration on the ground of want of registration.

8. We shall now advert to Section 17 of the Registration Act, 1908. Sub-section (1) specifies what are the documents that are to be

registered. An instrument of gift of immovable property, an instrument which purports to create, declare, assign, limit or extinguish, whether in present or in future any right, title or interest in immovable property, the value of which exceeds Rs 100, any instrument which acknowledges the receipt or payment of consideration on account of the creation, declaration, assignment, limitation or extinction of any right, title or interest, leases of immovable property from year to year or for a term exceeding one year and instruments transferring or assigning any decree or order of court or any award where such decree or order or award operates to create, declare, assign, limit or extinguish any right, title or interest in immovable property, the value of which exceeds Rs 100. Sub-section (1-A) provides that agreements for sale to be used to claim protection of Section 53-A of the Transfer of Property Act entered into after 24-9-2001 require registration. Sub-section (2) excludes from the operation of clauses (b) and (c) of sub-section (1) of Section 17, the various transactions described therein under various clauses. We are concerned with clause (vi) therein. We shall set down that provision for convenience:

"17. (2)(vi) any decree or order of a court except a decree or order expressed to be made on a compromise and comprising immovable property other than that which is the subject-matter of the suit or proceeding;"

23. Going by the history of the legislation, the decisions of the Privy Council and of the High Courts earlier rendered, we are satisfied that the decree in Civil Suit No. 398 of 1980 is admissible in evidence to establish that there had been a relinquishment of his interest by Sheo Ram in favour of the present plaintiff and his brother and that they were entitled to possession of half-share in the property. Firstly, the decree did not create any title for the first time in the present plaintiff and his brother. Secondly, as a decree it did not require registration in view of clause (vi) of Section 17(2) of the Registration Act, though it was a decree based on admission. We have noticed that there is no

challenge to that decree either on the ground that it was fraudulent or vitiated by collusion or that it was passed by a court which had no jurisdiction to pass it. It is not as if a litigant cannot admit a true claim and he has necessarily to controvert whatever has been stated in a plaint or deny a transaction set up in the plaint even if, as a matter of fact, such a transaction had gone through. Therefore, merely because a decree is based on admission, it would not mean that the decree is vitiated by collusion. Though, generally there is reluctance on the part of the litigants to come forward with the truth in a court of law, we cannot accede to the argument that they are not entitled to admit something that is true while they enter their plea. We are, therefore, satisfied that there is no merit in the challenge of counsel for the contesting defendants to the decree in Civil Suit No. 398 of 1980.

24. The courts below have held that as a family arrangement the relinquishment had followed and on that basis the decree in the earlier suit recognising that arrangement did not require registration. In the face of that, the High Court was justified in answering the substantial question of law formulated by it in favour of the plaintiff and against the contesting defendants."

(ii) Municipal Corporation of Delhi vs. Pramod Kumar Gupta [1991 (1) SCC 633]

"5. An examination of the relevant provisions of Order XXI of the CPC will show that the title to the property put on auction sale passes under the law when the sale is held. The owners and certain other interested persons are afforded opportunity under the Code to make a prayer for setting aside the sale on enumerated grounds, and after all such matters are disposed of without disturbing the sale, the sale is confirmed Under Rule 92. The relevant part of Rule 92 reads as follows:

92. Sale when to become absolute or be set aside.-(1) Where no application is made Under Rule 89, Rule 90 or Rule 91, or where such application is made and disallowed, the Court shall make an order confirming the sale, and thereupon

the sale become absolute.

The stage for issuing a Certificate of sale arises only thereafter, and Rule 94 states:

94. Certificate to purchaser.-Where a sale of immovable property has become absolute, the Court shall grant a certificate specifying the property sold and the name of the person who at the time of sale is declared to be the purchaser. Such certificate shall bear date the day on which the sale became absolute.

It is manifest that the title passes under the auction sale by force of law and the transfer becomes final when an order Under Rule 92 confirming it is made. By the Certificate issued Under Rule 94, the Court is formally declaring the effect of the same and is not extinguishing or creating title. The object of issuance of such a Certificate is to avoid any controversy with respect to the identity of the property sold, and of the purchaser thereof as also the date when the sale becomes absolute. The use of past tense in the rule stating that the sale "became" absolute, is consistent with this interpretation. The Certificate, therefore, cannot be termed to be an instrument of sale so as to attract Section 147 of the Delhi Municipal Corporation Act. The appeal is accordingly dismissed with costs."

(iii) The Chief Controlling Revenue Authority, Board of Revenue, Madras vs. K. Manjunatha Rai [AIR 1977 Mad 10 (FB)]

"15. It is true that what name the parties choose to give to an instrument cannot be decisive, or even indicative of the true nature of the instrument for purpose of stamp duty. But this rule does not mean that the revenue is empowered to go behind the recitals and terms of the document before it and hold that the object of the transaction was something different from what the document discloses and therefore the document should be deemed to be that which it is not. We do not think that the Revenue authorities can ignore the terms of the document which is before them for adjudication and base their decision on the terms of some other collateral instrument. At

all events, even according to the Board, the purchase document dated 14-3-1947, was silent as to how and where the purchaser formed the consideration which he passed to the vendor. In this situation, the release deed dated 29-4-1970 was the only instrument to which the Board should have directed its attention. It was not open to the Board to question the recitals in the release deed in the absence of any materials to the contrary. The same remark must apply to the Board's observation that the assignment by the Government of the adjacent property in favour of the respondent did not show that it was obtained for the benefit of the respondent and his wife jointly. We do not also subscribe to the view that the respondent's wife was merely in the position of a lender of moneys with reference to a portion of the consideration that went in for purchase of the property. We hold that the respondent's wife had acquired a joint interest along with him in the property; and the appropriate method by which the respondent could renounce his claim over the interest of his wife was by execution in her favour of a release as had been done under the document dated 29-4-1970."

(iv) Board of Revenue, Madras Chief Controlling Revenue Authority, Madras vs. N. Narasimhan and Ors. [AIR 1961 Mad 504 (FB)]

"32. There can be no legal impediment to a party selecting and adopting a particular form of transaction to minimise the expenses of stamp duty. The Revenue cannot say that the object of the transaction was to achieve a purpose not disclosed in the document and that therefore the document should be deemed to be that which it is not. In the words of Viscount Sumner in *Levene v Inland Revenue Commrs.*, (1928) 13 Tax Cas 486,

"It is trite law that His Majesty's subjects are free if they can, to make their own arrangements, so that their cases may fall outside the scope of the taxing Act. They incur no legal penalties and, strictly speaking, no moral censure, if having considered the lines drawn by the legislature of 'the imposition of taxes, they make it their business to walk outside them.'"

33. The true scope of the rule of substance prevailing over the form with reference to a document chargeable to stamp duty is that the recitals therein should not be lost sight of merely because the parties gave a particular description of the nature of the document."

(v) S. Manjunathan & others vs. The Joint Registrar and others [2007 (1) CTC 552 (DB)]

"19. It is true that the document that came up for scrutiny before the Full Bench in The Board of Revenue, The Chief Controlling Revenue Authority v. V.M. Murugesu Mudaliar of Gudiyatham, 1955 (68) LW 534, was between partners of a firm. The document that came up for consideration before the Full Bench in The Chief Controlling Revenue Authority v. Rustom Nusserwanji Patel, 1967 (80) LW 598, was between brothers and the document that came up for scrutiny before the Full Bench in The Chief Controlling Revenue Authority, Board of Revenue, Madras v. Rm.L.Rm.L. Lakshmanan Chettiar, 1970 (83) LW 205 was between mother and son. But this fact did not really weigh with the learned Judges who constituted those 3 Full Bench references. As a matter of fact, in the earliest Full Bench decision, The Board of Revenue, The Chief Controlling Revenue Authority v. V.M. Murugesu Mudaliar of Gudiyatham, 1955 (68) LW 534, a contention was raised by the revenue, that there is a distinction between a document executed among the members of a coparcenary and a document executed among co-owners. The said contention was repelled by the Full bench, in the following words:

"The learned Government Pleader was prepared to concede that a document under which one Hindu co-parcener purported to give up his rights to the family property in favour of the remaining co-parceners would not be a deed of conveyance, but a deed of release. He did this apparently because of a decision of a Full Bench of this Court in Reference under Stamp Act, Section 46(2). In that case the document was one under which a Hindu

son executed in favour of his father, as representing the interest of the other members of the family an instrument by which he relinquished his rights over the general property of the family in consideration of certain lands being allotted to him for life, and certain debts incurred by him being paid. It was held that the instrument was a release, which should be stamped, as such. The learned Judges observed that it was a deed by which one co-owner renounced his claim for partition against the family property in consideration of a certain income to be enjoyed by him for his life out of certain lands over which he has no power of alienation. We can see no difference in principle between such a document as between members of a coparcenary and the document in question, which is a document between co-owners."

(vi) Ramchandra Vishwanath Ghaisas and Ors. vs. The State of Maharashtra [AIR 1981 Bom 164].

"14. It is true that Section 33 of the Indian Stamp Act enables the Officers mentioned therein to impound the document not duly stamped. That section so far as it is material for our purposes reads as under :--

"33 (1). Every person having by law or consent of parties authority to receive evidence, and every person in charge of a public officer, except an officer of police, before whom any instrument, chargeable, in his opinion, with duty, is produced or comes in the performance of his functions, shall, if it appears to him that such instrument is not duly stamped, impound the same."

The expression "duly stamped" used in the said section would obviously mean so far as the conveyance or the gift deed is concerned, as the law stood at the time when the gift deed in the instant case was executed, stamped with the duty assessed on the basis of the valuation or

the amount set forth in the document. No provision in the Indian Stamp Act or the Bombay Stamp Act empowering the Sub-Registrar to make enquiry into the market value of the property and to refuse to register the document unless a document was stamped on the basis of the market value has been pointed out to me. Therefore, it will have to be held that there was no legal obligation or duty on the part of the Sub-Registrar to make enquiry regarding the market value of the property and to refuse to register the document on the ground that it was not stamped on the basis of the market value. No doubt, if the gift deed is not stamped with duty on the basis of the market value after coming into force of the Bombay Stamp Act, 1958, and the value of the property is not correctly set forth in the document, the persons concerned would render themselves liable for being dealt with under Section 62 of the Bombay Stamp Act. This appeal, therefore, must be allowed on the short ground that the defendant Sub-Registrar was under no legal obligation or duty to make enquiries regarding the market value of the property. In the view, I have taken it is not necessary to record my findings on the other issues."

10. On the other hand, Mr.P.P.Purushothaman, learned Government Advocate would contend that the Civil Suits are nothing but, a collusive action to evade stamp duty and the Civil Court Decrees create a new right in favour of the petitioners and hence, they are liable to pay stamp duty, treating them as a conveyance. It is further contended that the Circular issued by the first respondent, dated 26.10.2002 applies only to the Decree relating to partition and not for other suits, since the original Decree is obtained on non-judicial stamp paper, treating it as a partition.

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

12. In the case on hand, it is not in dispute that the writ petitioners are Educational Trust and they have been running educational institutions. It is equally not disputed that the Trustees of the petitioners' Trusts are the Trustees in Muthayammal Educational Trust, which gifted its properties in favour of the petitioners, by a Resolution, dated 05.09.2009. It is the case of the petitioners that pursuant to the Resolution, dated 05.09.2009, the management and administration of

Muthayammal Arts and Science and College and Muthayammal Engineering College were transferred in favour of the petitioners respectively, however, subsequently dispute arose between the Trustees of the donor Trust and the petitioners' Trusts.

13. It is seen that Civil Suits in O.S.Nos.10 & 11 of 2010 were instituted by the petitioners for declaration of their right over the property and for permanent injunction. It is further seen that the petitioners have valued the suit properties for more than Rs.4 Crores in each suit and they paid the Court fee. Eventually, the suits were decreed on 22.02.2010, in view of the compromise reached between the parties.

14. Chapter 3 of the Registration Act deals with registrable documents. Section 17 (1) of Registration Act, describes the documents which are mandatory registrable. Section 17(2)(vi) of Registration Act says that any Decree or Order of a Court, except a Decree or order expressed to be made on a compromise and comprising the immovable property other than that which is subject matter of the suit of the proceeding, is not compulsorily registrable under Section 17 (1) of Registration Act. In the instant case, the petitioners presented the Decrees made in O.S.Nos.10 & 11 of 2010 for registration. Reading of the above provisions make it clear that a Decree is not a compulsorily registrable document.

15. It is the case of the petitioners that the civil Court Decree only recognizes the pre-existing right of the parties and they did not create any right in the immovable property and their pre-existing right have been declared by means of civil Court Decree. The Circular, dated 26.10.2002, clarifies the position that the civil Court Decree need not suffer stamp duty and it could be registered on payment of registration fee at the rate of 1% of the suit value under Section 78 of the Registration Act. When there is no distinction in the Circular, it cannot be interpreted in such a way that it would apply only the decree obtained in a partition suit. Hence, this Court finds no force in the contention of the learned Government Advocate.

16. The Full Bench of this Court in AIR 1977 Mad 10 (supra), has held that the Revenue is not empowered to go beyond the recitals and terms of the documents presented before it, on the ground that the object of transaction was something different from that of the documents. In AIR 1981 164, the Full Bench of Bombay High Court while considering the power of the Authorities under Section 33 of the Stamp Act to impound the document for not duly

stamped, held that no provision in the Indian Stamp Act or the Bombay Stamp Act empowering the Sub Registrars to make enquiry into the market value of the property and to refuse registration on the ground of failure to pay stamp duty of the market value of the property.

17. The Full Bench of this Court in AIR 1961 Mad 504 (supra), has held that there is no legal impediment to a party selecting and adopting a particular form of transaction to minimize the expenses of the stamp duty.

18. As rightly argued by the learned Senior Counsel for the petitioners that the civil Court Decrees only recognize the pre-existing rights of the parties and hence, they cannot be termed as conveyance under Section 2(10) of the Indian Stamp Act. The dictum laid down in the above decisions would reveal that the third respondent has no authority to refuse to register the documents on the sole ground of non-payment of stamp duty under Article 23 of Schedule I of the Indian Stamp Act.

19. When an identical issue came up for consideration, the learned Single Judge in the unreported judgment in W.P.Nos.6737 & 7281 of 2010, dated 02.11.2010, observed that the respondents cannot doubt the genuineness and veracity of the documents once a final decree is validly passed by a competent Civil Court. Relevant paras are extracted hereunder:-

"9. It is an admitted fact that the final decree in pursuant to the compromise has been passed, engrossed on the stamp paper and after paying the requisite stamp duty, the decree was presented for registration. The impugned order proceeds on the footing that the document in question has been referred to the first respondent to ascertain the nature of the document. The steps taken by the respondents would indicate that they are mainly concerned with the evasion of stamp duty on the part of the respective writ petitioners by virtue of entering into compromise decree with the defendants. It is the stand taken by the respondents that they are doing so in order to prevent the revenue loss to the Government. Though attempts made by the respondents appear to be genuine under the existing provisions of the Indian Stamp Act, the respondents cannot doubt the genuineness and veracity of the document, once a final decree is validly passed by a court of competent jurisdiction.

10. In such view of the matter, the respective writ petitioners are entitled to

succeed and the writ petitions stand allowed. The second respondent is directed to consider and register the final decree passed in O.S.Nos.503 of 2008 and 499 of 2008 respectively, if the documents are otherwise in order, and register the same and return it to the respective writ petitioners. The 2nd respondent shall do that exercise within a period of three weeks from the date of receipt of a copy of this order. However, there will be no order as to costs. The connected miscellaneous petitions are closed."

20. Keeping in view the principles laid down in the above decisions, in the considered opinion of this Court, the petitioners are entitled to succeed in these Writ Petitions. In such view of the matter, both the Writ Petitions are allowed. There is no order as to costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

r n s
To

1.The Inspector General of Registration
Registration Department,
Santhome, Chennai - 600 004.

2.The District Registrar,
Namakkal District,
Namakkal.

3.The Sub Registrar,
Rasipuram,
Namakkal District.

+2ccs to Mr.R.Karthikeyan , Advocate SR.No. 79220,79221
+1 cc to Government Pleader Sr.No. 80213

W.P.Nos.19978 & 19979 of 2010 &
connected miscellaneous petitions

A.SK(04/11/2019)