IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED :19.06.2019
CORAM
THE HON'BLE MR.JUSTICE P.D.AUDIKESAVALU
W.P. No. 6473 of 2018

1. M.J. Omkumar

2. M.J. Govindakumar

... Petitioners

-vs-

1. The District Revenue Officer (Stamp),
Singaravelan Maligai,
Chennai - 600 001.

2. The Sub Registrar,
Tiruttani. ... Respondents

Prayer:- Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the entire records connected with the impugned order passed by the Second Respondent in Na. Ka. No. 138/Sapa/2016 dated 04.04.2016 and in Na. Ka. No. 138/Sapa/2016 dated 07.09.2016 and quash the same and direct the Second Respondent to remove the endorsement made in the encumbrance certificate in the light of the order reported in [(2013) 3 LW 85] in the case of R. Sivakumar -vs- Sub Registrar (Registration Department), Pattukkottai, Tanjore District.

For Petitioner : Mr. S.N. Ravichandran

For Respondents: Mr. P.P. Purushothaman
Government Advocate

O R D E R

The Petitioners, viz., M.J. Omkumar and M.J. Govindakumar are the sons of M. Jayaraman who executed a Settlement Deed dated 20.08.2007 registered as Document No. 3264 of 2008 in the office of the Sub-Registrar, Tiruttani, in their favour in respect of the properties situated at Vanganoor Village, Pallipat Taluk, Tiruvallur District and Karthikeyapuram Village, Tiruttani Block, Tiruvallur District. According to the Petitioner, their father, viz., M. Jayaraman, subsequently died on 02.10.2007. Long thereafter, a notice Na. Ka. No. 138/Saaba/2016 dated 04.04.2016 was issued by the Second Respondent to the said M. Jayaraman, claiming that there was deficit stamp duty of Rs.74,800/- and deficit registration charges of Rs.8,600/- aggregating to Rs.83,400/- for the aforesaid Settlement Deed executed by him and he was called upon to pay the said amount. The First Petitioner claims to have made a representation dated 17.06.2016 against the said notice to the First Respondent, but did not receive any response for the same. In the meanwhile, another notice Na. Ka. No. 138/Saaba/2016 dated 07.09.2016 was received from the Second Respondent reiterating the demand for the aforesaid deficit in stamp duty and registration charges as cognizable under-valuation in terms of Section 47-A(3) of the Indian Stamp Act, 1899, for which the Registering Authority had a charge over the property, apart from effecting the recovery of the same as arrears of land revenue. The Petitioners have challenged the aforesaid notices in Na. Ka. No. 138/Saaba/2016 dated 04.04.2016 and 07.09.2016 issued by the Second Respondent, in this Writ Petition and has sought for consequential direction to remove the endorsement made in the encumbrance certificate in the light of the decision of this Court in R. Sivakumar -vs- Sub Registrar (Registration Department) [(2017) 3 LW 85].

2. The Second Respondent has filed Counter Affidavit stating that the maximum stamp duty of Rs.10,000/- paid for the aforesaid Settlement Deed executed by the said M. Jayaraman in favour of the Petitioners as per Article 58(a)(i) of Schedule-I of the Indian Stamp Act, 1899, was applicable only to family members, but the Petitioners having been born through the second wife of the said M. Jayaraman cannot be construed as family members as per explanation to the said Article and the deficit stamp duty treating that instrument as falling under Article 58 (a)(ii), was rightly demanded for which no exception could be taken.

3. Heard Mr. N. Ravichandran, Learned Counsel for the Petitioner and Mr. P.P. Purushothaman, Learned Government Advocate appearing on behalf of the Respondents and perused the materials placed on record, apart from the pleadings of the parties.

4. The contention of the Second Respondent in the Counter Affidavit that the Petitioners cannot claim to be members of the 'family' of the said M. Jayaraman merely because they were born through second wife, which is a void marriage, cannot be countenanced. Section 16 of Hindu Marriage Act, 1955, makes the legal position abundantly clear that the children born out of 'void' marriage are 'legitimate' as pointed out by the Hon'ble Supreme Court of India in Rameshwari Devi -vs- State of Bihar [(2000) 2 SCC 431]. In this context, reference may be made to Section 16 of the Hindu Marriage Act, 1955, which is extracted below:-

"16. Legitimacy of children of void and voidable marriages:-

(1) Notwithstanding that a marriage is null and void under Section 11, any child of such marriage who would have been legitimate if the marriage had been valid, shall be legitimate, whether such a child is born before or after the commencement of the Marriage Laws (Amendment) Act, 1976, and whether or not a decree of nullity is granted in respect of the marriage under this Act and whether or not the marriage is held to be void otherwise than on a petition under this Act.

(2) Where a decree of nullity is granted in respect of a voidable marriage under Section 12, any child begotten or conceived before the decree is made, who would have been the legitimate child of the parties to the marriage if at the date of the decree it had been dissolved instead of being annulled, shall be deemed to be their legitimate child notwithstanding the decree of nullity. (3) Nothing contained in sub-section (1) or sub-section (2) shall be construed as conferring upon any child of a marriage which is null and void or which is annulled by a decree of nullity under Section 12, any rights in or to the property of any person, other than the parents, in any case, where, but for the passing of this Act, such child would have been incapable of possessing or acquiring any such rights by reason of his not being the legitimate child of his parents."

That apart, explanation to Article 58(a)(i) of the Indian Stamp Act, 1899, reads as follows:-

"For the purpose of this Article, the word "family" means father, mother, husband, wife, son, daughter. In the case of any one whose personal law permits adoption, "father" shall include an adoptive father, "mother" an adoptive mother, "son" an adopted son and "daughter" an adopted daughter."

The said 'explanation' nowhere excludes the children born through second wife of the executant of the document from being treated as his family member. In that view of the matter, the basis on which the Second Respondent has claimed that the document executed by the said M. Jayaraman in favour of the Petitioners is undervalued cannot be sustained.

5. The Learned Counsel for the Petitioner relying on the decision of this Court in R. Sivakumar -vs- Sub Registrar (Registration Department) [(2017) 3 LW 85], contended that the demand for deficit stamp duty having been made after a period of three years from the date of registration of the instrument could not be made under the second proviso to Section 33-A of

the Indian Stamp Act, 1899. On a perusal of the facts of the case, it is noticed that the document had been registered on 22.08.2007 and the demand for deficit stamp duty has been raised for the first time by notice Na. Ka. No. 138/Saaba/2016 dated 04.04.2016, which is obviously beyond the aforesaid stipulated time limit of three years and the same cannot be sustained for that reason also.

6. In the aforesaid circumstances, impugned notices in Na. Ka. No. 138/Sapa/2016 dated 04.04.2016 and 07.09.2016 issued by the Second Respondent, calling upon the deceased father of the Petitioners to pay deficit amount towards stamp duty and registration charges, are set aside and as a consequence thereof, the Registering Authority cannot claim any charge over the property invoking Section 47-A(3) of the Indian Stamp Act, 1899, or seek recovery of the amount demanded as arrear of land revenue under that enactment.

7. In fine, the Writ Petition is allowed on the aforesaid terms. No costs.

Sd/-
Assistant Registrar(Insp.Cell)

//True Copy//

Sub Assistant Registrar

To

1. The District Revenue Officer (Stamp),
   Singaravelan Maligai,
   Chennai - 600 001.

2. The Sub Registrar,
   Tiruttani.

+1cc to Mr. S.N. Ravichandran, Advocate sr.50874
+1cc to Government Pleader sr.50608

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