IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.01.2019

CORAM

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

W.P.No.4699 of 2011

Vijayan Rajes,
S/o. Late MSP Rajes,
MSP Plantations,
Cauvery Peak Post,
Yercaud -636 602,
Salem District. ... Petitioner

Vs.

1.The Inspector General of Registration,
120, Santhome High Road,
R.A.Puram,
Chennai - 28.

2.The District Registrar,
Salem East Registration Office,
27-C, Ramasundaram Street,
Salem - 1.

3.Gowri Pandiyanathan

4.Mohan Rajes ... Respondents

Prayer:Petition filed under Article 226 of the Constitution of India to issue a Writ of Mandamus directing the respondents 1 and 2 to take the necessary action in terms of Section 33 A of the Indian Stamp Act 1899 hereinafter referred to as Act, in regard to the documents bearing in No.3797, 3798 and 3799 of 2005 registered in the office of District Registrar, Salem East for recovery of insufficient stamp duty paid on the said instruments pursuant to the complaint of the petitioner dated 26.08.2006 and the proceedings No.7312/A1/2006 dated 11.01.2008 from the respondents 3 and 4 herein.

For Petitioner : Mr.S.Kalayanaraman

For Respondents: Mr.P.P.Purushothaman
Government Advocate for R.1 & R.2

:M/s.S.Sethuraman RR3 & 4

O R D E R

This writ petition has been filed for issuance of a Writ of Mandamus directing the respondents 1 and 2 to take necessary action in terms of Section 33 A of the Indian Stamp Act 1899, hereinafter referred to as " the Act", with regard to the documents bearing Nos.3797, 3798 and 3799 of 2005 registered in the office of District Registrar, Salem East, for recovery of insufficient stamp duty paid on the said instruments pursuant to the complaint of the petitioner dated 26.08.2006 and the proceedings No.7312/A1/2006 dated 11.01.2008 from the respondents 3 and 4.

2. Heard the learned counsel appearing for the petitioner and the learned Government Advocate appearing for the respondents 1 and 2.

3. The learned counsel for the petitioner would submit that the petitioner's father died on 25.12.2000. It is the case of the petitioner that the dispute arises between the petitioner and his brothers, Sister and Mother, in relation to the properties. The petitioner's father was filed a suit in O.S.No.663 of 1993, which is pending on the file of the Civil Court, Salem.

4. Be that as it may, on 12.12.2005 ,the petitioner's mother was executed two Gift Settlement Deeds in favour of the petitioner's brother Mohan Rajes and his Sister Gowri Pandyanathan in respect of the same settlement deed documents registration Nos.3797 and 3798 of 2005 and another gift settlement deed dated 21.12.2005, was executed by the petitioner's sister in favour of the petitioner's mother in respect of the same settlement deed document registration No.3799 of 2005 both the documents were registered in the Office of the District Registrar, Salem East.

5. According to the learned counsel for the petitioner, the aforesaid execution of gift settlement deeds were challenged by the petitioner and it is only on nature of exchanging the properties among themselves. The only intention of the respondents 3 and 4 are only to avoid payment of Stamp duty under the provisions of the Tamil Nadu Stamp Manual Act.

6. The petitioner has made a complaint to the Inspector General of Registration, Chennai, on 26.08.2006 and the same was acknowledged on 30.08.2006. Based on the complaint without any enquiry, the District Registrar, Salem East was issued a notice to the petitioner on 11.01.2008. The petitioner attended the enquiry and submitted the details by written submissions on 28.01.2009.

7. The fact that the said gift deed was executed by the aforesaid respondents 3 and 4 are only in the nature of exchange of deeds. Therefore, the respondents 3 and 4 were evaded from the payment of Stamp Duty and they registered the documents as a gift deed. The second respondent was issued a show cause notice to the respondents 3 and 4, why the said stamp duty could not be recovered. Thereafter, the petitioner had sent a communication to the second respondent to take action and recover the Stamp duty and registration charges from the respondents 3 and 4.

8. Even though an explanation was submitted, there is no order has been passed. The petitioner has got an information submitted that the second respondent has been satisfied the explanation submitted by the private respondents and therefore, enquiry cannot be done under Section 33 of the Stamp Duty Act , and the same was barred by limitation. Challenging the said order, the petitioner has filed the present writ petition before this Court .

9. The learned Government Advocate appearing for the respondents 1 and 2 would submit that show cause notice was issued to the respondents 3 and 4, but explanation was submitted. According to the second respondent, the document was registered on 12.12.2005 and another settlement deed dated 21.12.2005 was also registered in the office of the second respondent. It is true that the show cause notice was issued to the respondents 3 and 4, based on the complaint given by the petitioner. The explanation was also submitted by the third respondent. By a letter dated 11.05.2009 stating that the second respondent cannot proceed further against the respondents 3 and 4 to pay under the Stamp duty. By virtue of the provisions under Section 33(A) of the Act, prescribe that the enquiry has to be completed within three years from the date of complaint. Therefore, in view of the above, the said complaint has been preferred beyond three years. Hence, the respondent cannot proceed by invoking under Section 33(A) of the said Act and conduct an enquiry to the respondents 3 and 4.

10. It is also brought to the notice of this Court by the learned counsel for the petitioner that the civil suit is pending between the parties before the civil Court, Salem. Therefore, as rightly pointed out by the learned Government Advocate that the petitioner's complaint has been duly considered and the same was rejected on the ground that the said complaint was beyond the three years period. Therefore, the respondents cannot proceed by invoking under Section 33 (A) of the Act, to take action against the respondents 3 and 4 for evading stamp duty. Therefore, the parties can seek appropriate

remedy before the Civil Court and there is no reason to interfere with the present case on hand and hence, the present writ petition is liable to be dismissed.

11. Accordingly, the writ petition is dismissed. No costs

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

gsp/kkd

To

1.The Inspector General of Registration,
120, Santhome High Road,
R.A.Puram,
Chennai - 28.

2.The District Registrar,
Salem East Registration Office,
27-C, Ramasundaram Street,
Salem - 1.

+1cc to Mr.S.Kalyana raman, Advocate, S.R.No. 1346
+1cc to Mr.S.Sethuraman, Advocate, S.R.No. 2191
+1cc to the Government Pleader, S.R.No. 2347

W.P.No.4699 of 2011

RR(CO)
GN(25/02/2019)