IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 22.01.2019
CORAM :
THE HON'BLE MR. JUSTICE D. KRISHNAKUMAR
W.P. No. 5985 of 2011

M.Mohammed Rafi ...Petitioner

Vs.

1.The Inspector General of Registration
Santhome High Road
Chennai - 600 028.

2.The District Registrar
District Registration Office
Madurai South
171, Palace Road
Madurai - 625 001.

3.The Sub Registrar
Joint-I, South
Madurai South Registration
Office, 171, Palace Road
Madurai -625001. ...Respondents

PRAYER: This Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, calling for the records relating to the proceedings No.10238/R3/2010 dated 25.5.2010 on the file of the first respondent herein and to quash the same and direct the respondents to cancel the endorsement validating the document with the third respondent under Serial No.49/2006 dated 18.08.2006 within a time frame as may be fixed by this Court.

For Petitioner : Mr. P. Raja

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

O R D E R

This writ petition is filed seeking to quash the proceedings No.10238/R3/2010 dated 25.5.2010 on the file of the first respondent and direct the respondents to cancel the endorsement validating the document by the third respondent under Serial No.49/2006 dated 18.08.2006 within a time frame as may be fixed by this Court.

2. The learned counsel for the petitioner would submit that one Gopal, Son of R.N. Narasimhan got his right in the subject matter of the property under registered Partition deed dated 29.03.1972 effected between Narasiman and his sons Gopal and Kannan. The B-schedule property was allotted to the said Gopal under the said partition deed. Based on the partition deed, Gopal effects a sale in favour of his mother one Pappammal residing at Madurai at Parasala, Kerala State under Document No.1075/1992 dated 25.02.1992. Subsequently, the said Gopal cancelled the sale deed under registered Document No.948 of 2002 dated 01.06.2002 at Parasala, Kerala State. On 11.02.2006 the said Pappammal, mother of Gopal died. The said Gopal gave General Power of Attorney in favour of one Mohammed Salim, on 07.04.2006. On 18.01.2008, the property was sold to the petitioner by the said Salim as a Power Agent, under a registered sale deed in Document No.386 of 2008 before the Sub Registrar of Madurai South. The property was registered and transferred in the name of the petitioner. The property tax, water tax, drainage tax and the electricity charges are being paid in the name of the petitioner.

3. Thereafter, one Kannan who is the brother of the said Gopal, along with his other sisters, namely Andal, Thayarammal and Malliga sold the schedule property on 07.05.2008, to one Navaneethan and his wife Indhumathi. When the petitioner came to know the said fact and that they are trying to transfer the property to their name, the petitioner applied for the Encumbrance certificate of the property and found that the sale deed dated 25.02.1992 executed by the petitioner vide Document No.1075 of 1992 has been re-validated and deficit stamp duty was collected by the 3rd respondent. On receipt of the communication under the Right to Information Act, the petitioner filed a revision before the 1st respondent. Since the revision was rejected by the 1st respondent, the present writ petition has been filed before this Court, on the ground that initiation of revalidation is barred by limitation, under Section 19-B(4) of the Indian Stamp Act, 1899.

4. It is further submitted that Section 19-B(4) of the Act was amended by Tamil Nadu Act No.39 of 1999 with effect from 22.02.2000. The said amendment does not have any retrospective effect. In view of Section 19-B(4) of the Act, the 1st respondent ought to have cancelled the illegal endorsement made by the 3rd respondent and nullify the said endorsement. Thus it is made clear that the 3rd respondent has violated the provisions of Section 19-B (4) of the Act.

5. The learned Government Advocate, relying upon the counter affidavit filed by the 3rd respondent, would submit that one Gopal, Son of R. Narasimhan, for him and as a guardian of his four minor children, executed a sale deed dated 25.02.1992 in favour of Pappammal, wife of R. Narasimhan and registered as Document No.1075/1992 on the file of the Sub Registrar, Parasala, Kerala State. The subsequent cancellation deed registered as Document No.948/2002, by the said Gopal was not brought to the knowledge of the 3rd respondent. It is further submitted that clause (b) of Section 28 of the Registration Act, 1908 specifically states that any document registered outside the State of Tamil Nadu in contravention of the provisions of clause (a) shall be deemed to be null and void. Section 28 was substituted by the Tamil Nadu Act 19 of 1997 w.e.f. 29.03.1997. Hence, the cancellation deed made on 01.06.2002, if registered in Parasala, Kerala will be a nullity. The difference stamp duty payable on the sale deed in the State of Tamil Nadu was collected by the 3rd respondent on 18.08.2006 under Section 19-A of the Indian Stamp Act, 1899. In the sale deed registered in Document No.1075/1992 at Kerala, one of the item of properties situate in Madurai City coming under the jurisdiction of Madurai (South) Joint Sub Registry.

6. Learned Government Advocate would further submit that one R.N. Kannan, son of Tmt. Pappammal, submitted an application to the 3rd respondent stating that he is prepared to pay the deficit stamp duty for document No.1075/1992 in Tamil Nadu, which was registered on 25.02.1992. However, Section 19 B was inserted to take effect from 02.09.1992 vide Tamil Nadu Act 43 of 1992. Since the aforesaid document was registered prior to amended Section 19-B(4), it is inapplicable. Therefore, the difference stamp duty under Section 19-A of the Act was collected by the 3rd respondent. Hence, the contention of the petitioner that there is no jurisdiction for the 3rd respondent to collect the difference stamp duty is liable to be rejected. The dispute raised by the petitioner, challenging the execution of the sale deed and invalidation of the document, can be agitated before the appropriate forum. Therefore, there is no merits in the present writ petition and is liable to be dismissed.

7. Considered the submission made by both the parties and perused the material available on record.

8. Learned Government Advocate contended that the writ petition is not maintainable mainly on the ground that

the revalidated document dated 18.08.2006 cannot be challenged in this writ petition. One Gopal the vendor of the petitioner executed the sale deed in favour of his mother Pappammal on 25.02.1992 on the file of Sub Registrar, Parasala, Kerala, under registered document No.1075/1992. Subsequently, the sale deed was cancelled as per Document No.948 of 2002 at Parasala, Kerala State. The said fact was not brought to the knowledge of the respondents. According to the learned Government Advocate, the subsequent cancellation of the sale deed, after 10 years is invalid, in view of the amended provisions under Section 28 of the Registration Act. Therefore, the respondents cannot act on the subsequent cancellation of the sale deed made in Document No.1075 of 1992 on the file of Sub Registrar, Parasala, Kerala. Section 19(a) of the Indian Stamp Act 1899 reads as follows :-

> "19 (a) if, at the time any such bill of exchange or note comes into the hands of any holder thereof in [India], the proper adhesive stamp is affixed thereto and cancelled in manner prescribed by section 12 and such holder has no reason to believe that such stamp was affixed or cancelled otherwise than by the person and at the time required by this Act, such stamp shall, so far as relates to such holder, by deemed to have been duly affixed and cancelled;"

On the basis of the aforesaid provisions, one of the two properties conveyed in the sale deed Document No.1075/1992 dated 25.02.1992 is situated within the jurisdiction of the 3rd respondent and the deficit stamp duty payable for the aforesaid document had been collected by the respondent department. Further, the petitioner has not impleaded the necessary parties, at the time of filing of the writ petition. Subsequently, in the year 2016, the petitioner is stated to have filed petition to implead, which has also not been listed before this Court.

9. The petitioner has challenged the invalidation of the sale deed, executed by one Gopal in favour of his mother Pappammal, mainly relying upon the subsequent Amended Act of the year 1992, which cannot be entertained by the Joint Sub Registrar, Kerala. The respondents have specifically raised the ground that the cancellation deed in Document No.948/2002 dated 01.06.2002 made by the said Gopal, is subsequent to Section 19-B coming into force, effected on 02.09.1992. The subsequent sale deed executed by the aforesaid Gopal is revalidated as per the amended Section 19-B. Thus cancellation of the sale deed in

Document No.948/2002 dated 01.06.2002 and revalidation of the Document No.1075/1992 dated 18.08.2006 under Section 19-A of the Act, by the 3rd respondent cannot be dealt with, in this writ petition. Therefore, the contentions raised by the learned counsel for the petitioner cannot be accepted and the same is liable to be rejected. It is for the petitioner to approach Civil forum to seek his remedy.

10. In fine, the Writ Petition is dismissed, with liberty to the petitioner to approach the Civil forum, if so advised. No order as to costs.

Sd/-
Assistant Registrar(CS iv)

//True Copy//

Sub Assistant Registrar

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To

1.The Inspector General of Registration
Santhome High Road
Chennai - 600 028.

2.The District Registrar
District Registration Office
Madurai South
171, Palace Road
Madurai - 625 001.

3.The Sub Registrar
Joint-I, South
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Office, 171, Palace Road
Madurai - 625 001.

+1cc to Mr. Elizabeth Ravi, Advocate SR.No. 5269
+1 CC TO GOVERNMENT PLEADER SR.NO. 5500

W.P. No.5985 of 2011

A.SK(07/03/2019)