IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.03.2019

CORAM

THE HONOURABLE Mrs. JUSTICE PUSHPA SATHYANARAYANA

W.P.No.27084 of 2016
and W.M.P.No.23257 of 2016

T.S.Vijayanandan .. Petitioner

Vs.

1. The Commissioner and Secretary,
Revenue Department,
Govt. of Tamil Nadu,
Fort St. George, Chennai-600 009.

2. The Inspector General of Registration
and Chief Controlling Revenue Authority,
No.120, Santhome High Road,
Santhome, Chennai-600 028.

3. The District Registrar,
Chennai Central Administration,
(Addl. Charge of Asst. Inspector
General of Registration),
182, Bharathi Salai, Royapettah,
Chennai-14.

4. The District Registrar acting as Sub Registrar,
Office of the Sub Registrar, Kodambakkam,
Chennai-600 024. .. Respondents

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Prayer : Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus calling for the records relating to the impugned order dated 23.06.2016 vide Proceedings No.15713/P1/2015, issued by the second respondent to the petitioner, and quash the said proceedings directing the respondents to delete the adverse entry made in the Encumbrance in view of the alleged deficit stamp duty in the Release Deed dated 06.01.2014 vide Document No.497/2014 on the file of SRO, Kodambakkam.

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For Petitioner :Mr.H.Mohammed Farook

For Respondents :Mr.N.Inbanathan,
Addl. Govt. Pleader for RR 1 and 2

Mr.T.M.Pappiah,
Special Govt. Pleader for RR 3 and 4

O R D E R

The writ petition is filed challenging the proceedings of the second respondent in Proceedings No.15713/P1/2015, dated 23.06.2016. The order under challenge is the demand of deficit stamp duty alleged to be paid on the registration of a release deed dated 06.01.2014.

2. The facts leading to the case are that :

(i) The petitioner is a coparcener of the property, which is released in his favour by other coparceners under a release deed vide document No.497/2014 registered on 06.01.2014. The property originally belonging to one Guruswami Thevar, who died intestate on 09.10.1964. He had three sons and a daughter. The petitioner is the son of T.G.Sethuraman, who is the son of the said Guruswami Thevar, i.e., he is the grandson of the original owner. The petitioner is the releasee under the document No.497/2014. The releasors are the grandchildren of the said Guruswami Thevar through the other two sons and the daughter. The father of the petitioner is the first releasor.

(ii) Prior to the Release Deed, there was a partition suit in the family and a preliminary decree was passed on 11.10.2006 in O.S.No.6498 of 1997 before the XVIII Assistant Judge, City Civil Court, Chennai. Pursuant to the same, the final decree was passed in the suit on 25.08.2012 in I.A.No.10635 of 2008. However, the final decree was not executed since, the co-sharers wanted to release their shares in favour of the petitioner, who is one of the coparceners. The petitioner herein, thus, was entitled to 20/480 shares in the said property. The other coparceners have 460/480 shares in the said property. Excepting the petitioner, all the other co-sharers decided to release and relinquish their shares in favour of the petitioner for a consideration of Rs.10,35,000/-, which was distributed among themselves.

(iii) As stated earlier, being the joint family property, the petitioner was one of the coparceners having a pre-existing right in the same, which was also decreed in O.S.No.6498 of 1997. Therefore, the release deed was executed and registered on 06.01.2004 by the other coparceners in favour of the petitioner and stamp duty of Rs.25,000/- was paid along with the registration charges as required under Article 55A of the Schedule I of the India Stamp Act, 1899.

(iv) On 01.02.2014, a Show Cause Notice was issued by the third respondent - District Registrar calling upon the petitioner as to why the deficit stamp duty of Rs.6,25,461/- should not be collected from the petitioner, as he did not have a pre-existing right in the said property and the release deed has to be treated as conveyance for the purpose of stamp duty, in view of the audit objection. Article 55A of the Indian Stamp Act, 1899 prescribes 1% of the market value, which is under release, as a stamp duty, subject to a maximum of Rs.25,000/- as per G.O.Ms.No.125, Commercial Taxes and Registration (J1) Department, dated 30.09.2013. Hence, the petitioner had sent an explanation dated 05.02.2015 to the said Show Cause Notice pointing out that he had a pre-existing right in the joint family property as a coparcener, which was evident from the fact that the preliminary decree was also passed in the suit for partition. Therefore, the release is the one contemplated under Article 55A of the Indian Stamp Act and hence, the demand of additional stamp duty as deficit fee arrived at by the third respondent is unsustainable. Unfortunately, the third respondent had rejected the explanation offered by the petitioner and passed the order dated 13.02.2015 demanding the deficit duty as Rs.6,25,461/-.

(v) Aggrieved by the same, an appeal was preferred on 06.04.2015 before the second respondent raising all the grounds explaining the pre-existing right of the petitioner in the property that was released in his favour. The second respondent also fell into the same error holding that the petitioner do not have a pre-existing right over the property, which was inherited by the legal heirs of the original owner Late.Guruswami Thevar. Hence, the present writ petition.

3. The learned counsel appearing for the petitioner contended that the order impugned is not sustainable as the same having been passed without application of mind and without adverting to the facts.

4. The ownership of the property belonging to Guruswami Thevar is not in dispute and after his demise, it had devolved on the legal heirs as per the Law of Succession. It was also confirmed in the preliminary decree for partition, which declared the shares of the individuals and later confirmed in the final decree, which was not acted upon, as the other legal heirs of Guruswami Thevar, who had shares in the property released the same in favour of the petitioner. The impugned order says that the instrument is a deed of conveyance and thus,

charged the stamp duty accordingly on the basis of the market value. Further, the impugned order states that when such conveyance is made by releasors after receiving consideration amount, then the same must be treated as a 'sale' in the light of the definition given in Section 54 of the Transfer of Property Act.

5. It is well-settled that a release can be usefully employed as a form of conveyance by a person having some right or interest to another having a limited interest and by virtue of the release it would enlarge the limited right. A release can only feed the title and cannot transfer the title, which means, a release can be executed only in favour of the person, who already has a pre-existing right or interest in the subject property.

6. In this case also, after the death of the original owner, the property devolved on several legal heirs, who are entitled to shares and the property was owned by the persons as a co-owners. When the release deed was executed all the co-owners had decided to abandon their right or relinquish their claim to the share, to which, they would be entitled to by way of release deed. Hence, by no stretch of imagination, the document be considered as a conveyance.

7. When the releasors are giving up their right in the property, in which, already the petitioner/releasee has got a pre-existing right, it would fall within Article 55A of the Indian Stamp Act, 1899 and the stamp duty leviable is one rupees for every Rs.100 or part thereof of the market value of the property, which is under release, subject to a maximum of Rs.25,000/-.

8. Thus, the deficit stamp duty levied by the third respondent and upheld by the second respondent is erroneous and the same is liable to be set aside.

9. Accordingly, the impugned order is set aside and this writ petition is allowed. There will be no order as to costs. Consequently, W.M.P.No.23257 of 2016 is closed.

Sd/-
Assistant Registrar (CS-VIII)

//True Copy//

Sub Assistant Registrar

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To

1. The Commissioner and Secretary,
   Revenue Department,
   Govt. of Tamil Nadu,
   Fort St. George, Chennai-600 009.

2. The Inspector General of Registration
   and Chief Controlling Revenue Authority,
   No.120, Santhome High Road,
   Santhome, Chennai-600 028.

3. The District Registrar,
   Chennai Central Administration,
   (Addl. Charge of Asst. Inspector
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4. The District Registrar acting as Sub Registrar,
   Office of the Sub Registrar, Kodambakkam,
   Chennai-600 024.

+1 cc to Mr.K.Mohammed Farook, Advocate, S.R.No.28862

+1 cc to the Government Pleader, S.R.No.29794

W.P.No.27084 of 2016

SSM(03/04/2019).