IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.10.2019

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA

W.P.No.4158 of 2017

Sankari Gurupatham
W/o A.Gurupatham ..Petitioner

-vs-

1. The District Registrar (Administration)
Office of the District Registrar
South Chennai
Chennai 600 017

2. Sub Registrar
Thiagarayar Nagar
Veterinary Hospital Road
(Opposite Bhuhari Hotel)
Saidapet
Chennai 600 015 ..Respondents

Petition under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, calling for the records relating to the proceeding dated 24.10.2016 in Pending Document No.P.115/2016, on the file of the second respondent herein and to quash the same and direct the second respondent to register the settlement deed dated 29.08.2016 executed and presented by the petitioner for registration, but kept as P.No.115/2016 on his file, in accordance with law and the procedure and to return the document with due endorsement of registration within a time frame as may be fixed by this Hon'ble Court.

For Petitioner :: Mr.S.Subbiah
Senior Counsel for
Mr.P.Raja

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

ORDER

Mrs.Sankari Gurupatham, W/o Mr.A.Gurupatham has questioned the correctness of the impugned order passed by the Sub

Registrar, Thiyagaraya Nagar, Saidapet, Chennai, the second respondent herein calling upon the petitioner to pay the deficit stamp duty of Rs.4,16,800/- together with the registration charges of Rs.59,200/- declining the case of the petitioner on the ground that the transaction cannot be termed as a family settlement under Article 58(a)(i) of Schedule-I to the Indian Stamp Act, 1899.

2. Mr.S.Subbiah, learned Senior Counsel for the petitioner, assailing the impugned order, submitted that the land covered in Town Survey No.8386 in Block No.109, Mambalam-Guindy Taluk and the building bearing Door No.12 at Chinniah Pillai Street, T.Nagar, Chennai properly described in the schedule of the settlement originally belonged to one T.C.Shanmugam and his sisters Dr.T.C.Manonmani and Mrs.Vimala Kotteeswaran, inherited by them from their father T.N.Chinniah Pillai. The said T.C.Shanmugam and his sisters Dr.T.C.Manonmani and Mrs.Vimala Kotteeswaran sold the said property to a private registered trust under a sale deed dated 15.12.82 bearing Document No.2077 of 1982 on the file of the second respondent and thereupon put the purchaser private A.G.Family Trust into possession. The said A.G.Family Trust was created under a deed of trust dated 3.11.82 and registered in Document No.80 of 1982 on the file of the Sub Registrar, Nagapattinam by A.Kumaravelu, S/o late Appadurai Mudaliar in favour of A.Gurunatham, S/o Appadurai Mudaliar for the limited purpose of providing for maintenance, advancement and the comfortable living of the beneficiaries therein during their prime of life. Clause (14) of the trust deed makes it crystal clear that the trust shall stand extinguished on 3.11.2000 and the net assets of the trust, after paying the liabilities, if any, shall be distributed to the beneficiaries according to the terms stated therein. Therefore, when the private family trust as per clause (14) of the trust deed stood extinguished on 3.11.2000, by virtue of clause (14), the net assets of the trust after paying all the liabilities, if any, shall be distributed to the beneficiaries as per the terms contained therein. Hence, as per clause (6) of the said private trust deed, the beneficiaries viz., the petitioner's two sons A.G.Senthilkumar and A.G.Rajendrakumar are entitled to 50% share each in the property. In view of the extinguishment of the trust, both her sons A.G.Senthilkumar and A.G.Rajendrakumar became the absolute owners of the said property with an equal share of 50%. However, A.G.Rajendrakumar married S.Gomathy and a son by name R.Gurusankar and one daughter by name R.Vanathi aged about 7 years and 5 years respectively were born to them. But unfortunately, the said A.G.Rajendrakumar died on 2.10.2011 leaving behind his wife S.Gomathy, his children minors R.Gurusankar and R.Vanathi along with the petitioner as his legal heirs and representatives/Class-I heirs under Section 8 of the Hindu

Succession Act, 1955. Therefore, all the legal heirs of the deceased A.G.Rajendrakumar having an equal interest are entitled to an undivided 1/8th share each in the said property, it is pleaded.

3. Adding further, the learned Senior Counsel submitted that the petitioner also decided to settle her undivided 1/8th share in the said property to her grandson minor R.Gurusankar out of love and affection, subject to the condition of retaining her right of residence in the said property without creating encumbrance over the said property during her lifetime. As such, the petitioner executed a settlement deed dated 29.8.2016 in favour of her grandson minor R.Gurusankar as the beneficiary by stamping Rs.25,000/- as the duty payable under Article 58(a)(i) of Schedule-I of the Act. After presentation of the said settlement deed for registration together with the registration fee of Rs.4,100/- as required under the Tamil Nadu Stamp Rules, the Sub Registrar, Thiagaraya Nagar, the second respondent herein, on receipt of the document for registration, doubted the correctness of the stamp duty paid by the petitioner. Although the second respondent kept the document pending with P.No.115 of 2016, by letter dated 29.9.2016, sought for clarification from the first respondent as to whether the said document has to be taken as a settlement deed in favour of a family member or not belonging to a family member. Again referring to the Explanation to Article 58(a) of Schedule-I appended to the Indian Stamp Act, Mr.Subbiah, learned Senior Counsel submitted that for the purpose of this Article, the word 'family' means, father, mother, husband, wife, son, daughter, grandchild, brother or sister. Therefore, a mere reading of the Explanation to Article 58(a) makes it clear that a grandchild is also a member of the family. Moreover, when the settlor is the grandmother and the settlee is her grandson, as required by law, the petitioner has paid the stamp duty of Rs.25,000/- along with the registration fee of Rs.4,100/-. Hence, the second respondent ought to have registered the document, as it is only a settlement deed, without unnecessarily entertaining any doubt thereon. The reason being that the settlement deed clearly mentions that the grandmother Mrs.Sankari Gurupatham has settled the property in question in favour of her grandson Master R.Gurusankar. Leaving that area to be looked into carefully, the second respondent, ignoring the fact that clause (14) of the trust deed categorically mentions that the trust itself stood extinguished on 3.11.2000, should not have denied the registration of the document. Without doing so, he has wrongly, keeping it as a pending document, wasting his valuable time and also the petitioner, written to the District Registrar (Administration), South Chennai, the first respondent herein seeking unnecessary clarification. Moreover, without getting any clarification from the first respondent, the second respondent has passed the

impugned order that is running contrary to Article 58(a)(i) of Schedule-I of the Act. Hence, the demand made by the second respondent calling upon the petitioner to pay a sum of Rs.4,16,800/- towards the deficit stamp duty along with Rs.59,200/- towards the deficit registration fee is totally uncalled for, inasmuch as when the document executed by the petitioner in favour of her own grandson is a settlement, which clearly and squarely is covered under Article 58(a)(i) of Schedule-I of the Act, without giving any reason that the document in question is not falling under Article 58(a)(i) of Schedule-I, the impugned order ought not to have been passed by the second respondent, he pleaded.

4. A detailed counter affidavit has been filed by the Sub Registrar, Thiyagaraya Nagar, the second respondent herein. The learned Government Advocate for the respondents, restating the stand taken in the counter affidavit, pleaded that one A.Kumaravelu, S/o late Appadurai Mudaliar created a family trust dated 3.11.82 in favour of A.Gurunatham, S/o Appadurai Mudaliar for the limited purpose of providing for and securing the welfare, maintenance, advancement and the comfortable living of the beneficiaries therein during their life time. Therefore, when clause (14) of the trust deed shows that the trust itself stood extinguished on 3.11.2000 and the properties thereupon stood distributed among the beneficiaries as per the terms contained in the trust deed, citing a reason that since the beneficiary of the trust deed A.Gurunatham had died, as a result the property of the trust devolved on his two sons equally and that one of the sons being the beneficiary also died, hence, the share of the deceased son stood devolved on his wife, mother, son and daughter and the petitioner-mother had settled her share of the property in favour of the grandson R.Gurusankar, S/o late A.G.Rajendrakumar, the payment of Rs.25,000/- as the stamp duty by way of family settlement, cannot be taken into account. The reason being that the word 'family' defined in the Explanation to Article 58(a) of Schedule-I of the Act includes the father, mother, husband, wife, son, daughter, grandchild, brother or sister only. Moreover, it may be mentioned that even though the property was vested on the petitioner as co-parcenary property, originally the said property formed part of the trust only and the term 'Trust' is not categorised as 'family' under Article 58 (a)(ii) of Schedule-I to the Indian Stamp Act. Continuing his arguments, the learned Government Advocate submitted that even though the relationship between the settlor and the settlee is grandmother-grandson, the property settled by the settlor is derived from the trust and since the trust does not come within the meaning of 'family' as defined in the Explanation to Article 58(a) of Schedule-I of the Act, the contentions made by the petitioner that the conveyance is a family settlement, cannot be accepted. However, the learned Government Advocate submitted

that the document has been now registered in Document No.2928 of 2016 pending Section 47-A(1) proceedings.

5. The arguments advanced by the learned Government Advocate for the respondents have to be brushed aside as not holding any water whatsoever, for two reasons. Firstly, it is the admitted case of both the petitioner and the respondents that the settlement deed in question has been executed by the petitioner-grandmother in favour of her own grandson R.Gurusankar and their relationship has not been disputed by any one of the parties before the Court. Secondly, the weak contention made by the respondents that the property settled in favour of the settlee cannot be treated as a family settlement for the reason that originally the property belonged to the trust, deserves to be repelled on the basis of clause (14) of the trust deed, which reads as under:-

> "(14) Extinction of the Trust: The Trust shall extinguish as on 3.11.2000 and the net assets of the Trust after paying off the liabilities, if any, shall be distributed to the beneficiaries, according to the shares hereinbefore stated."

6. When the trust was established on 3.11.82 under Section 77 of the Trust Act, clause (14), as mentioned above, clearly shows that the trust shall extinguish as on 3.11.2000 and the net assets of the trust after paying off the liabilities, if any, shall be distributed to the beneficiaries according to the shares hereinbefore stated. That shows that when the trust itself got extinguished on 3.11.2000 long time ago, the net assets of the trust had already devolved upon the beneficiaries only. Now the grandmother Mrs.Sankari Gurupatham, the petitioner herein has also rightly settled her share in favour of her grandson R.Gurusankar, therefore, it is a case clearly falling under Article 58(a)(i) of Schedule-I of the Act. Such a crystal clear issue has been fully overlooked by the second respondent. Hence, the impugned order passed against the petitioner by the Sub Registrar, Thiagaraya Nagar, the second respondent herein is without any merit.

7. For the aforementioned reasons, the impugned order is set aside and the writ petition stands allowed with costs of Rs.10,000/- (Rupees ten thousand only) payable by the second respondent from his own pocket to the Secretary, High Court Legal Services Committee within a period of two weeks from the date of receipt of a copy of this order. Needless to mention that the second respondent shall return the registered document No.2928 of 2016 to the petitioner forthwith. Consequently, W.M.P.Nos.17556 & 17557 of 2017 are closed.

Registry is directed to post the matter on 18.11.2019 'for reporting compliance'.

ss Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1. The District Registrar (Administration)
Office of the District Registrar
South Chennai, Chennai 600 017

2. The Sub Registrar
Thiagarayar Nagar
Veterinary Hospital Road
(Opposite Bhuhari Hotel)
Saidapet, Chennai 600 015

Copy to:-

The Secretary,
High Court Legal Services Committee,
High Court, Madras - 104.

The Section Officer,
Writ Section, High Court,
Madras - 104.

+1cc to M/s.Elizabeth Ravi, Advocate, SR.No.89151
+1cc to the Govt.Pleader, Vide Sr.No.89966

W.P.No.4158 of 2017

Kak(01/11/2019)