IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 15.10.2019

Coram:

THE HONOURABLE DR. JUSTICE G. JAYACHANDRAN

Writ Petition No.26671 of 2019
in W.M.P.No.26059 of 2019

1.Ms.S.Tara Vibha
2.Mrs.Vijayalakshmi ... Petitioners

Vs

1.The Inspector General of Registration and
Chief Revenue Collecting Authority,
No.100, Santhome High Road,
Mullima Nagar, Mandavelipakkam,
Chennai - 600 028.

2.The Sub Registrar,
No.60, TNSC Building,
J.J.Complex, 2nd Floor,
Jawaharlal Nehru Road,
Thirumangalam,
Chennai - 600 040. ... Respondents

Prayer :- This Writ Petition is filed under Article 226 of the Constitution of India to issue a writ of Mandamus, praying to direct the respondents to refund the excess amount of Rs.11,47,756/- unauthorizedly collected for the registration of family settlement deed dated 13.06.2019 bearing Doc.No.2696 of 2019 registered on the file of second respondent office together with 12% interest per annum from 13.06.2019 onwards.

For Petitioner :Mr.V.Srinivasa Babu

For Respondents :Mr.M.Thamizharasan
Government Advocate

ORDER

The case of the petitioner is that the first petitioner settled property in favour of the second petitioner out of love and affection, vide settlement deed dated 13.06.2019, registered the same before the SRO, Anna Nagar. Since the respondents considered the document as a conveyance and claimed Stamp Duty as per Article 23 of the Indian Stamp Act, 1899 and demanded a sum of Rs.7,43,762/- towards stamp duty; Rs.4,27,864/- towards Registration Fee; Rs.160/- towards Computer Fee; Rs.120/- towards Sub Division Fee and Rs.50/- towards CD charges and totally, a sum of Rs.11,71,956/- was demanded and the same was paid by the petitioner. The deed being a settlement deed executed by grand-daughter in favour of the grand-mother out of love and affection, the stamp duty charge ought to have been calculated as per Article 58(a) of the Indian Stamp Act, since the conveyance is within the family members and out of love and affection without any monetary consideration.

2. A representation was made by the second petitioner to the Inspector General of Registration, SRO, Anna Nagar, pointing out that the Division Bench of this Court in W.P.No.12611 of 2012, dated 19.11.2018 has held that the settlement deed, executed out of love and affection by grand-children in favour of the grand-parents, has to be considered as a deed of settlement and Stamp Duty to be assessed as per Article 58(a), schedule I of the Indian Stamp Act. Therefore, fixed Stamp Duty of Rs.25,000/- and proportionate registration charge alone to be collected from her. Instead, excess sum of Rs.11,47,756/- has been collected and hence, sought for refund of the excess Stamp Duty collected from her. The said representation dated 31.07.2019 has not been considered by the respondents. Hence, the present writ petition.

3. The learned Government Advocate would submit that the petitioners, while presenting the document voluntarily submitted that the document was assessed as per Article 23 of the Stamp Act and paid the ad valorem of the Stamp Duty along with the registration fee and other necessary charges. Thereafter, they have made representation for refund of excess Stamp Duty as an after thought on the basis that the document has to be considered under Article 58(a) and not under Article 23.

4. The contention of the respondent herein that the document was voluntarily presented under Article 23 of Stamp Act, but no one will opt for higher stamp duty when there is option for levy of lesser Stamp Duty under the Act, In this case, the grand-daughter, the first petitioner has settled her property in favour of the second petitioner(grandmother). There is no monetary consideration for the said conveyance. It is purely out of love and affection and between the family members. In an identical case in W.A.No.85 of 2015, dated 23.10.2017, the learned Single Judge of this Court has held as below:

> "The learned Single Judge after hearing the arguments of both sides, allowed the writ petition filed by the respondents/petitioners, while concluding the order of the learned Single Judge observed as follows:
>
> "11. If a grandchild is included within the definition of the expression "family" I do not know how a grandmother or grandfather will stand excluded. There can be no quarrel about

> the proposition that if person executes settlement in favour of his grandchild, the case will be covered by Article 58(a). But to hold that the converse cannot be accepted, would militate against the very purpose of the provision. A settlement need not flow in a hierarchal fashion from the elders to the younger ones. It can also flow in the reverse direction. If a gift in favour of a grandchild is covered by Artice 58(a), the gift in favour of the grandparent should be equally covered as a corollary. Therefore, the writ petition is allowed. The impugned order is set aside. The respondents are directed to register the sale deed by treating as one filing under Article 58 (a). No costs. Consequently, M.P.Nos.1 of 2013 and 1 o 2014 are closed."

5. The above proportion of law was confirmed by the Division Bench in W.A.No.85 of 2015, dated 23.10.2017, holding that the maternal grand-mother will come under the definition of family as explained under the Act and Section 58(a), schedule I of the Indian Stamp Act, will apply to deed of settlement executed by grand-children in favour of the grand-parents.

6. In the light of the above fact, the first respondent is hereby directed to consider the representation of the petitioner dated 31.07.2019 and pass appropriate orders in accordance with law, within a period of eight weeks from the date of receipt of a copy of this order.

7. Accordingly, this writ petition is disposed of. Consequently, connected miscellaneous petition is closed. No costs.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

To

1.The Inspector General of Registration and
Chief Revenue Collecting Authority,
No.100, Santhome High Road,
Mullima Nagar, Mandavelipakkam,
Chennai - 600 028.

2.The Sub Registrar,
No.60, TNSC Building,
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Jawaharlal Nehru Road,
Thirumangalam,
Chennai - 600 040.

+1cc to the Government Pleader Sr.86884
+1cc to M/s.V.Srinivasa Babu, Advocate Sr.85977

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rsi[co]
srg 18/11/2019