



20BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 13.06.2019

CORAM

WEB COPY

THE HON'BLE MR.JUSTICE R.SURESH KUMAR**W.P. (MD) No.10060 of 2019**

K.P.Muthiah

...Petitioner

-Vs-

1.The Sub Registrar,
Sholavanthan Sub-Registry,
Madurai District.

2.Commissioner of Revenue Administration,
Government of Tamil Nadu,
Chennai - 600 028.

...Respondents

Prayer: Writ Petition - filed under Article 226 of Constitution of India, to issue a writ of Mandamus, directing the 1st respondent to register the gift settlement deed executed by the petitioner dated 18.03.2019 in favour of his son M.Rajendran with regard to the property situate in Madurai District, Sholavanthan Sub District, Vadipatti Taluk, Sithalangudi Village, Patta No.791, R.S.No.166/3 present R.S.No.166/8B measuring 57 cents.

For Petitioner : Mr.S.Mahesh Babu

For Respondents : Mr.M.Murugan, G.A.

ORDER

The prayer in this writ petition is for a Writ of Mandamus, directing the 1st respondent to register the gift settlement deed executed by the petitioner dated 18.03.2019 in favour of his son M.Rajendran with regard to the property situate in Madurai District, Sholavanthan Sub District, Vadipatti Taluk, Sithalangudi Village, Patta No.791, R.S.No.166/3 present R.S.No.166/8B measuring 57 cents.

2.Heard Mr.S.Mahesh Babu, learned counsel appearing for the petitioner and Mr.M.Murugan, learned Government Advocate appearing for the respondents.

3.The petitioner, in order to register the land situate in Madurai District, Sholavanthan Sub District, Vadipatti Taluk, Sithalangudi Village, in R.S.No.166/3 present R.S.No.166/8B measuring 57 cents, submitted a settlement deed executed by him on 18.03.2019. However the same has not been registered by the respondent Registrar i.e., the first respondent on the ground that originally, the property was purchased in the name of a partnership



firm and the petitioner, being one of the partner, now has executed the settlement deed. Therefore, the petitioner does not have any independent right to execute the settlement deed and accordingly, necessary stamp duty has to be paid, otherwise, the partnership firm should be dissolved and then only, the property, after the partition/dissolution among the partners, could be sold by the person, in whose share the property comes.

4.I have heard the learned Government Advocate appearing for the respondents, who would submit that, if at all, the petitioner wants to settle the property on his own, he must establish that the property belongs to proprietorship. However, it seems that the property has been purchased in the name of the partnership firm. If the property belongs to proprietorship, then only, the petitioner or any other partners can encumber the property and therefore the present submission made by the petitioner cannot be entertained.

5.I have heard the submissions made on either side and perused the materials produced before this Court.

6.On perusal, it is found that, though the property in question has been purchased in the name of the firm, the fact remains that there has been no partnership in the eye of law as nothing has been registered as a partnership firm and therefore, the question of dissolution of partnership firm will not arise. Therefore, if at all the land in question has been purchased in the name of the firm, it can only be treated as proprietary concern or proprietary firm for which the petitioner can be treated as a Proprietor. Therefore, being Proprietor of a proprietary concern, he has got every right to sell or settle the property at his own will.

7.In that view of the matter, this Court is of the considered opinion that the document, which is in question i.e. settlement deed dated 18.03.2019, shall be construed only as document of settlement by the petitioner as a proprietor of the proprietary firm and in that capacity, the same can be construed and the execution through the settlement deed in question can be accepted by the registration authorities and after getting the prescribed fee, the same can be registered, if the document is otherwise in order for registration.

8.With the above direction, this writ petition is disposed of. No costs.

Sd/-

Assistant Registrar

// True Copy //



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To

1.The Sub Registrar,
Sholavanthan Sub-Registry,
Madurai District.

2.Commissioner of Revenue Administration,
Government of Tamil Nadu,
Chennai - 600 028.

+1CC TO MR.S.MAHAESH BABU, Advocate Sr. No.68554

+1CC TO THE SPECIAL GOVERNMENT PLEADER SR.No.69255

Order made in

W.P. (MD) No.10060 of 2019

Dated:**13.06.2019**

GKG (CO)

TR (27.06.2019) 3P 5C