IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 24.08.2020

CORAM

THE HONOURABLE THIRU JUSTICE N.ANAND VENKATESH

W.P.No.2148 of 2020

1. T.Bhaskar,
   S/o.Late.Thambiah Reddiyar,
   No.110/216, Mudichur Road,
   Tambaram West, Chennai 600 045.

2. Sarala,
   Wife of Mr.Prabhakaran,
   No.1B/28, Srinivasan Street,
   West Tambaram, Chennai 600 045.

3. Shruthi,
   Wife of Mr.Praveen,
   No.1B/28, Srinivasan Street,
   West Tambaram, Chennai 600 045.

.. Petitioners

versus

1.The Inspector General of Registration,
   No.100/120, Santhome High Road,
   R.A.Puram, Chennai 600 028.

2.The Sub Registrar,
   Sriperumbudur,
   Kancheepuram District.

.. Respondents

Prayer: This Writ Petition is filed under Article 226 of the Constitution of India, praying for issuance of Writ of Mandamus, directing the second respondent to refund to the petitioners a sum of Rs.17,70,650/- collected towards purported deficit stamp duty and Rs.4,43,670/- collected towards purported deficit registration fees totalling to Rs.22,14,320/- in respect of family partition deed dated 29.03.2012, registered as Doc No.5216/2012, on the file of the second respondent.

For Petitioners : Ms.S.P.Arthi
For Respondents : Mr.T.M.Pappiah, SGP

ORDER

On the consent given by either side, the main writ petition itself has been taken up for final hearing.

2. The present writ petition has been filed for the issuance of writ of mandamus, directing the second respondent to refund the amount that has been collected from the petitioners towards deficit stamp duty and deficit registration fees in respect of the family partition deed that was registered on 29.03.2012.

3. The case of the petitioners is that their father and mother had acquired several properties which also included ancestral properties. The properties were enjoyed jointly and at one point of time, they have decided to amicably partition the properties among the sharers. The partition deed came to be executed on 29.03.2012 and it was submitted before the second respondent and the same was also registered as Document No.5216/2012. The petitioners had paid the necessary stamp duty and registration fees and the document was also duly registered in favour of the petitioners.

4. In the year 2018, the petitioners wanted to deal with the property that was allotted to them and a sale deed was presented for registration before the second respondent on 26.06.2018. The second respondent is said to have retained the document and informed the petitioners that there is deficit stamp and registration fees payable for the earlier partition deed that was registered and therefore, the same must be paid by the petitioners. The petitioners were not in a position to deny or resist the demand made by the second respondent, since they had already committed to sell the property in favour of a third party. Therefore, the petitioners proceeded to pay a sum of Rs.22,14,320/-, which was the amount that is due and payable for the alleged deficit stamp duty and deficit registration fees.

5. The petitioners have approached this Court seeking for a direction to the second respondent to refund the amount paid towards the deficit stamp duty and the deficit registration charges on the ground that it was collected without putting the petitioners on notice.

6. The learned counsel for the petitioners placed reliance upon Section 33(A) of the Stamp Act. The learned counsel by placing reliance upon this provision, submitted that, a recovery of deficit stamp duty can be made only after notice is issued and an opportunity is given to the petitioners to put forth their defence. The learned counsel further submitted that such recovery has to be made within a period of three years from the date of registration of the instrument, failing which, the right to recovery is lost. The learned counsel therefore submitted that apart from the fact that the petitioners were not given an opportunity, the recovery made from the petitioners is also barred by law and therefore, the petitioners are entitled for

the refund of the amount paid by them towards deficit stamp duty and deficit registration charges.

7. Mr.T.M.Pappiah, the learned Special Government Pleader appearing for the respondents, on written instructions, submitted that the partition that was entered into and was registered, consisted of parties who fell within the definition of family member, and also the parties who did not fall into this definition. The learned counsel submitted that if the partition is among the family members, the deed will have to be stamped as per Section 45(a) of the schedule 1 of the Indian Stamp Act and the maximum stamp duty payable is Rs.25,000/- for each schedule of property. If it is entered into between the non family members, the stamp duty will have to be paid at the rate of 4% on the value of the property that goes to the sharer not falling within the definition of a family member. The learned counsel submitted that the sister-in-law, nephew, niece, who were parties to the partition deed, will not fall within the definition of a family and their share must necessarily be subjected to stamp duty of 4% of the value. This deficiency in stamp duty and registration fees worked out to the tune of Rs.22,14,320/- and the said amount was recovered from the petitioners. The learned counsel submitted that the petitioners having paid this amount, will not be entitled for refund of the amount and therefore, the present writ petition is liable to be dismissed.

8. This Court has carefully considered the submissions made on either side and the materials available on record. Before this Court proceeds to decide the issue that is raised in the present writ petition, it will be more beneficial to extract Section 33(A) of the Stamp Act hereunder:-

> "33-A. Recovery of deficit stamp duty- (1) Notwithstanding anything contained in section 33 or in any other provisions of this Act, if, after the registration of any instrument under the Registration Act, 1908 (Central Act XVI of 1908), it is found that the proper stamp duty payable under this Act in respect of such instrument has not been paid or has been insufficiently paid, such duty or the deficit, as the case may be, may, on a certificate from the Registrar of the district under the Registration Act, 1908 (Central Act XVI of 1908) be recovered from the person liable to pay the duty, as an arrear of land revenue.
>
> Provided that no such certificate shall be granted unless due inquiry is made and such person is given an opportunity of being heard .
>
> Provided further that no such inquiry shall be

commenced after the expiry of three years from the date of registration of the instrument.

(2) The certificate of the Registrar of the district under sub-section (1) shall, subject only to appeal under sub-section (3), be final and shall not be called in question in any Court or before any authority.

(3) Any person aggrieved by a certificate of the Registrar of the district under sub-section (1) may appeal to the Chief Controlling Revenue Authority. Any such appeal shall be preferred within such time, and shall be heard and disposed of in such manner, as may be prescribed".

9. A careful reading of the above provision shows that such recovery can be made only after the District Registrar issues notice and conducts enquiry after affording opportunity to the concerned party. This procedure has not been followed in the present case. It is also clear from the above provision that the enquiry should be commenced within a period of three years from the date of registration of the instrument and it is not permissible to conduct any enquiry or recover any deficit stamp duty beyond this period.

10. In the present case, the partition deed was registered on 29.03.2012, bearing Registration No.5216 of 2012. If any enquiry is to be conducted for recovery of deficit stamp duty, it should have been done on or before 29.03.2015. In the present case, no enquiry was conducted. It is seen that there was an audit objection that was raised by the audit party on the ground that there is deficit in the payment of stamp duty and registration fees. Even pursuant to such audit objection, no notice was issued to the petitioners. When the petitioners attempted to register the sale deed with regard to the subject property, at that point of time, the second respondent had forced the petitioners to pay the deficit stamp duty and registration fees. The petitioners had no other go except to make the payment, since the petitioners had already committed to sell the property to a third party.

11. The method adopted by the second respondent to collect the deficit stamp duty and the deficit registration fees from the petitioners goes beyond his jurisdiction. In the first place, this jurisdiction has only been conferred on the District Registrar as per Section 33(A) of the Stamp Act. Therefore, the second respondent could not have exercised his power, which he did not possess and proceeded to recover the deficit stamp duty and deficit registration fees. Apart from the above reason, the recovery made by the second respondent also

suffers from lack of jurisdiction, since any recovery should be made within the period of three years from the date of registration of the document. In this case, the document was registered in the year 2012 and the recovery was made in the year 2018. Therefore, the act of the second respondent suffers from both lack of authority and jurisdiction.

12. In view of the above discussion, this Court has no hesitation in directing the respondents to consider the representation made by the petitioners on 04.06.2018 and further direct the amount collected towards deficit stamp duty and deficit registration fees to be refunded to the petitioners within a period of twelve weeks from the date of receipt of a copy of this order.

13. In the result, this writ petition is allowed. No costs.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1. The Inspector General of Registration,
   No.100/120, Santhome High Road,
   R.A.Puram, Chennai 600 028.

2. The Sub Registrar,
   Sriperumbudur,
   Kancheepuram District.

+1cc to Government Pleader in SR.27768

W.P.No.2148 of 2020

RSV (CO)
RV (24/08/2020)