IN THE HIGH COURT OF JUDICATURE AT MADRAS

JUDGMENT RESERVED ON: 09 / 07 / 2018
JUDGMENT PRONOUNCED ON: 02 / 09 / 2020

CORAM:

THE HON'BLE MR.JUSTICE M.GOVINDARAJ

CMA NOS.2255 OF 2008 AND 3556 OF 2012

CMA NO.2255 OF 2008

N.Veeraraghavan ... Appellant

Vs.

1.Inspector General of Registration
(Principal Registration Controlling Authority)
Office of the Inspector General of Registration
100, Santhome High Road,
Foreshore Estate, Chennai - 600 028.

2.Joint Sub Registrar - I
Central Chennai. ... Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 47(A) of Indian Stamp Act, 1899, against the order dated 04.07.2008 (served on 14.07.2008 on the counsel for the appellant by post), in the file of the 1st respondent in proceedings No.41825/P1/2007.

For Appellant :Mr.N.Manokaran
for Mr.M.B.Gopalan

For Respondents :Mr.T.M.Pappiah
Special Govt. Pleader (Registration)

CMA NO.3556 OF 2012

A.L.Gopal Sah ... Appellant/Petitioner

Vs.

1.The Sub Registrar
Purasaiwalkam,
Chennai - 7.

2.The Inspector General of Registration
Santhome High Road,
Chennai - 600 028. ... Respondents /Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 47(A) (10) of Indian Stamp Act, 1899, against the impugned order dated 09.11.2012 in proceedings No.20805/P1/2012 passed by the Inspector General of Registration, Chennai - 28, dismissing his revision confirming the order dated 14.03.2012 passed in Impound No.4 of 2011 in the Pending Doc.No.P69 of 2011 by the Sub Registrar, Purasaiwalkam, Chennai - 7.

For Appellant : Mr.N.Nagu Sah

For Respondents: Mr.T.M.Pappiah
Special Govt. Pleader (Registration)

COMMON JUDGMENT

Challenging the order dated 04.07.2008 and 09.11.2012 passed by the Inspector General of Registration, the appellants have preferred the above Civil Miscellaneous Appeals.

2.By the impugned order, the Inspector General of Registration has directed the appellants to pay stamp duty as per Schedule I of Article 45 of Indian Stamp Act, 1899. According to the appellants, the relationship between the appellants and other family members is that of cousins, nephew and niece. Cousins Nephew and nieces will not fall within the definition of family and therefore, they are not entitled to concessional stamp duty.

3.In CMA No.2255 of 2008, the Inspector General of Registration, has relied on the judgment of this Court in DISTRICT REGISTRAR, TINDIVANAM VS. V.RANGANATHAN [2008 (1) CTC 1] wherein this Court has held that the transaction between Uncle and nephew are first cousins, the benefit of the concessional rate of stamp duty under Schedule I of Article 45 (a) of the Indian Stamp Act, will not apply, as they will not fall under the definition of “family”.

4.In CMA No.3556 of 2012, the second respondent relying on the judgment of this Court in M.VEERAIAH VS. INSPECTOR GENERAL OF REGISTRATION CUM CHIEF CONTROLLING REVENUE AUTHORITY

[WP (MD) NO.5445 OF 2006 dated 16.12.2011] has directed the appellant to pay stamp duty under Article 45(b) of Schedule I of the Indian Stamp Act.

5.The learned counsel for the appellant in CMA No.2255 of 2008 would vehemently contend that the property originally belonged to three brothers; one brother had executed a release deed in favour of his brothers as such the two brothers have become joint owners. Both of them died intestate leaving behind the appellant, his brother and his first cousins as legal heirs. They have put up construction and divided the property equally. They being the legal heirs of the brothers and members of the joint family are entitled to the concessional rate as provided under Schedule I of Article 45(a) of the Indian Stamp Act.

6.The learned counsel for the appellant in CMA No.3556 of 2012 would vehemently contend that actually the father of the appellants namely A.S.Loka Sah and his brother A.S.Maheshwar Sah had 50% of the undivided share in the property. Each brother has got 50% of the property. Therefore, the family arrangement between the two brothers will fall within the definition of family. In the absence of one of the brothers, the legal representatives have entered into partition. Therefore, they will very well fall under the definition of family. In support of his case, he relied on the judgment of this Court in SMT.CHHAYA GUPTA AND OTHERS VS. THE DISTRICT REGISTRAR, T.NAGAR, CHENNAI [2003 (3) CTC 129] wherein it is held that partition is not transfer or conveyance nor is it creation or extinguishment of right of co-parceners or member of joint family, but is division among co-sharers.

7.Per contra, learned Special Government Pleader appearing for the respondent would contend that the first cousins will not fall within the definition of family. The relationship between the appellants is not that of brother and sister, but one of aunt, cousin brother and cousin sister. In such circumstances, they will not fall within the definition of family. The judgment of this Court in DISTRICT REGISTRAR, TINDIVANAM VS. V.RANGANATHAN [2008 (1) CTC 1] will squarely apply to the case on hand. It cannot be construed as Obiter dicta but a binding judgment. The concessional rate cannot be given to non-family members only because they have jointly constructed the building and became co-owners. They shall be directed to pay stamp duty as per Article 45(b) of the Indian Stamp Act.

8.I have considered the submissions made on either side and perused the materials available on record.

9.Though both the appeals agitate against chargeability of stamp duty under Article 45(b) of Schedule I of the Indian Stamp Act, in CMA No.3556 of 2012, in addition to the same, valuation of the document is also an issue. Therefore, I prefer to answer the valuation at the first instance and thereafter, to deal with the common issue.

10.In so far as the valuation of the document is concerned, the learned counsel for the appellants would rely on the judgment of the Hon'ble Division Bench of this Court in THE DISTRICT REGISTRAR VS.CHHAYA GUPTA AND OTHERS [W.A.No.2358 of 2007 dated 29.06.2007] to the proposition that the value mentioned in the document shall be taken for imposing stamp duty and the authorities cannot adopt the market value or guideline value for that purpose. The judgment of the Hon'ble Division Bench in similar circumstances has observed as under:

> "8.In the present case, the instrument in question is a partition deed by which the co-parceners of the undivided joint family have agreed to divide the properties among themselves which they have been hitherto holding as members of the Hindu joint family. As such, the instrument in question is really a process in and by which a joint enjoyment is transformed into an enjoyment in severally. Each one of the sharers had an antecedent title and therefore, no conveyance is involved in the process as the conferment of new title is not necessary, obviously, no question of transfer of assets arise since the partition is really a process in and by which a joint enjoyment is transferred into an enjoyment into severally. As such, the stamp duty cannot be claimed basing on the market value. That apart, under Section 47-A, partition is not include but whereas as per the wordings of Article 45, it is left to the parties to the instrument of partition to value and submit that instrument for registration upon which the stamp duty is leviable on the value of the separate share of the property set out in the instrument of partition. Therefore, there cannot be any reference or adjudication under Section 47-A.

> Consequently, the question of under-valuation and assessment thereon in terms of section 47-A will not arise at all, as Section 47-A exists. As such partition is not transferred or conveyed nor it creates any right or interest in the immovable property for the first time in favour of the sharer. As such, for the purpose of Article 45, the market value alone has to be taken, cannot stand, since already the parties to the instrument are owning the property jointly or tenant in common or co-parceners."

11.It is relevant to mention that the demand made in the notice dated 24.10.2011, the stamp duty was calculated on the basis of the value specified in the document. But while passing order, the second respondent had imposed a stamp duty on market value of the property. The original order, as such, whether the second respondent has jurisdiction or not to do so, has been passed without giving an opportunity to the appellant to defend himself. The first respondent also has not adverted to the specific ground raised on this aspect. However, the learned Special Government Pleader appearing for the respondents would fairly accept that the legal proposition laid down by the Hon'ble Division Bench would squarely apply to the case on hand.

12.Since there is consensus on this issue, it is made clear that the value given in the document as to partition shall be considered for imposing stamp duty under Article 45(b) of the Act and it shall not be on the market value.

13.Now that the common and primordial issue in the above appeals is with regard to the concessional stamp duty chargeable under Article 45(a) or whether it shall be under Article 45(b) of the Act.

14.This Court in M.VEERAIAH VS. INSPECTOR GENERAL OF REGISTRATION CUM CHIEF CONTROLLING REVENUE AUTHORITY [WP (MD) NO.5445 OF 2006 dated 16.12.2011] has directed the appellant to pay stamp duty under Article 45(b) of Schedule I of the Indian Stamp Act. In the said judgment, the Division Bench of this Court has held as under:

> "The authority held that the definition of family as found in the explanation does not contain "Brothers" or "Sisters-in-law" and hence, it has to be termed as "Partition between non-family members". He also referred

to the judgment of the Supreme Court in Sulochana Amma V. Narayanan Nair reported in (1994) 2 SCC 14 to hold that the explanation cannot control the section and that the levy of stamp duty which was wrongly made in a different head cannot be accepted and the petitioner is liable to pay the stamp duty as required under law. Reliance was placed on the following passage found in paragraph 8:

> "8. It is settled law that explanation to a section is not a substantive provision by itself. It is entitled to explain the meaning of the words contained in the section or clarify certain ambiguities or clear them up. It becomes a part and parcel of the enactment. Its meaning must depend upon its terms. Sometimes it would be added to include something within it or to exclude from the ambit of the main provision or some condition or words occurring in it. Therefore, the explanation normally should be so read as to harmonise with and to clear up any ambiguity in the same section."

7.In the light of the above, the impugned order do not suffer from any illegality or irregularity. Hence, the writ petition stands dismissed. No costs. Consequently, connected miscellaneous petition is closed."

15.In both the appeals, as held by the Hon'ble Division Bench of this Court in M.VEERAIAH's case (cited supra), the parties do not fall under the definition "family". Even though the appellants are co-parceners and that partition is not a conveyance or transfer of title nor extinguishes the rights of the co-sharers or co-parceners, but only a physical division of common stock by metes and bounds on the basis of pre-existing rights, the legislators in their wisdom, has not extended the benefits to the extended members of the family. The Hon'ble Division Bench has categorically found that cousins, uncles, nephews and nieces will not fall under the definition of "family". The partition shall be treated as one between non-family members and they are not entitled to concessional stamp duty under Article 45(b) of the Act.

16.In the considered opinion of this Court, judicial discipline requires that the order of the Superior Court be followed. In that view of the matter, the order dated 04.07.2008 and 09.11.2012 passed by the Inspector General of Registration cannot be interfered with on the issue of imposing stamp duty under Article 45(b) of First Schedule of the Indian Stamp Act, 1899.

17.However, considering the factual circumstances, a direction is given to the appellant to deposit the stamp duty as ordered by the respondents within a period of thirty days (30 days) without interest from the date of receipt of a copy of this order, failing which, the respondents will be entitled to collect the same along with interest in accordance with law.

18.Accordingly, CMA No.2255 of 2008 is dismissed with the above direction.

19.The Civil Miscellaneous Appeal in CMA No.3556 of 2012 is partly allowed. No costs.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

TK
To
1.Inspector General of Registration
(Principal Registration Controlling Authority)
Office of the Inspector General of Registration
100, Santhome High Road,
Foreshore Estate, Chennai - 600 028.

2.Joint Sub Registrar - I
Central Chennai.

3.The Sub Registrar
Purasaiwalkam,
Chennai - 7.
+1 cc to M/s.N.Nagusah, Advocate Sr.No. 28560
+1 cc to The Government Pleader, Sr.No. 28993

CMA NOS.2255 OF 2008 AND 3556 OF 2012

PP(CO)
RMP(15/10/2020)