IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 29 / 06 / 2018

DELIVERED ON : 27 / 05 / 2020

CORAM:

THE HON'BLE MR.JUSTICE M.GOVINDARAJ

C.M.A. NO.2702 OF 2011

&

M.P.No.1 of 2011

M/s. Trinity Charitable Trust
rep by the Managing Trustee Bro.,
Mr.Uthama Asirwatha Udayar ... Appellant

Vs.

1.The Chief Controlling Revenue Authority
O/o. Chief Controlling Revenue Authority
No.120, Santhome High Road
Chennai-600 028

2.The District Registrar
Chennai south,
O/o. District Registrar
Saidapet, Chennai-600 015 ... Respondents

PRAYER: Civil Miscellaneous Appeal filed under Sec. 47(A) (10) of Indian Stamp Act to set aside the order passed by the 1st respondent made in Pa.Mu.No.4092/P/1/2003, dated 30.11.2004 directing the 2nd respondent to register the Transfer Deed 21.12.1998 (pending No.919/1998) and return the same to the petitioner Trust immediately after registration.

For Appellant : Mr.K.N.Pandian

For Respondents: Mr.T.M.Pappiah
Spl.G.P (Registration)

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J U D G M E N T

Civil Miscellaneous Appeal is directed against the order passed by the 1st respondent in his proceedings No.PA.Mu.No.4092/P/1/2003 dated 30.11.2004.

2. The petitioner claims it to be a Trust getting transfer of properties from another Trust having similar objectives. The 2nd respondent computed the stamp duty as per Art.23 of Sch.I of the Indian Stamp Act, 1899. Whereas, the claim of the appellant is that it shall be calculated as per Art.62 (e) of Sch. I of the Indian Stamp Act, 1899.

3. Learned counsel for the appellant would rely on the judgment of this Court in The National Missionary Society of India vs. The Inspector General of Registration, Chennai-28 and another reported in 2011(1) CWC 803, wherein this Court has held that when a transfer of Management of Trust without consideration to carry out intentions of original author of Trust in true letter and spirit of Trust Deed and to ensure continuance of charity reaching public at large cannot be treated as conveyance or settlement warranting payment of Stamp duty. This judgment has followed the judgment of Full Bench of this Court in The Chief Controlling Revenue Authority Board of Revenue, Madras vs. P.A. Muthukumar reported in AIR 1979 Madras 5.

4. I have given my anxious consideration to both the judgments. The Hon'ble Full Bench of this Court considered the issue and imposed the Stamp Duty in respect of properties conferred by way of a Will. The Registration Department treated the deed as “Settlement” as if property was distributed among the members of the family. On the other hand it is held that the said deed styled as “Trust” appointed a Trustee and nominated him under the Will to clear certain debts of the author of the Trust and administer the properties so as to preserve the same till the life time of the author. In those circumstances, the Hon'ble full Bench has found that it is not a “Settlement”, but a Will with a direction to preserve the Estate till the life time of the author and thereafter to be taken over by the legal heirs. By the said deed property was not transferred to the legal heirs. Therefore, it was held that the Deed will not fall under the definition “Settlement”.

5. But, in the case on hand the properties belonging to Transferor Trust is being transferred to appellant Trust. Though it is stated that the transferor Trust is doing certain charitable activities none of the activities were revealed in the Deed of transfer. In fact the trustees of Transferor Trust are British Nationals settled in England. The recitals disclose

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that the transferor Trust acquired properties and constructed home and hostel for the use of Missionaries visiting Ootacamumd with a preference given to Church Missionary Society and the Church of England Zenana Mission. Apart from that nothing is disclosed as to the charitable activity carried out for the benefit of public.

6. The wholesome reading of Deed of Transfer discloses the transfer of properties from the Transferor Trust to the appellant Trust without consideration. Mere a recital or covenant states that the properties are transferred without consideration, it will not entail exemption provided under Art.62 E of the Indian Stamp Act.

7. To be precise as held by this Court in the National Missionary Trust case, the appellant is not taking over the management of a Trust having similar objectives, but taking over properties of other Trust under the guise of a Trust having similar objectives. No where in the recitals it is stated that the transferor Trust was doing public charitable activities to the beneficiaries at large and that it has become defunct and the objectives of the Trust is continued by the appellant for the welfare of the public. On the other hand, it is crystal clear that the home and hostel constructed for the English Missionaries for their stay along with the land are transferred to the appellant by Transferor Trust. It is in the nature of a trust purchasing the properties of other Trust and not in the nature of taking over the Management for the welfare of the beneficiaries.

8. In such circumstances, the order passed by the 1st respondent that the transferor and transferee are transferring the property rights between themselves shall fall under Art.23 of Sch. I of Indian Stamp Act is absolutely valid and correct. Further, the Transferor Trust is one registered in England operated by Powers of Attorney. Therefore, permission under Sec.31 of Foreign Exchange Regulation Act, 1973 is also required for registration. The appellant has not whispered anything about the permission obtained by them to register the property as per Foreign Exchange Regulation Act, 1973.

9. In such circumstances, I do not find any merit in the contention of the Appellant and accordingly Civil Miscellaneous Appeal is dismissed. No Costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS-III-MDU)

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Sub Assistant Registrar

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To

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MR(CO)
GMY(31/07/2020)

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