IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.01.2020

C O R A M

THE HONOURABLE MR. JUSTICE ABDUL QUDDHOSE

W.P.No.32891 of 2012
&
M.P.No.1 of 2012

T.Kanagarathinam ... Petitioner

Vs.

The Sub Registrar,
Palladam,
Tirupur District. ... Respondent

PRAYER: Petition filed under Article 226 of the Constitution of India, for issuance of a writ of certiorari to call for the records relating to the impugned notice No.Nil dated 27.07.2012 and the consequent notice dated 04.10.2012, insofar it relates to registered settlement deed, document No.28294 of 2011 dated 26.12.2011 on the file of the respondent.

For Petitioners :Mr.S.Saravanan

For Respondents 1 to 4 :Mr.P.P.Purushothaman
Government Advocate

O R D E R

The instant writ petition has been filed challenging the notice No.Nil dated 27.07.2012 and the consequent notice dated 04.10.2012 relating to the registered settlement deed bearing document No.28294 of 2011 dated 26.12.2011 issued by the respondent.

2. The case of the petitioner is that originally the property comprised in Survey No.222 of Palladam Village, Tiruppur Taluk measuring an extent of 9788 sq. ft. was purchased jointly by M.Mayilsamy and D.Karthikeyan under a sale deed dated 23.12.2005 registered as document No.9480 of 2005, Sub Registrar Office, Palladam. According to her, subsequently M.Mayilsamy and D.Karthikeyan have settled the above mentioned property absolutely to the petitioner (T.Kanagarathinam) and and T.Subbulakshmi out of natural love and affection under a settlement dated 26.12.2011 registered as document No.28294 of 2011, Sub Registrar Officer, Palladam.

3. It is the case of the petitioner that after the

registration, they have also obtained the release of the document from the Sub Registrar's Office. According to the petitioner, all of a sudden, the respondent issued a notice under Section 33-A of the Stamp Act calling upon the petitioner to pay a sum of Rs.2,98,888/- towards loss of stamp duty and Rs.36,615 towards loss of registration fees within 7 days from the date of receipt of the notice. According to the petitioner, having paid the stamp duty for a settlement deed entered into between family members under Article 58(a) of the Stamp Act, the demand of the respondents for deficit stamp duty is illegal. It is also the case of the petitioner that any demand for deficit stamp duty under Section 33-A of the Stamp Act can be made only by the Registrar and not by a Sub-Registrar. Aggrieved by the impugned demand, this writ petition has been filed.

4. Heard Mr.S.Saravanan, learned counsel for the petitioner and Mr.P.P.Purushothaman, learned Government Advocate for the respondent.

5. The settlement deed dated 26.12.2011 has been executed by M.Mayilsamy and D.Karthikeyan in favour of T.Kanagarathinam (petitioner herein) and T.Subbulakshmi. T.Kanagarathinam, the petitioner herein is the sister of M.Mayilsamy and T.Subbulakshmi is the sister of D.Karthikeyan. M.Mayilsamy and D.Karthikeyan had earlier purchased the property jointly under a sale deed dated 23.12.2005 registered as document No.9480, SRO, Palladam. But by a single settlement deed, they have settled the property in favour of the petitioner herein (T.Kanagarathinam) and T.Subbulakshmi. The third respondent (Sub-Registrar) has issued the impugned notice dated 27.07.2012 claiming deficit stamp duty and registration fees under Section 33-A of the Stamp Act.

6. Section 33-A of the Stamp Act makes it clear that any notice under the said section calling upon the payment of deficit stamp duty will have to be issued by the Registrar of the District under the Registration Act, 1908. Admittedly, in the case on hand, the notice under Section 33-A of the Stamp Act has been issued by the Sub Registrar and hence, it is not a valid notice in accordance with Section 33-A of the Stamp Act.

7. The explanation to Article 58(a) of the Act also makes it clear that sisters also come within the definition of a family. But in the case on hand, by a single settlement deed, the settlees are not the sisters of both the settlors. The first settlee (T.Kanagarathinam, petitioner) is the sister of the first settlor (M.Mayilsamy) and the second settlee (T.Subbulakshmi) is the sister of the second settlor (D.Karthikeyan). Whether the settlement deed dated 23.12.2005 comes within the purview of Article 58(a) of the Stamp Act or not is for the District Registrar to decide. Therefore this court is leaving the said issue open for the District

Registrar to decide as and when any action is initiated by him for payment of deficit stamp duty under section 33-A of the Stamp Act. However, as observed earlier any notice under Section 33-A of the Stamp Act for payment of deficit stamp duty can be issued only by the District Registrar and not by a Sub-Registrar. In the case on hand, admittedly, the notice has been issued by the Sub-Registrar who does not have authority under law to issue the said notice. In such circumstances, the impugned notice will have to be quashed. It is made clear that the impugned notice is quashed only on the ground that the Sub-Registrar does not have the authority under law to issue notice under Section 33-A of the Stamp Act. It is also made clear that the Registrar having jurisdiction if he so decides is empowered to initiate fresh action for payment of deficit stamp duty under Section 33-A of the Stamp Act against the petitioner and other parties to the settlement deed dated 26.12.2011 registered as document No.28294 of 2011, SRO, Palladam.

8.For the foregoing reasons, the impugned notice No.Nil dated 27.07.2012 and the consequent notice dated 04.10.2012 relating to the registered settlement deed bearing document No.28294 of 2011 dated 26.12.2011 issued by the respondent is hereby quashed and the writ petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (CS-VIII)

//True Copy//

Sub Assistant Registrar

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To

The Sub Registrar,
Palladam,
Tirupur District.

+1cc to Mr.S.Saravanan, Advocate, S.R.No. 265
+1cc to the Government Pleader, S.R.No. 975

W.P.No.32891 of 2012

SPD(CO)
GN(31/01/2020)