

In the High Court of Judicature at Madras

Dated : 27.1.2020

Coram :

The Honourable Mr.Justice T.S.SIVAGNANAM

Writ Petition Nos.6191, 10761 & 37612 of 2015
& all connected pending WMPs

Ms.Malavika Sarukkai ...Petitioner in all the WPs
Vs

- 1.The Sub-Registrar (Registrar
Cadre), Saidapet, Joint I,
South Chennai, Chennai-15. ...R1 in both WP.Nos.6191
& 10761 of 2015 & R2 in
WP.No.37612 of 2015
- 2.The Inspector General of
Registration, No.100, Santhome
High Road, Chennai-28.R2 in both WP.Nos.6191
& 10761 of 2015 & R1 in
WP.No.37612 of 2015

PETITIONS under Article 226 of The Constitution of India
praying for the issuance of Writs of Certiorarified Mandamus

(i) to call for the records of the first respondent, quash
the impugned notice Mudakkam No.1/2014 dated 29.12.2014 and
direct the first respondent to register the document and release
the said document without insistence of any additional duty and
penalty (WP.No.6191 of 2015);

(ii) to call for the records of the first respondent, quash
the impugned order passed in Mudakkam No.1/2014 dated 16.2.2015
and direct the first respondent to register the document and
release the said document without insistence of any additional
duty and penalty (WP.No.10761 of 2015); and

(iii) to call for the records of the first respondent, quash
the impugned order dated 14.10.2015 in proceedings
No.17709/P1/2015 and direct the second respondent to register
the document and release the said document without insistence of
any additional duty and penalty (WP.No.37612 of 2015).

For Petitioner :Mr.J.Balachander

For Respondents :Mr.S.R.Rajagopal, AAG, assisted by
Mr.P.P.Purushothaman, GA

COMMON ORDER

I have heard Mr.J.Balachander, learned counsel for the petitioner and Mr.S.R.Rajagopal, learned Additional Advocate General assisted by Mr.P.P. Purushothaman, learned Government Advocate appearing for the respondents.

2. The petitioner in all the three writ petitions is one and the same. The reason for filing three writ petitions is on account of three orders being passed by the respondents, which are impugned in these three writ petitions, all pertaining to very same document namely a release deed executed in favour of the petitioner by her sister. In this common order, for the sake of convenience, the Sub-Registrar (Registrar Cadre), Saidapet, South Chennai, Chennai-15 is referred to as the first respondent and the Inspector General of Registration, Chennai-28 is referred to as the second respondent.

3. The question to be decided in these cases is as to whether the document presented for registration was a release deed to be charged the stamp duty at Rs.25,000/- or should it be treated as a deed of conveyance.

4. W.P.No.6191 of 2015 is the first among the three writ petitions, in which, the petitioner challenges a notice dated 29.12.2014 issued by the first respondent treating the document as a deed of conveyance and demanding deficit stamp duty and other charges. Further, the petitioner was granted 15 days' time to file objections.

5. W.P.No.10761 of 2015 has been filed challenging the order dated 16.2.2015 passed by the first respondent rejecting the objections of the petitioner dated 28.1.2015, confirming the proposal in the show cause notice and demanding differential stamp duty and penalty. Aggrieved by the order dated 16.2.2015 passed by the first respondent, the petitioner preferred an appeal before the second respondent and it was rejected by the order dated 14.10.2015, which is impugned in W.P.No.37612 of 2015.

6. The facts leading to issuance of the notice and the orders passed by the respondents are stated as hereunder :

The property in question is a residential house situated at No.29, 'Dharini', Second Seaward Road, Valmiki Nagar, Thiruvannamiyur, Chennai-41. Originally, the owner of the property was the petitioner's mother, who executed a settlement deed in favour of the petitioner dated 27.6.2007 registered as doc.No.5095 of 2007. The property settled is more fully described in Schedule - B of the settlement deed, which is half share in the property in question together with superstructure measuring an extent of 1800 sq.ft., of the main building in the ground floor, 250 sq.ft. garage in the ground floor and 350 sq.ft. of the built up area in the mid level floor area together with half right over the terrace and the larger extent of the land.

7. On the very same day, the petitioner's mother executed another settlement deed in favour of the petitioner's sister registered as doc.No.5096 of 2007. The property settled in favour of the petitioner's sister is more fully described in Schedule B of the settlement deed, by which, the petitioner's mother settled the other half share of the property together with 150 sq.ft. of the built up area being servant quarters in the ground floor and 1400 sq.ft. of built up area in the first floor existing thereon together with half right over the entire terrace and the larger extent of the land.

8. In both the settlement deeds, the following covenant finds place, which reads as hereunder :

"In the event of the settlee desires to sell the portion settled in her favour, described in Schedule B annexed hereunder, the settlee shall give the first option of the purchase to her sister, in whose favour the settlor is settling the remaining portion of Schedule A mentioned property. The first refusal right shall always vest with the above said other co-owner of the property in whose favour the settlor is making a separate settlement deed."

9. On a reading of the above covenant, it is clear that it was the desire of the petitioner's mother that the property should remain in the family and precisely for such a reason, the petitioner's mother thought fit to insert the above covenant in both the settlement deeds dated 27.6.2007. Thus, if one of the settlees desires to sell the portion, which is more fully described in Schedule - B of the respective settlement deeds, the settlee shall give the first option of purchase to her sister, in whose favour, the settlor had settled the remaining portion of Schedule - A property.

10. It appears that the petitioner's sister was desirous of selling her share in the property and in terms of her mother's desire as mentioned in the above covenant, she gave the first option to the petitioner to purchase her share. The petitioner also agreed to purchase the same for a total consideration of Rs.2.70 Crores. The petitioner's sister executed a deed dated 15.9.2014 releasing her share in the property, which was settled by her mother, to the petitioner, which included superstructure measuring an extent of 1400 sq.ft., in the first floor of the main building and 150 sq.ft. servant quarters in the ground floor.

11. It is seen that this document was not accepted for registration by the first respondent and therefore, the petitioner submitted a representation even on the same day i.e. 15.9.2014. In the meantime, the document was impounded under Section 33 of the Indian Stamp Act, 1899 (for short, the Act). Since the petitioner approached the second respondent by way of

a representation, a reply was given to the petitioner dated 29.10.2014 stating that the petitioner could raise all the points before the concerned Sub-Registrar and that if she is aggrieved by the final decision, an appeal against the order of the Collector could be preferred to the Chief Controlling Revenue Authority-cum-Inspector General of Registration under Section 56(1) of the Act.

12. Thereafter, the show cause notice dated 29.12.2014 was issued by the first respondent to the petitioner, who sent a reply dated 28.1.2015 contending that she has a right of pre-emption to purchase 50% of the undivided share in the land and agreed to compensate her sister and that based on such understanding, the petitioner's sister executed the release deed dated 15.9.2014 after accepting Rs.2.70 Crores as consideration. Therefore, the petitioner reiterated that the document is a deed of release wherein the restrictive covenant stipulated by their mother in the original settlement deed would clearly show that it is not a sale transaction, but it is the exercise of right by a co-owner, who has been granted a right of pre-emption.

13. The first respondent did not accept the contention advanced by the petitioner and treated the document as one of conveyance and demanded deficit stamp duty to the tune of Rs.18,65,000/- and penalty to the tune of Rs.10,000/- and altogether, a sum of Rs.18,75,000/- has been demanded vide proceedings dated 16.2.2015. Aggrieved by that, the petitioner preferred an appeal to the second respondent, who heard the petitioner in person, during the course of which, the petitioner submitted written arguments and also relied upon certain decisions. However, the second respondent rejected the appeal petition by order dated 14.10.2015. This is how the petitioner is before this Court by way of these writ petitions.

14. This Court has elaborately heard Mr.J.Balachander, learned counsel for the petitioner and Mr.S.R.Rajagopal, learned Additional Advocate General assisted by Mr.P.P.Purushothaman, learned Government Advocate appearing for the respondents.

15. The question, which falls for consideration in the instant case, is as to whether the document executed by the petitioner's sister is a deed of release or a deed of conveyance. The title to the document describes it as a deed of release. The Authorities below treated the document as a deed of conveyance. Thus, the legal issue to be considered is as to whether the petitioner had any pre-existing right over the property, which has been released in favour of the petitioner by her sister. If the petitioner had a pre-existing right, by virtue of which, her right got enlarged, according to the petitioner, it should be treated as a deed of release and not a deed of conveyance.

16. The respondents, on the other hand, would contend that the petitioner had no pre-existing right over the property released by her sister, that for the first time, the petitioner

got title over the said property and that therefore, it is a deed of conveyance though it is titled as a deed of release.

17. Appropriate stamp duty payable on such document is in terms of Entry 55C of Schedule I to the Act.

18. The learned counsel for the petitioner has relied upon

(i) the decision of Hon'ble Full Bench of this Court in the case of Chief Controlling Revenue... Vs. Rustorn Nusserwanji Patel [reported in AIR 1968 Madras 159];

(ii) the decision of a learned Single Judge of this Court in the case of The Chief Controlling Revenue.... Vs. Dr.K.Manjunatha Rai [reported in 1976 (2) MLJ 279]; and

(iii) the decision of another learned Single Judge of this Court in the case of P.D.Palanivelu Vs. The Sub-Registrar, (District....) [reported in 2003 (1) MLJ 66].

19. Per contra, the learned Additional Advocate General appearing on behalf of the respondents, in support his contentions, has relied upon the decision of the Hon'ble Full Bench of this Court in the case of The Board of Revenue Vs. Murugesu Mudaliar [reported in 68 LW 534].

20. Before going into the decisions relied upon at the bar, this Court needs to first know the factual position. As mentioned above, the petitioner's mother executed two settlement deeds both dated 27.6.2007 registered as doc.Nos.5095 and 5096 of 2007 in favour of the petitioner and her sister respectively. Schedule B of the respective settlement deeds dated 27.6.2007 are the properties, which have been settled. Admittedly, the properties, which have been settled in favour of the petitioner and her sister are two distinct properties in the sense that the petitioner gets ground floor of the building along with servants quarters etc., and 50% of the share in the land and the open terrace. Similarly, her sister gets first floor of the building constructed as well as the garage and 50% of the share in the land and the open terrace.

21. It is no doubt true that in both the settlement deeds, the mother of the petitioner states that if the settlee (i.e the petitioner or her sister) desires to sell the portion settled in her favour, described in Schedule B annexed hereunder, the settlee (the petitioner or her sister) shall give the first option of the purchase to her sister, in whose favour the settlor is settling the remaining portion of Schedule A mentioned property and that the first refusal right shall always vest with the above said other co-owner of the property, in whose favour, the settlor is making a separate settlement deed.

22. The petitioner seeks to take advantage of the said covenant to state that she is a co-owner in respect of the

property in question, that by virtue of the deed of release, her share gets enlarged over the property, that it should be treated as a deed of release and that therefore, the stamp duty payable is only Rs.25,000/-.

23. In the decision in the case of Rustorn Nusserwanji Patel relied upon by the learned counsel for the petitioner, the Hon'ble Full Bench of this Court had taken note of the decision of the Hon'ble Supreme Court in the case of Kuppaswami Chettiar Vs. Arumuga Chettiar [C.A.No.521 of 1964] wherein it was held that a release deed can only feed a title, but cannot transfer title and also that renunciation must be in favour of a person, who had already title to the estate, the effect of which is only to enlarge the right.

24. In the decision in the case of Dr.K.Manjunatha Rai relied upon by the learned counsel for the petitioner, it was held that a release, in law, may be effected either for consideration or for no consideration and in either case, if the transaction operates as a relinquishment or a renunciation of a claim by one person against another or against a specified property, it will be a release.

25. In the decision in the case of P.D.Palanivelu relied upon by the petitioner, the above referred to decisions were taken note of and it was pointed out that the essential difference between a conveyance and a release lies in the fact that in the latter, there is no transfer of an interest or right to another, who had no pre-existing right in it to any extent and that a release of a right or of a claim can only be in favour of a person, who had a pre-existing right or claim and by reason of the release, the latter's right or claim is enlarged or is made fuller in its content.

26. The decision of the Hon'ble Full Bench of this Court in the case of Murugesu Mudaliar relied upon by the respondents, pointed out that in the case of co-owners, there need be no conveyance as such by one of the co-owners in favour of the other co-owners as each co-owner in theory is entitled to enjoy the entire property in part and in whole and it is not necessary for one of them to convey his interest to another. It was further pointed out that it is sufficient if he releases his interest, the result of which would be the enlargement of the share of another and that there can, however, be no release by one person in favour of another, who is not already entitled to the property as a co-owner.

27. Bearing the above legal positions in mind, if this Court examines the factual position, it is no doubt true that the petitioner's mother settled one half share of the property together with a distinct built up area in the ground floor to the petitioner and another half share of the property together with a distinct built up area in the first floor to her sister. It is also true that the petitioner and her sister are each entitled to half undivided share of the land together with half

share in the open terrace. Thus, the petitioner cannot be stated to be a person, who has a pre-existing right in respect of the property mentioned in Schedule B of the settlement deed dated 27.6.2007 executed in favour of the petitioner's sister registered as doc.No.5096 of 2007.

28. The petitioner would contend that Schedule B property is undivided and taking note of the right of pre-emption granted in favour of the petitioner by her mother in the settlement deed, if her sister releases her right over the property, the share of the petitioner in the property would get enlarged.

29. However, one important fact, which the petitioner missed to note is that the property, which is released in favour of the petitioner, is a distinct and separate property than what was released to her sister. It may be true that each of the 50% of the undivided share in the land and the open terrace together with the respective built up area was clearly split into two. Therefore, on and after execution of the settlement deed by the mother of the petitioner in favour of her sister, the petitioner has no pre-existing right in respect of the B Schedule property in doc.No.5096 of 2007. Further, unless and until the petitioner had a pre-existing right, the question of treating the document as a release deed will not arise as the existing share held by the petitioner does not get enlarged. By virtue of the release deed, the petitioner has acquired title to the property, which was settled in favour of her sister and the Authorities below have rightly treated the document as one of conveyance.

30. As pointed out by the Hon'ble Full Bench in the case of Rustorn Nusserwanji Patel relied upon by the learned counsel for the petitioner, a document to be treated as a release must be a renunciation in favour of a person, who had title already to the estate, the effect of which is only to enlarge the right. Further, the petitioner had no title to Schedule B property of the settlement deed executed vide doc.No.5096 of 2007 and by virtue of the release, her share does not get enlarged, but the petitioner has acquired title to the settled property, which is distinct and separate.

31. The argument of the petitioner that a right of pre-emption would, in fact, mean that the petitioner has title to the other extent also, is an argument, which has to be rejected. Therefore, in the considered view of this Court, the respondents rightly treated the document as a deed of conveyance and demanded full stamp duty and penalty. For the above reasons, the petitioner has not made out any grounds to interfere with the impugned orders.

32. Accordingly, all the three writ petitions are dismissed. No costs. Consequently, the connected WMPs are also dismissed.

33. After the order is dictated, the learned counsel for the petitioner submits that the petitioner misplaced the original remittance slip issued by the first respondent and a direction may be issued to the first respondent to release the document on

payment of differential stamp duty, penalty and other charges, if any.

34. In the light of the said submission, the petitioner is permitted to pay the charges as demanded by the first respondent and if the same is paid in full along with a copy of this order, the first respondent shall register and release the document within a period of two weeks from the date, on which, the full payment is made.

RS

Sd/-
Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

To

1.The Sub-Registrar (Registrar Cadre), Saidapet, Joint I, South Chennai,
Chennai-15.

2.The Inspector General of Registration, No.100, Santhome High Road,
Chennai-28.

+1 cc to Government Pleader Sr.No.6685

+1cc to Mr.J.Balachander , Advocate SR.No. 5616

WP.Nos.6191, 10761 & 37612
of 2015 & all connected pending
MPs

A.SK(28/02/2020)

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