BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 04.08.2020

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THE HONOURABLE MR.JUSTICE M.SATHYANARAYANAN

AND

THE HONOURABLE MR.JUSTICE P.RAJAMANICKAM

W.A.(MD)No.1391 of 2017
and
C.M.P.(MD)No.10033 of 2017

M.Mohammed Shajahan ... Appellant/Petitioner

Vs.

1.Inspector General of Registration-cum-
Chief Controlling Revenue Authority,
Registration Department,
Chennai - 28.
2.The District Registrar,
Administration,
Pudukkottai.
3.The Joint Sub Registrar II,
Registration Department,
Pudukkottai. ... Respondents/Respondents

Prayer : Appeal filed under Clause 15 of the Letters Patent Appeal against the order passed by this Court in W.P.(MD)No.11157 of 2008, dated 28.02.2017.

Prayer in WP(MD). 11157 of 2008 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a writ of Certiorarified Mandamus, calling for the records relating to the impugned order in Pa.Mu.No.12947/P1/2007 dated 2.7.2008 issued by the first respondent and quash the same and consequently direct the third respondent to register the pending document No.39/2005 by classifying it under Article 45(b) of Schedule 1 of Indian Stamp Act, 1899 and release the same to the petitioner.

For Appellant : Mr.T.Antony Arul Raj

For Respondents : Mr.V.Anand
Government Advocate

J U D G M E N T

(Judgment of the Court was delivered by M.SATHYANARAYANAN,J)

The appellant along with his wife, his brother and his wife jointly purchased a property by a registered sale deed bearing document No.2727 of 1997. Another item was also jointly purchased by his brother and the petitioner under registered sale deed bearing document No.2317 of 2001 and yet another item of property was also jointly purchased by the petitioner and his another brother under document No.2478 of 1995 and in one transaction, the wives of the two brothers have joined together. Therefore, they took a decision to effect partition. Accordingly, 2/4th share of the undivided property covered under document No.2727 of 1997 is alloted to the petitioner and the undivided 1/2 share of the property covered under document No.2727 of 1997 is allotted in favour of the petitioner's brother Jahafar Ali and his wife Pathimagani. The 1/2 share of the property standing in the name of Jahafar Ali under Document No.2317 of 2001 is allotted to the petitioner.

2.The petitioner would further state that when said document of partition was submitted to the third respondent for registration, he was of the opinion that the document ought not to have been classified under Article 45(b) of Schedule 1 of Indian Stamp Act. Since the third respondent entertained some doubts regarding classification of the document, referred the same to the second respondent, who classified the document as an exchange and vide communication dated 09.01.2007, directed the petitioner to pay the deficit stamp duty of Rs.67,632/- and penalty of Rs.2,358/-. The petitioner aggrieved by the same has sought review of the order and it was rejected by the impugned order dated 02.07.2008, classifying the document partly as a gift and partly as a partition and directing collection of stamp duty on that basis. Making a challenge to the said order, the petitioner has come forward to file the Writ Petition and it was entertained.

3.The third respondent has filed a counter affidavit stating among other things that a person having no title or interest cannot seek partition and partition pre-supposes, pre-existing right or interest over the property sought to be partitioned and on going through the materials it was concluded that Articles 33 and 45(A) of Indian Stamp Act, 1899, alone apply to the transaction in question and therefore, prayed for dismissal of the Writ Petition.

4.The learned Single Judge has taken note of the rival submissions and other materials as well as statutory provisions and concluded that explanation of Article 58 of Indian Stamp Act, 1899, has no application to the facts of the case and stamp duty has to be levied under Article 33 of the Act and accordingly, by citing the said reasons dismissed the Writ Petition and challenging the same, the petitioner has filed this Writ Appeal.

5.When the matter was listed on 30.07.2020, this Court made a reference to the decision rendered by the Division Bench of this Court in ***The District Registrar, Tindivanam v. V.Ranganathan [2008 (1) CTC 1]*** and put a query to the learned counsel for the petitioner, the learned counsel for the petitioner sought time to work out the legal position and accordingly, the matter was listed today (04.08.2020).

6.The learned counsel for the petitioner would submit that the third respondent has filed a counter affidavit declaring the shares between the parties and the same is impermissible and in the facts and circumstances of the case, the deed in question be considered only as a partition deed and therefore, the reasons assigned in the impugned orders are wholly unsustainable and prays for interference.

7.This Court considered the rival submissions and perused the materials placed on record.

8.In the decision reported in ***The District Registrar, Tindivanam v. V.Ranganathan [2008 (1) CTC 1],*** the order allowing the Writ Petition with a direction to the second apeallant therein to release a deed of partition presented by the respondent therein for registration, without collecting the deficit stamp duty charged by the appellants, was put to challenge. The Division Bench, had taken into consideration Article 45 of the Indian Stamp Act, 1899, and observed as follows:

> "9. It is seen from Clause (a) of Article 45 that if an instrument of partition is among family members, the stamp duty payable would be 1% on the market value of the property subject to a maximum of Rs.10,000/- per share. The respondents have claimed their deed of partition to fall under Article 45(a) and they had paid a stamp duty of Rs.20,005/-, at the rate of Rs.10,000/- per share, for both of them (with a small spillover of Rs.5/-).
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> 10. But if an instrument of partition is not among family members, such an instrument would be covered only by Article 45(b), under which the stamp duty payable would be the same as duty payable for a Bottomry Bond falling under Article 16, for the amount of the value of the separated share. Article 16 dealing with Bottomry Bond prescribes a stamp duty of 4%.

...

13. Thus, it is seen that the word, "family" is given a restrictive meaning, in its Application to Article 58 and the same meaning is imported to the word, "family" appearing in Article 45. Consequently, the respondents would be entitled to claim the benefit of confessional rate of stamp duty under Article 45(a) only if both of them are members of a family, within the meaning of the definition of the word, "family". Obviously, the respondents do not fall within the definition of the word, "family" under Article 45(a). Therefore, *prima facie*, the objection raised by the appellants with regard to the nature of the document is well founded. Under such circumstances, it is not possible to order the release of the documents, especially after an order has been passed by the first appellant. Admittedly, the respondents have filed an Appeal to the Chief Controlling Authority, viz., Inspector General of Registration, on 19.4.2006. Therefore, the respondents will have to await the outcome of the said Appeal and the question of return of documents could be considered only after final orders are passed on the Appeal."

Citing the said reasons, the Division Bench allowed the Writ Appeal filed by the official respondents.

9.This Court, on an atmost consideration of the facts projected before it, is of the considered view that there are no pre-existing right and different parties to different deeds and different properties are put together and executed a deed of partition. In the light of the said decision, the said document is considered as a partition deed and therefore, it comes within Article 45(b) of the Indian Stamp Act.

10.Though the learned counsel for the petitioner would submit that the first respondent went one step beyond and declared the share itself, this Court cannot adjudicate the said issue as it is called upon to answer to the legal issue as to the levy of stamp duty under Article 45(a) or 45(b) of Schedule 1 of Indian Stamp Act, 1899 of the Indian Stamp Act. This Court on an independent application of the materials placed before this Court is of the considered view that there is no error in the reasons assigned by the learned Single Judge for dismissing the Writ Petition and the Writ Appeal deserves dismissal.

11.Accordingly, the Writ Appeal is dismissed. Consequently, connected Miscellaneous Petition is also dismissed. However, in the circumstances of the case, there shall be no orders as to the costs.

Sd/-

Deputy Registrar(LA & M)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

Sj

Note: *In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.*

To

1.Inspector General of Registration-cum-
Chief Controlling Revenue Authority,
Registration Department, Chennai - 28.

2.The District Registrar,
Administration, Pudukkottai.

3.The Joint Sub Registrar II,
Registration Department, Pudukkottai.

+1 CC to M/s.GP (SR-13734[F] dated 06/08/2020)

W.A.(MD)No.1391 of 2017
and
C.M.P.(MD)No.10033 of 2017
04.08.2020

SE(CO)
TR(19.08.2020) 5P 5C