IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.12.2021

CORAM

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

W.P.NO.13194 OF 2013
AND
M.P.NOS.1 AND 2 OF 2013

S.J.Sathish Kumaran ... Petitioner

vs.

The Inspector General of Registration
Office of the Inspector General of Registration
No.100, Santhome High Road,
Chennai - 600 028. ... Respondent

Prayer:

Writ Petition is filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the records of the Respondent in his proceedings dated 05.10.2012, bearing reference number 3691/C2/2010, pertaining to the disposal of the representation given by the Petitioner on 25.01.2010 for refund of excess stamp duty and registration fee of Rs.25,32,928/- (Rupees Twenty five lakh thirty two thousand nine hundred and twenty eight only) paid for the document registered as number 5179 of 2009 before the Sub-Registrar of Vadavalli and consequently quash the order of the Respondent directing a refund of a sum of Rs.18,71,903/- (Rupees Eighteen lakh seventy one thousand nine hundred and three only) to the Petitioner herein.

For Petitioner : Mr.C.P.Hem Kumar
for Ms.T.Hemalatha

For Respondent : Mr.Yogesh Kannadasan
Special Government Pleader

ORDER

This writ petition has been filed to issue a Writ of Certiorarified Mandamus, calling for the records of the respondent in his proceedings dated 05.10.2012, bearing reference number 3691/C2/2010, pertaining to the disposal of the representation given by the petitioner on 25.01.2010 for refund of excess stamp duty and registration fee of Rs.25,32,928/- (Rupees Twenty five lakh thirty two thousand nine hundred and twenty eight only) paid for the document registered as number 5179 of 2009 before the Sub-Registrar of Vadavalli and consequently quash the order of the respondent directing a refund of a sum of Rs.18,71,903/- (Rupees Eighteen lakh seventy one thousand nine hundred and three only) to the Petitioner herein.

2. The case of the petitioner is that the petitioner along with his father, grandfather and brother constituted a Partnership Firm in the name and style of 'M/s Sri Investments'. The property comprised in S.F.No.54/1A1 ad-measuring to an extent of 1 acre was purchased in the name of the said Partnership Firm by the sale deed dated 09.03.2009 registered vide Document No.791 of 2009. Thereafter, by a Deed of Dissolution of Partnership dated 18.09.2009 the Partnership Firm was dissolved and agreed to partition the property purchased by the Partnership Firm. Accordingly, the Partition Deed was entered into between them and in respect of one share of the subject property was allotted to the petitioner's father and other share was allotted to the petitioner, his brother and their grandfather. The said Partition Deed was presented for registration with the Sub-Registrar, Vadavalli, on payment of stamp duty as prescribed under Schedule-I, Article 46-B(ii) of the Indian Stamp Act, 1899 (hereinafter referred to as the 'Act' for short) viz., a sum of Rs.10,000/- for each share of the property. However, it was kept pending as Pending Document No.95 of 2009 on the file of the Sub-Registrar, Vadavalli and made reference to the District Registrar, Coimbatore, seeking his assistance to adjudicate/access the stamp duty on the said Partition Deed.

3. In the meanwhile, the petitioner filed writ petition in W.P.No.25397 of 2009 before this Court for a direction, directing the Sub-Registrar, Vadavalli to register the partition deed dated 27.10.2009 bearing Pending Document No.95 of 2009 and release the same to the petitioner. By an order dated 23.12.2009 this Court directed the Sub-Registrar, Vadavalli to register and release the same on payment of stamp duty as claimed by the Sub-

Registrar, Vadavalli. As directed by this Court, the petitioner paid stamp duty of Rs.22,52,823/- and a sum of Rs.2,80,105/- for registration fee under protest and on receipt of the same, the Sub-Registrar, Vadavalli registered the partition deed dated 27.10.2009 vide Document No.5179 of 2009 and released the same to the petitioner. Thereafter, the petitioner made representation dated 25.01.2010 for refund of excess stamp duty and registration fee paid by the petitioner. However, it was not considered and as such, the petitioner was constrained to file writ petition in W.P.No.8086 of 2010 before this Court. By an order dated 09.07.2010, this Court directed the respondent herein to consider and pass orders on the representation dated 25.01.2010 made by the petitioner within a period of six weeks from the date of receipt of the copy of the order. Finally, it was partly rejected the claim of the petitioner in so far as the part of the stamp duty and registration fee which were paid by the petitioner.

4. The learned counsel for the petitioner submitted that the definition of Family as stated in Schedule-I, Article 58 does not include the the word Grand Father. The respondent failed to give any reason as to why the word Grand Child is being used in the definition of Family as stated in Schedule-I, Article 58 and the respondent has not given any explanation as to why the hierarchy in the definition of family is given as Father, Mother, Son, Daughter and Grand Child. The respondent also failed to interpret that the relationship between Father, Mother and Grand Child as provided under Article 58 includes that of the Grand Father, Grand Mother and Grand Children. There was no partition of the property between the Grand Father and Grand Child and both the Grand Father and Grand Child have have taken 1 ½ of the property and another ½ of the property has been taken by the son viz., father of the petitioner herein. He further submitted that the respondent failed to give any finding for refund of the excess registration fee. There is absolutely no reason to order of refund only a sum of Rs.18,71,903/- instead of Rs.25,32,928/-.

5. The respondent filed counter affidavit and revealed that the partition deed comprises of two distinct matters falling under Article 46-B(i) and Article 46-B(ii) of the Act. Therefore, the stamp duty as calculated by the Sub-Registrar, Vadavalli has to be paid by the petitioner. The petitioner has paid only a sum of Rs.20,000/- as stamp duty and as such, it was referred to the District Registrar, Coimbatore for clarification instead of impounded the same under Section 33 of the Act. The relationship of 'Grandfather' does not find place in the definition of family under Article 58 of the Schedule-I of the

Act. Hence, it cannot be said that the settlement transaction was within the family members. The order has not been passed under Section 45 of the Act, whereas it has been passed under the provisions of Article 32 of the Tamil Nadu Financial Code. Therefore, the claim of interest for the refund amount is totally erroneous. Neither Indian Stamp Act, 1899 nor Tamil Nadu Financial Code provide for payment of interest on the amount which is refunded. The refund ordered by the impugned order dated 05.10.2012, is in consonance with provisions of the Indian Stamp Act, 1899.

6. Admittedly, the petitioner along with his father, grandfather and brother formed a Partnership Firm in the name and style of 'M/s Sri Investments' and thereafter, it was dissolved by a deed of dissolution of partnership dated 18.09.2009. When the Partnership Firm was in existence, they purchased the subject property registered vide Document No.179 of 2009. When the Partnership Firm was dissolved, the partners agreed to partition the said property since all the partners are family members.

7. Though the word Grandfather does not include in the Article 58 of Schedule-I of the Act, the partition deed reads that the subject property partitioned into two shares and one of the share allotted to the petitioner's father and the another share allotted to the petitioner, his brother and their grandfather. Therefore, there was no partition of the property between the Grandfather and the Grandchied. Even assuming that the partnership entered between the Grandfather and Grandchild, this Court repeatedly held that when the Grandchild include as a family member, Grandfather and Grandmother also included as a family while executing the settlement deed.

8. On perusal of the impugned order, there is no discussion about the refund of registration fee. When the petitioner is entitled for refund of excess stamp duty, he is also entitled for refund of excess registration fee. Further, the respondent calculated the stamp duty as if the Grandfather is not a family member and accordingly calculated the stamp duty payable by the petitioner. Therefore, the petitioner is entitled for refund of stamp duty and registration fee, which were paid excess.

9. In view of the above, the impugned order passed by the respondent in Ref.No.3691/C2/2010, dated 05.10.2012 is set aside. The Sub-Registrar, Vadavalli is directed to disburse the excess stamp duty and registration fee collected from the

petitioner at Rs.3,80,920/- and Rs.2,80,105/-, respectively, within a period of four weeks from the date of receipt of a copy of this order.

10. With the above direction, this writ petition is allowed. Consequently, the connected miscellaneous petitions are closed. No costs.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

dm

To

The Inspector General of Registration
Office of the Inspector General of Registration
No.100, Santhome High Road,
Chennai - 600 028.

Copy To

The Sub Registrar,
Vadavalli.

+2ccs to Ms.T.Hemalatha, Advocate, S.R.No.68005
+1cc to the Government Pleader, S.R.No.68305

W.P.No.13194 of 2013

PM(CO)
PM/19/01/2022