



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.08.2021

CORAM

THE HON'BLE Mr. JUSTICE G.K.ILANTHIRAIYAN

WP.No.37053 of 2006 and
MP.No.2 of 2006

1.D.Harikrishnan
2.D.Usha Rani
3.D.Sarala Devi
4.B.Manjula
5.D.Mohanasundaram

...Petitioners

Vs

1. The District Registrar(North),
Rajaji Salai,
Chennai 600 001

2. The District Revenue Officer,
Rajaji Salai,
Chennai 600 001

3. The Tahsildar,
Fort - Tondiarpet Division,
Park Town,
Chennai 600 003

...Respondents

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 relating to the impugned notice in Ref.No.13394/B1/2003-2 dated 20.12.2003 on the file of the first respondent, quash the same and forbearing the third respondent from initiating the distraint proceedings under their letter dated 11.08.2004 for recovery of the decifit stamp duty of Rs.2,32,687/- under the Revenue Recovery Act against the petitioners.

For Petitioners : Mr.J.R.K.Bhavanantham

For Respondents : Mr.Richardson Wilson
Government Advocate



ORDER

This Writ Petition is filed to issue a writ of certiorarified mandamus calling for the records relating to the impugned notice in Ref.No.13394/B1/2003-2 dated 20.12.2003 on the file of the first respondent, quash the same and forbearing the third respondent from initiating the proceedings under their letter dated 11.08.2004 for recovery of the deficit stamp duty of Rs.2,32,687/- under the Revenue Recovery Act against the petitioners.

2. The case of the petitioners is that the subject property originally was purchased by their grandfather. Thereafter, he settled his life estate in favour of his wife i.e. their grandmother and his only son i.e. their father and vested absolute remainder in favour of the petitioners herein, thereby giving 1/5 undivided equal share by the registered settlement deed registered vide document No.76 of 1965. After demise of their grandfather and grandmother, the petitioners are in joint possession and enjoyment of the subject property. The petitioners 1 to 4 executed release deed dated 05.02.2002 in favour of the fifth petitioner, thereby relinquished their right over the property for consideration of Rs.50,000/- to each of them by way of cheque. It was presented for collection and registered as document No.129 of 2002. The property was valued at Rs.2,50,000/- and paid stamp duty at Rs.10,140/- as per Article 55(A) of the Indian Stamp Act. Thereafter, the petitioners received show cause notice why deficit stamp duty should not be recovered from the petitioners under Section 80 A of the Indian Registration Act dated 20.12.2003 from the file of the first respondent.

3. The learned counsel for the petitioners would submit that the impugned order is contrary to law, unconstitutional, arbitrary and unjust for the reason that the impugned order has been passed by violation of principles of natural justice. The petitioners were never given opportunity to hear before passing the impugned order. Though the impugned notice which is contemplated by the first respondent that the certificate under Section 80 A of the Indian Registration Act would be issued if no written representation is received from the petitioners. The first respondent pre-determined the market value of the property under the release deed and deficit stamp duty payable thereon before receipt of the written explanation and enquiry as contemplated under proviso to Section 80 A of the Indian Registration Act. He further submitted that admittedly, the petitioners are brothers and the petitioners 1 to 4 executed release deed in favour of the fifth petitioner who is none other than own brother of the petitioners 1 to 4. It attracts only Article 55(A) of the Indian Stamp Act and not Article 55 (C) of



the Indian Stamp Act.

4. Per contra, the learned Government Advocate submitted that the petitioners were duly served show cause notice and they failed to send any explanation. Therefore, the ground raised by the petitioners that they should be given opportunity for the enquiry conducted under Section 80 A of the Indian Registration Act, does not arise for recovery of deficit registration fees. The learned Government Advocate submitted that as against the order passed by the first respondent, there is a provision under Section 80 A proviso to sub clause 3 of the Indian Registration Act before the Inspector General of Registration.

5. Heard, J.R.K.Bhavanantham, the learned counsel for the petitioners, and Mr.Richardson Wilson, Government Advocate appearing for the respondents.

6. The petitioners are the brothers, in which the petitioners 1 to 4 executed release deed in favour of the fifth respondent by the release deed dated 05.02.2002 and presented for registration. It was registered vide document No.129 of 2002. The petitioners 1 to 4 relinquished their rights and released their respective rights over the property in favour of the fifth petitioner herein. Accordingly, they paid stamp duty and at Rs.10,140/- as contemplated under Article 55(A) of the Indian Stamp Act. However, the petitioners were issued show cause notice for deficit stamp duty. On receipt of the same, the petitioners did not submit any explanation. However, the first respondent without conducting any enquiry as contemplated under proviso to Section 80 A, passed the impugned order. It is relevant to extract Section 80 A of the Indian Registration Act as follows:

80A-Recovery of deficit registration fee -

(1) Notwithstanding anything contained in Section 80, if after the registration of a document, it is found that fee payable under this Act in relation to that document has not been paid or has been insufficiently paid, such fee or the deficit, as the case may be, may on a certificate of the registering officer, be recovered from the person who presented such document for registration under Section 32, as arrears of land revenue:

Provided that no such certificate shall be granted unless enquiry is made and such person is given an opportunity of being heard:

Provided further that no such enquiry shall be commenced after the expiry of such period, after the



date of the registration of the document, as may be prescribed.

(2) The certificate of the registering officer under sub-section (1) shall be, subject only to appeal under sub-section(3), be final and shall not be called in question in any court or before any authority.

Accordingly, no such certificate shall be granted unless due inquiry is made and such person is given an opportunity of being heard.

7. In the case on hand, admittedly, no enquiry was conducted before passing the impugned order. Therefore, it is clear violation of principles of natural justice. In this regard, the learned counsel for the petitioners relied upon the judgment in the case of S.Manjunathan and three others Vs. The Joint Registrar, Ootacamund and others reported in 2006-4-LW 726, wherein it is held as follows:

11. In other words, the Amendment Act of 1981 divided the instruments of release into 2 types, namely (i) genuine Releases and (ii) Releases of Benami rights. The Amendment Act of 1998 (Act 1 of 2000) divided the instruments of release into 4 types namely (i) releases, (ii) releases of benami rights, (iii) releases in favour of co-owners and (iv) releases of rights in a partnership between family members and strangers. By a subsequent amendment under Tamil Nadu Act No. 31 of 2004, Article 55-C underwent one more change in that it was made applicable only to release of right in favour of another co-owner who is not a family member.

12. Paragraph 2 of the Statement of Objects and Reasons for the Amendment Act of 1981, (Tamilnadu Act No. 42 of 1981) provides the clue as to why the instruments of release were sought to be divided into 2 types. The said paragraph reads as follows:

2. At present, the said Act provides different rates of stamp duty for "conveyance" and "release deeds". A number of documents, styled as release of benami rights are not releases but in reality conveyances and are registered as releases so as to evade higher stamp duty. It is therefore considered necessary to make a distinction between genuine releases and releases so far as



WEB COPY

they relate to benami rights by suitably amending Section 47-A of the said Act and also Article 55 of Schedule I to the said Act so as to prevent malpractices.

To put succinctly, the legislature started drawing a clear and unequivocal distinction, from the year 1981, between genuine documents of release and those which tend to pass on benami rights. But even in the said Amendment, there was no attempt to draw a distinction between genuine releases and those made with the object of avoiding a higher incidence of stamp duty. Releases made between members of the same family and releases made between strangers were sought to be put on different pedestal by the statute only from the Amendment Act 1 of 2000.

13. In other words, though the aforesaid full bench decisions relied on by the appellant were rendered in the years 1955, 1967 and 1970, the Amendment of the year 1981 did not seek to cover the lost ground. It was only in the Amendment of the year 1998 that the release of the shares of some co-owners in favour of the other co-owners was made chargeable to duty at a higher rate than the normal releases.

14. More over even under the Amendment of the year 1998, the releases made between co-owners, were not directed to be treated as conveyances for the purpose of stamp duty. The Amendment just stopped by prescribing a higher rate of stamp duty for instruments of release entered into between co-owners. Thus the Legislature seems to have accepted the fact that a 'release' is not a 'conveyance' as the former 'merely feeds title to a person having a pre-existing right' and 'enlarges the same' while the later 'creates title by transfer, in favour of a person who never had one'.

15. Keeping the above legislative history in mind, if we analyse the facts of the present case, it is apparent that the appellants who are total strangers to the family of their vendors, purchased 1/4 undivided share under a deed of conveyance dated 26.4.1985, thereby becoming co-owners of the property in question. After becoming co-owners, they employed the method of getting a deed of release executed in their favour on 24.4.1987, for enlarging their title to



WEB COPY

the properties, to 100%. This gave rise to a suspicion that the appellants had used the devious method, to avoid higher stamp duty. Therefore, the respondents treated the document as a deed of conveyance chargeable to duty under Article-23, since at that time Article 55 did not provide for a higher rate of stamp duty for releases between co-owners.

8. Therefore, Article 55 A of the Indian Stamp Act is applicable to the case on hand, since the petitioners are brothers, in which the petitioners 1 to 4 executed release deed in favour of their brother i.e. fifth petitioner herein, thereby released their right over the property in favour of the fifth petitioner. As such, the above judgment is squarely applicable to the case on hand, and the impugned order cannot be sustained in the eye of law.

9. That apart, in the absence of enquiry, as contemplated under proviso to Section 80 A of the Indian Registration Act, it is clear violation of principles of natural justice. Therefore, the impugned order cannot be sustained and it is liable to be set aside. Accordingly, this writ petition is allowed and the impugned notice dated 11.08.2004 is set aside. Consequently, connected miscellaneous petition is closed. No order as to costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

lok

To

1. The District Registrar(North),
Rajaji Salai,
Chennai 600 001
2. The District Revenue Officer,
Rajaji Salai,
Chennai 600 001
3. The Tahsildar,
Fort - Tondiarpet Division,
Park Town,
Chennai 600 003



+1cc to Mr.J.R.K.Bhavanantham, Advocate, S.R.No.40661
+1cc to the Government Pleader, S.R.No.41110

WEB COPY

WP.No.37053 of 2006

AK-II (CO)
CT (17/09/2021)