IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.08.2021

CORAM :

THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

W.P.No.4840 of 2012

1. J.Harish Bakshani
2. Thakur Bakshani ... Petitioners

-Vs-

1. The State of Tamil Nadu rep by
Inspector of Registration,
Santhome High Road,
Mandaveli,
Chennai – 600 028.

2. The Registrar,
Sembium Registrar Office,
Perambur,
Chennai – 600 011. ... Respondents

Prayer :- Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus, calling for the records of the first respondent in Letter No.566/P1/2009, dated 05.01.2011 and quash the same and direct the respondents to register the pending Document No.69 of 2008 dated 06.10.2008 pending on the file of the II respondent and register the same on receipt of 10% percent value of the property for stamp duty and registration charges apart from the amount already paid towards stamp duty and registration charges as mentioned in the document and return the above document to the petitioner i.e., stamp duty and registration charges etc., on the property.

For Petitioner : Mr. P.Subba Reddy

For Respondents : Mr.Richardson Wilson
Government Advocate

ORDER

The Writ Petition has been filed to call for the records of the first respondent in Letter No.566/P1/2009, dated 05.01.2011 and quash the same and direct the respondents to register the pending Document No.69 of 2008 dated 06.10.2008 pending on the file of the II respondent and register the same on receipt of 10% percent value of the property for stamp duty and registration charges apart from the amount already paid towards stamp duty and registration charges as mentioned in the document and return the above document to the petitioner i.e., stamp duty and registration charges etc., on the property.

2. The petitioners have partnership form in the name and style of Supreme Art Works dealing in ready-made garments. Initially there were two partners viz., U.Udhay H. Rajai & U.Manoj H. Rajai and they were having 60% and 40% share respectively in the partnership firm as per deed of the partnership dated 19.01.1992. The said partnership firm was re-constituted on 10.02.2006 and new two partners viz., the petitioners herein were inducted in the partnership firm. As per the re-constitution deed the shares of the partners have been changed in the following manner :-

a. U.Udhay H. Rajai - 5% share
b. U.Manoj H. Rajai - 5% share
c. J. Harish Bakshani - 30% share
d. J.Thakur Bakshani - 60% share

3. Thereafter by an another reconstitution/relinquishment deed dated 06.10.2008, original the partners relinquished their respective shares in favour of the petitioners herein, thereby the first petition has 35% share and the second petitioner has 65% shares in the partnership firm. The reconstituted deed dated 06.10.2008 was presented for registration. Stamp duty was paid on 10% of the property which were relinquished by the earlier partners. The second respondent failed to register the said document for the reason that the stamp duty has to be levied on 100% of the property value and the stamp duty has to be paid for a sum of Rs.4,27,972/-. Aggrieved by the same, the petitioner filed appeal before the first respondent and the same was dismissed by confirming the order passed by the second respondent by the Letter No.566/P1/2009, dated 05.01.2011. Therefore, the petitioners filed this Writ Petition with the above said prayer.

4. The learned counsel appearing for the petitioners would submit that the petitioners submitted the document for registration only in respect of the 10% shares of the retired partners and therefore they had not paid the stamp duty for remaining 90% of the stamp duty. When the retired partners relinquished 10% of the shares in favour of the petitioners herein, the petitioners need not to pay stamp duty for the entire property viz., 100% of its value. He further submitted that all the partners are being the family members, as per Section 17(1) of the Registration Act, 1908, the dissolution of partnership firm need not to be registered. Whereas in the

instance case, the petitioners are ready to pay 10% of the stamp value of the asset but the respondents are demanding for 100% value of the property. As per the Registration Act, directing the petitioners to pay stamp duty of entire property is against law. The name of the partnership firm is only compendious name given to a partnership firm and the partners are the real owners of the partnership firm. The retirement of the partners is amount to dissolution of partnership. Accordingly two partners retired from the partnership firm and their 10% shares respectively relinquished in favour of the other partners. In support of his contention, he relied upon the followed judgments :-

(i) JT 1993 (1) SC 278- S.V.Chandrapandian & ors Vs. S.V.Sivalinga Nadar & ors

(ii) 2003 (3) SCC 229 – N.Khadervali Saheb (died) by LRs and anr Vs.N.Gudu Sahib (died) by LRs and ors

(iii) 2003 (1) Supreme 921 - N.Khadervali Saheb (died) by LRs and anr Vs. N.Gudu Sahib (died) by LRs and ors

5. Per contra, the learned Government Advocate appearing for the respondents filed counter and submitted that the petitioners presented the deed for registration as "Deed of Retirement cum Release". Accordingly, the original partners viz., U.Udhay H. Rajai and his son U.Manoj H. Rajai as retiring partners of the one part and the petitioners herein as the continuing partners of the other part. In the name of the partnership firm, the retired partners are the original partners and they were constructed the building to promote the garment business. Due to loss, they inducted the petitioners as partners in the partnership firm by the re-constitution deed dated 10.02.2006. Accordingly, the major share capital to the tune of 90% released in favour of the petitioners herein and the retired partners retained their 10% share in the property.

5.1. He further submitted that now by the present deed of "Retirement cum Release", the retired partners relinquished their 10% right over the property in favour of the petitioners herein. The stamp duty borne by the deed is Rs.80,000/- at the rate of 8% on the value set forth in the document in question under Article 55(D)(ii) of Schedule I of the Indian Stamp Act, 1899. When the document in question presented for registration, the second respondent kept the document pending and impounded the same under Section 33 r/w Section 40 of the Indian Stamp Act, 1899. Accordingly, they demanded the deficit stamp duty of Rs.42,39,072/- vide proceedings dated 12.12.2008. As per the present deed, it is clear that in consideration of Rs.4.80

crores, the releasors released their 90% undivided right and also 10% right by receiving specific consideration in this deed. Therefore, the second respondent rightly classified the document in question as release in favour of the petitioners herein, of the whole property and charged as such. He further submitted that the Article 55(D)(ii) of Schedule I of the Indian Stamp Act, 1899 has been amended so as to charge stamp duty on release among partners of the firm who are non family members in Tamil Nadu Act 1 of 2000 with effect from 06.03.2000. Therefore, the respondents rightly passed the orders and prayed for dismissal of the Writ Petition.

6. Heard Mr.P.Subba Reddy, learned counsel appearing for the petitioners and Mr.Richardson Wilson, learned Government Advocate appearing for the respondents

7. The petitioners are the partners in the partnership firm called M/s.Supreme Art Works and its original partners are U.Udhay H. Rajai & U.Manoj H. Rajai and both had 60% and 40% of shares in the partnership firm respectively. By the re-constitution deed dated 10.02.2006, the petitioners were inducted as partners to the firm. As per the re-constitution deed the partners have been changed their shares. Accordingly, the petitioners have 30% and 60% of shares respectively and the original partners have 5% of share each. Admittedly, the reconstitution deed dated 10.02.2006 was not registered. Thereafter, the original partners released their respective 5% shares in partnership firm in favour of the petitioner herein by the Deed of Retirement cum Release deed dated 06.10.2008. As per the said deed, the petitioners have 35% and 65% of shares respectively, in the partnership firm.

8. On perusal of the re-constitution deed dated 10.02.2006 revealed that the petitioners herein, in order to discharge the liabilities of the firm to the banks, trade creditors, staff & workers and statutory dues infused necessary funds to the tune of Rs.4.80 crores in the form of capital contribution to the firm during the financial year 2005-06 and 2006-07. Whereas in consideration of the capital contribution brought into the firm by the petitioners, the original partners have already assigned, released, transferred, relinquished 90% (out of 100% stake) of their share of interest, right, title in the said partnership business including 90% undivided share of interest in land and building situated at No.42, KKR Avenue, Perambur, Chennai - 600 011. Accordingly, the original partners were released their 90% undivided share in favour of the petitioners herein and retained 10% of their share in the partnership firm.

9. In the deed of Retirement cum Release, dated 06.10.2008, in page No. 10 & 11, read as follows :-

" .... A sum of Rs.36,33,374.15 (Rupees thirty six lakhs and thirty thousand three hundred seventy four and fifteen paisa only) paid to Mr.U.Manoj from firm accounts towards credit balance in his capital account vide cheque No.0141351 dated 6th October, 2008 drawn on State Bank of India Overseas Branch, Chennai.

..... A sum of Rs.18,54,936.18 (Rupees Eighteen lakhs fifty found thousand nine hundred thirty six and eighteen paisa only) paid to Mr.U.Manoj from firm accounts towards credit balance in his capital account vide Cheque No.451107 dated 6th October, 2008 drawn on Union Bank of India, Purasawakkam Branch, Chennai.

AND WHEREAS now it is mutually agreed that the RELEASORS desire to transfer, release and relinquish to and in favour of the RELEASEES the their remaining 10% undivided share of interest in the firm, rights, claims, title and enjoyment rights over the schedule mentioned immovable properties including their share of goodwill for the consideration mentioned supra under this Deed of Retirement-cum-Release"

Accordingly, the original partners of the partnership firm transferred their entire right of the property in favour of the petitioners herein that too on receipt of Rs.5,34,88,310.33 and released their entire right over the immovable property mentioned in the partnership deed including their share of goodwill for the said consideration.

10. The learned counsel appearing for the petitioners relied upon the judgment reported in JT 1993 (1) SC 278 in the case of S.V.Chandrapandian & ors Vs. S.V.Sivalinga Nadar & ors, in which the Hon'ble Supreme Court of India held that when dissolution of the firm takes place and residue is distributed amount to the partners, there is no partition, transfer or extinguishment of interest attracting Section 17 of the Registration Act, 1908. In another judgment reported in 2003 (3) SCC 229 in the case of N.Khadervali Saheb (died) by LRs and anr Vs. N.Gudu Sahib (died) by LRs and ors., the Hon'ble Supreme Court of India held that allotment of assets to individual partners on dissolution of the partnership, held, does not constitute transfer of any assets of the firm. Hence an award recording such settlement, held does not require registration under Section 17(1) of the Registration Act, 1908. In another judgment reported in 2003 (1) Supreme 921 in the case N.Khadervali Saheb (died) by LRs and anr Vs. N.Gudu Sahib (died)

by LRs and ors., it is held that an arbitration award by which residue assets of partnership firm are distributed among the partners on dissolution of the partnership firm does not require registration under Section 17 of the Registration Act, 1908 before making it rule of the Court.

11. Whereas in the case on hand, admittedly the earlier re-constitution deed dated 10.02.2006 is unregistered one. Therefore, the petitioner presented the present document for registration indirectly to validate the earlier re-constitution deed dated 10.02.2006, since the earlier reconstitution deed original partners transferred their right of 90% share in favour of the petitioners herein. Therefore, when the earlier document is not subjected for registration, the judgments relied upon by the learned counsel appearing for the petitioners are not applicable to the case on hand. In this regard, it is relevant to extract the provisions under Section 55(D) in Schedule I of the Indian Stamp Act as reads as follows :-

"55. D. Release of right in favour of partner:-

(i)	A release of right by a partner or partners in favour of other partners relinquishing his or their rights over the immovable property when the release is between family members who constitute the partnership or when the property is movable property;	Three rupees for every Rs.100/- or part thereof of the market value of the immovable property which is the subject matter of release.
(ii)	When such release is between partners who are not family members	(a)Rupees seven for every Rs.100/- or part thereof of the market value of the immovable property which is the subject matter of release when such property is situated within the Chennai Metropolitan Planning Area and the Urban agglomeration of Madurai, Coimbatore, Salem and Tiruchirappalli and the City of Tirunelveli.

(i)	A release of right by a partner or partners in favour of other partners relinquishing his or their rights over the immovable property when the release is between family members who constitute the partnership or when the property is movable property;	Three rupees for every Rs.100/- or part thereof of the market value of the immovable property which is the subject matter of release.
		(b) Seven Rupees for every Rs.100/- or part thereof of the market value of the immovable property which is the subject matter of release, when such property is situated in other areas.”

This amendment come into force with effect from 06.03.2000. The document which was subjected for registration dated 06.10.2008. Therefore, the said Article is very much applicable to the document dated 06.10.2008. Accordingly, the petitioners are liable to pay the stamp duty for the entire relinquishment of share in their favour. Therefore, the second respondent rightly directed the petitioners to pay the deficit stamp duty. This Court finds no error in the orders passed by the respondents and the present Writ Petition is devoid of merits.

12. Accordingly, the Writ Petition stands dismissed. There shall be no order as to costs.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

rts

To

1. The Inspector of Registration
   State of Tamil Nadu,
   Santhome High Road,
   Mandaveli,
   Chennai - 600 028.

2. The Registrar,
   Sembium Registrar Office,
   Perambur,
   Chennai - 600 011.

+1CC to Government Pleader, Sr.No.38809/2021
+1CC to Mr.P.Subba Reddy, Advocate, Sr.No.38333/2021

W.P.No.4840 of 2012

AK (CO)
K.RK. (01.09.2021)