IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.10.2021

CORAM

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

W.P. NO.33678 OF 2013
AND
MP.NO.1 OF 2013

Narayan Sethuramon @ S.L.Narayan ...Petitioner

Vs

1.The Commercial Taxes and Registration Department,
Represented by its Secretary,
Secretariat, Fort. St.George,
Chennai 600 009

2.The Inspector General of Registration,
100, Santhome High Road,
Pattinapakkam, Chennai 600 028

3.The Sub-Registrar,
(District Registrar Cadre),
Mylapore, Chennai 600 004 ...Respondents

Prayer :- Writ Petition is filed under Article 226 of the Constitution of India praying to issue a writ of certiorari calling for the records of the third respondent in its proceedings on 05.11.2013 and quash the same.

For Petitioner : Mr.K.Harishankar

For Respondents : Mr.Richardson Wilson,
Government Advocate

ORDER

The writ petition has been filed to issue a writ of certiorari calling for the records of the third respondent in its proceedings dated 05.11.2013 and quash the same.

2. The case of the petitioner is that the petitioner and his son owned undivided 1/3 share of house property comprised in new No.3, old No.2 situated at Sathyanarayana Avenue, Raja Annamalai Puram, Chennai. They derived the title over the property by

partition deed dated 19.05.2006 registered vide document No.2260 of 2006. Under the said partition deed dated 19.05.2006, the remaining undivided 2/3rd share allotted to his father who in turn settled the said share in favour of the petitioner by settlement deed dated 12.10.2007 registered vide document No.2497 of 2007. Therefore, the petitioner and his son executed settlement deed in favour of the petitioner's mother and presented the document for registration. The petitioner also duly paid registration fee of Rs.2,500/- and stamp duty of Rs.10,000/-. It was registered as document No.2342 of 2012 on the file of the third respondent. However, the third respondent refused to release the same and issued notice dated 22.03.2013 thereby called upon the petitioner stating that the settlement deed did not fall within the purview of the deeds executed between family members as the definition of family does not include settlement made by a grandson to his grandmother. Therefore, the third respondent made a demand of Rs.31,89,420/- towards stamp duty within a period of fifteen days from the date of receipt of notice. The third respondent calculated stamp duty at 8% of the market value of the property. By the letter dated 22.04.2013, the petitioner sent explanation about the family circumstances and that the settlement deed can be executed by the grandson in favour of the grandmother and it is coming under the purview of family and as such no need to pay any deficit stamp duty. However, on receipt of the same, no order has been passed by the third respondent. Again, the third respondent issued the impugned notice dated 05.11.2013 and made demand to pay a sum of Rs.31,89,420/- as deficit stamp duty.

3. Mr.K.Harishankar, the learned counsel for the petitioner submitted that the term 'family' as mentioned in the explanation to Article 58 (a)(1) of the Indian Stamp Act as applicable in the State of Tamil Nadu. The settlee is not an outsider but she is the mother and grandmother respectively of the first and second settlors i.e. the petitioner and his son. Therefore, the Act does not require, indicate or imply that a settlement, particularly within a family must be restricted to the members of the family upto a particular degree.

4. Heard, Mr.K.Harishankar, the learned counsel for the petitioner, and Mr.Richardson Wilson, Government Advocate appearing for the respondents.

5. In support of his contention, the learned counsel for the petitioner relied upon the judgment in the case of S.V.L.S.Ranga Rao Vs. Secretary to Government, Commercial Taxes ad Others in WP.No.23263 of 2008, wherein this Court held that though explanation to Article 58 of Schedule I of the Indian Stamp Act defines the persons coming under the word 'family', it could be said that it is only an illustration and not an exhaustive one.

Therefore, strict meaning cannot be construed so as to include only those persons who have been named as 'family members'. Furthermore, when adoptive mother and adoptive father could be included as members of the family, it is neither legal nor logic to say that the stepmother could not be construed as a family member. He also relied upon the judgment in the case of Inspector General of Registration and Chief Revenue Controlling Authority, Chennai and another Vs. R.Santhosh and another reported in 2017 SCC Online Mad 32632, wherein the Hon'ble Division Bench of this Court held that as per Article 58 (a) (i) under Schedule I of the Indian Stamp Act, the word 'family' mean father, mother, husband, wife, son, daughter, grandchild. In the case of anyone whose personal law permits adoption, 'father', shall include an adoptive father 'mother' an adoptive mother. 'son' and adopted son and 'daughter' an adopted daughter. Further, extracted the learned single judge's observation as follows:

> If a grandchild is included within the definition of the expression family I do not know how a grandmother or grandfather will stand excluded. There can be no quarrel about the proposition that if person executes settlement in favour of his grandchild, the case will be covered by Article 58(a). But to hold that the converse cannot be accepted, would militate against the very purpose of the provision. A settlement need not flow in a hierarchal fashion of the provision. A settlement need not flow in a hierarchal fashion from the elders to the younger ones. It can also flow in the reverse direction. If a gift in favour of a grandchild is covered by Article 58(a), the gift in favour of the grandparent should be equally covered as a corollary. Therefore, the writ petition is allowed. The impugned order is set aside. The respondents are directed to register the sale deed by treating as one filing under Article 58 (a). No costs. Consequently, MP.Nos.1 of 2013 and 1 of 2014 are closed.

6. If a gift in favour of a grandchild is covered by Article 58 (a), the gift in favour of the grandparent should be equally covered as a corollary. The Hon'ble Supreme Court of India also held in the case of Manish Mohan Sharma Vs. Ram Bahadur Takur Ltd reported in AIR 2006 SC 1690 that it has been repeatedly emphasised in several decisions that family settlements are governed by a special equity and are to be enforced if honestly made. This would be so 'even if the terms may have been agreed to on the basis of an error of the parties or originate in a mistake or ignorance of facts as to what the rights of the

parties actually are, or of the points on which their rights actually depend'. This is because the object of an arrangement is to protect the family from long drawn out litigation, and to bring about harmony and goodwill in the family. Therefore, a family settlement need not be confined to the one, among the legal heirs, or successors. If the aim is only to provide for arrangement in accordance to succession, the whole exercise would be redundant. The reason is that the Law of Succession would take its course. It is only when an arrangement, in slight or major deviation from natural succession, as a price for bringing about comity and harmony is chosen, that a settlement comes into existence. The provision under Section 24 (2) of the Indian Stamp Act defines that term as under:

> "Settlement" means any non-testamentary disposition, in writing, of movable and immovable property made -
>
> (a) in consideration of marriage,
>
> (b) for the purpose of distributing property of the settler among his family or those for whom he desires to provide, or for the purpose of providing for some person dependent on him , or
>
> (c) for any religious or charitable purpose

7. Thus it is clear that the settlement, particularly, within a family need not be restricted to the members of the family upto a particular degree. In fact, the third respondent registered the settlement deed vide document No.2342 of 2012 and thereafter issued impugned demand notice dated 05.11.2013. When the gift deed executed by the grandmother in favour of grandchild is covered by Article 58(a), at the same time, the gift deed executed by the grandchild in favour of grandparent should be also equally covered under Article 58(a) of the Indian Stamp Act.

8. In view of the above, the present writ petition deserves to be succeeded. Accordingly, the impugned notice dated 05.11.2013 is quashed and the writ petition is allowed. The third respondent is directed to release the settlement deed registered vide document No.2342 of 2012 to the petitioner forthwith. Consequently, connected miscellaneous petition is closed. No order as to costs.

Sd/-
Assistant Registrar(CS-VI)

//True Copy//

Sub Assistant Registrar

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To

1.The Secretary,
Commercial Taxes and Registration Department,
Secretariat, Fort. St.George,
Chennai 600 009

2.The Inspector General of Registration,
100, Santhome High Road,
Pattinapakkam, Chennai 600 028

3.The Sub-Registrar,
(District Registrar Cadre),
Mylapore, Chennai 600 004

+2ccs to Mr.K.Harishankar, Advocate, S.R.No.52633

W.P. No.33678 of 2013

KG(CO)
RVM(26/11/2021)