

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date : 07.04.2021

CORAM:

THE HON'BLE MR. JUSTICE R.SURESH KUMAR

W.P.No.27137 of 2017

M.Vijaya

... Petitioner

Vs.

The Sub Registrar  
Office of the Sub Registrar  
Adyar, Chennai.

... Respondent

Prayer: Petition filed under Article 226 of Constitution of India praying for issuance of a Writ of Mandamus directing the respondent to register and release the Release Deed in Doc.No.P201600149, dated 09.12.2016 executed in favour of the petitioner which is pending registration on the file of the respondent.

For Petitioner : Mr.N.Baaskaran

For Respondent : Mr.P.P.Purushothaman  
Government Advocate

ORDER

The prayer sought for herein is for a writ of mandamus directing the respondent to register and release the Release Deed in Doc.No.P201600149, dated 09.12.2016 executed in favour of the petitioner which is pending registration on the file of the respondent.

2.The petitioner presented a document in Document No.P201600149 dated 09.12.2016, which, according to the petitioner, is a release document, however the same has been kept pending as Pending Document in No.P201600149 by the respondent stating that, it is not a release document, instead, it can only be treated as a sale deed.

3.However, according to the petitioner, if at all the document in question is not a release deed, it can be treated only as a settlement deed but not as a sale deed, and only fixed stamp duty can be asked for by the Sub Registrar by treating it

as a settlement if not release deed and therefore, accordingly, the document shall be released. Therefore, in order to get the same, though he made an attempt to that effect, since it has not yielded any positive result, by approaching this Court he filed this writ petition with the aforesaid prayer seeking mandamus to release the document in question.

4. Heard Mr.N.Baaskaran, learned counsel appearing for the petitioner, who having reiterated the aforesaid facts, would submit that, the person who released the right and the person who received the right are same family members, therefore, it can only be treated as a release deed and at the worst, if it is not treated as a release deed in view of the consideration received by the person who released the right, it can at the best be treated only as a settlement deed. Therefore, even in that case, only a fixed stamp duty can be collected by the respondent and accordingly, after collecting the same, it can very well be released and therefore, the learned counsel for the petitioner seeks indulgence of this Court to give a direction to that effect.

5. Per Contra, Mr.P.P.Purushothaman, learned Government Advocate appearing for the respondent, by relying upon the averment made by the respondent in the counter affidavit, would contend that, before the deed in question dated 09.12.2016 was prepared, partition has been effected between the parties and therefore, the share become an exclusive property of the person who said to have released the same, that too for a consideration, therefore, it can be treated only as a sale deed and therefore, accordingly, the necessary stamp duty should be paid by the petitioner, without which, the document cannot be released by accepting it as a release deed.

6. Even in respect of a settlement, according to the learned Government Advocate appearing for the respondent, it must have been only on love and affection and not for any consideration. Therefore, to that extent also, the document in question cannot be treated as a settlement, therefore, it can only be treated as a sale deed.

7. Any how, in this regard, in order to conduct an enquiry by giving an opportunity to the petitioner, the respondent is ready and willing to give a notice and in this regard, though earlier notice have been given, it seems that, it has not been served on the petitioner, however a fresh notice would be served on the petitioner and accordingly, after giving an opportunity of being heard to him, a decision would be taken on merits in the issue by the respondent within a time frame that may be stipulated by this Court.

8.I have considered the said submissions made by the learned counsel appearing for the parties and have perused the materials placed before this Court.

9.In view of the controversy that has arisen in the issue raised by the writ petitioner as to whether the document in question is a release deed or a settlement deed or a sale deed, as claimed by the respondent, that can very well be decided by the respondent, after giving an opportunity of being heard to the petitioner and once the defence whatever be taken by the petitioner if it is accepted by the respondent, accordingly, if an order is passed and the document in question is released, the petitioner may not have any grievance. Assuming that, on the other hand, if the defence taken or explanation to be given by the petitioner is not accepted, even then, if any adverse order is passed by the respondent, it is open to the petitioner to challenge the same in the manner known to law. In that view of the matter, this Court is inclined to pass the following order.

That there shall be a direction to the respondent to issue a notice in this regard, on the document in question, to the petitioner within two weeks from the date of receipt of a copy of this order fixing a date of enquiry to be conducted in this regard and on receipt of the same, it is open to the petitioner to appear before the respondent with his defence in writing and also can make oral submissions to the respondent on the date of hearing and after hearing the plea to be raised by the petitioner, a decision can be taken by the respondent and an order to that effect shall be passed within one week thereafter and the said order shall be communicated by the respondent to the petitioner and depending upon the outcome of the order to be passed, as indicated above, the remedy can be worked out by the petitioner accordingly.

10.With this direction, the Writ Petition is disposed of. No costs.

Sd/-

Assistant Registrar(CS-IX)

//True Copy//

Sub Assistant Registrar

Sgl

To

The Sub Registrar  
Office of the Sub Registrar  
Adyar, Chennai.

+1cc to Mr.N.Baskaran, Advocate, S.R.No.21976

W.P.No.27137 of 2017

PCH (CO)  
CB (27/04/2021)



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