IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.03.2022

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THE HONOURABLE MR. JUSTICE M.DHANDAPANI

W.P. No. 20271 of 2009

1. Syed Abdul Cader
2. A.H.Naina Sahib .. Petitioners

Versus

1.The Chief Controlling Revenue Authority & the Inspector General of Registration
Santhome High Road
Chennai.

2. The Joint Sub-Registrar-II
Thousand Lights
In the cadre of District Registrar
Office of the Registrar of Central Chennai
Chennai-18. .. 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 of the respondents culminating in the impugned orders passed by the 2nd respondent in Va.No.5/2006 dated 15.03.2007 and confirmed in revision by the impugned order passed by the 1st respondent in D.Dis No.18168/P1/2007 bearing dates 04.02.2008 and 26.07.08 and signed on 04.08.2008 quash both the impugned orders direct the 2nd respondent to refund to the 1st petitioner the amount paid by the 1st petitioner under the heads of deficit stamp duty of Rs.9 75 100/- deficit registration fee of Rs.5 000/- and deficit fee of Rs.4275/- totalling Rs.9 84 375/- to the credit of Doc.No.52 of 2009 on the file of the 2nd respondent.

For Petitioners : Mr.K.Ganesan
For Mr.Jeevagiridharan

For Respondents : Mr.Yogesh Kannadasan
Special Government Pleader

ORDER

This writ petition is filed calling for the records of the respondents culminating in the impugned orders passed by the 2nd respondent in Va.No.5/2006 dated 15.03.2007 and confirmed in revision by the impugned order passed by the 1st respondent in D.Dis No.18168/P1/2007 bearing dates 04.02.2008 and 26.07.08 and signed on 04.08.2008 and quash both the impugned orders and to direct the 2nd respondent to refund the amount to the 1st petitioner which was paid by him under the heads of deficit stamp duty of Rs.9,75,100/-, deficit registration fee of Rs.5,000/- and deficit fee of Rs.4,275/- totalling Rs.9, 84, 375/- to the credit of Doc.No.52 of 2009 on the file of the 2nd respondent.

2. The case of the petitioners is that the first petitioner purchased the plot situated at Door No.27 (old No.21) Jambulinga Naicken Street, Nungambakkam, Chennai-34 ad-measuring 2 grounds and 612 sq. ft. or thereabouts as per documents, 2 grounds and 551 sq. ft. as per patta from his vendors viz., W.M.M.Mamood Asia, WM.M.Nohuthazeen, W.M.M.Shashudeen, W,M.M.Uvais, W.M.M.Shahul Hameed, W.M.M.Maznavi, W.M.M.Mubarak and W.M.M.Sheik Fathima vide sale deed dated 21.07.2006, which was presented for registration before the second respondent. In the said sale deed, W.K.S.Mahmood Zainab, V.M.S.Ameena Ummal, Ayisha Rafeeka and W.MM.Sheik Fathima (hereinafter referred to as confirming parties). Both the vendors and the confirming parties have been represented by the second petitioner herein, in his capacity as partner of M/s.Wavoo Magdoom Realtors, a partnership firm which is the Power of Attorney Agent of both the vendors and the confirming parties have been appointed as power agents. The total consideration of the said property is Rs.75,00,000/-.

3. The above said property was originally purchased by the confirming parties from one A.Subramaniam under a sale deed dated 09.01.1989. As such, the confirming parties were entitled to equal shares in the said property each owning 25% share. On 25.08.2000 the confirming parties given the share to the petitioners' vendors by way of Hiba, for which, they filed affidavits to that effect.

4. It is the further case of the petitioners that on 21.07.2006, the sale deed dated 25.08.2000 was presented for registration before the second respondent. Since the total sale consideration of the said property is Rs.75 Lakhs, the entire stamp duty and registration fee has been paid, but, the second respondent has kept the document as pending. The second

respondent issued notice to the petitioners on 30.08.2006 directed to pay the deficit stamp duty for a sum of Rs.15,75,000/-, for which, the petitioners filed a reply on 25.09.2006. In the meanwhile, the second respondent passed an order dated 15.03.2007 and demanded a sum of Rs.15,75,000/- and after deducting the stamp duty of Rs.6,00,000/- as engrossed in the sale deed called upon the petitioners herein to pay the purported deficit stamp duty of Rs.9,75,000/- with penalty of Rs.100/-. Challenging the said order, the petitioners have filed a revision before the first respondent. The first respondent, vide order dated 26.07.2008, confirmed the order passed by the second respondent. As against the orders of the respondents 1 & 2, the present writ petition has been filed seeking appropriate remedy.

5. Learned counsel for the petitioner submitted that since the Hiba (oral gift) is permissible under the Mohammedan Law, it does not require an instrument or registration and is not chargeable to stamp duty and therefore, the learned counsel prays to release the sale deed after due registration. The learned counsel further submitted that the Hiba executed by the confirming parties is valid one and the same is also admitted by both the respondents. But the second respondent demanded for a sum of Rs.9,75,100/- which is unfair. However, without prejudice the rights, the petitioners paid the above said stamp duty and they received the original sale deed dated 21.06.2006 registered as document No.52 of 2009 and the same has been received from the office of the second respondent. Hence, the learned counsel prays that this Court may set aside the impugned orders and to direct the respondents to return back the deficit stamp duty which was paid by the petitioners.

6. Learned Special Government Pleader submitted that admittedly, the confirming parties purchased the subject property from one Subramanian vide sale deed dated 27.08.2000. Thereafter, the confirming parties have gifted the property by way of Hiba (oral gift) to eight persons viz., petitioners' vendors on 25.08.2000. Thereafter, eight persons appointed power agent M/s.Wavoo Magdoom Realtor for a sale consideration of Rs.75 lakhs and presented the same for registration and the same was kept pending. The learned counsel further submitted that even though the oral gift by way of hiba is permissible under the Mohammedan Law, the same is to be recorded and proved. If Hiba is not proved, the said instrument is chargeable to stamp duty as per Clause (c) of sub-section (24) of section 2 of the Indian Stamp Act, 1899 and at the time of registration, the same was found out by the respondent and rightly demanded

the deficit stamp duty. Further, he submitted that the said amount were also paid by the petitioners without any protest and the same cannot be refunded to them. Hence, this petition is liable to be dismissed.

7. The facts of the case are not in dispute. Admittedly the first petitioner is the purchaser. When the first petitioner presented the above said documents before the second respondent for registered for a total consideration of Rs.75 lakhs, the second respondent found that there was a deficit stamp duty between the confirming parties and the petitioners' vendor. Therefore, the second respondent issued a show cause notice to the petitioners. The second respondent passed the impugned order dated 15.03.2007 demanding the petitioners to pay a sum of Rs.9,75,100/- as deficit stamp duty for registration. To which, petitioners have also paid the entire amount as demanded by the second respondents without any protest. Nevertheless, challenging the same, the petitioners filed revision before the first respondent and the same was also confirmed by the first respondent.

8. The petitioner claims that the original owner executed a Hiba in favour of the Vendors. It is therefore submitted that the oral gift made by the above named parties are perfectly valid in law and no exception could be taken to them and the oral gift is also valid. It is not known to this Court and no document was produced before this Court for execution of Hiba, only declaration alone be placed before this Court. However, based on the said declarations, this Court cannot arrive at a conclusion that there is a valid Hiba in favour of the petitioner's vendor. Ultimately, the petitioners had also paid the amount demanded by the second respondent in his show cause notice without any protest. Hence, the prayer sought for by the petitioner cannot be granted by this Court.

9. In view of the above discussion, this Court feels that both the respondents have rightly passed the impugned orders and this Court does not warrants any interference in the said impugned orders. Hence, this writ petition stands dismissed. No costs.

Sd/-
Assistant Registrar(CS-III)

//True Copy//

Sub Assistant Registrar

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To

1.The Chief Controlling Revenue
Authority & the Inspector General of Registration,
Santhome High Road,
Chennai.

2. The Joint Sub-Registrar-II,
Thousand Lights,
In the cadre of District Registrar,
Office of the Registrar of Central Chennai,
Chennai-18.

+1cc to Mr.K.Ganesan, Advocate SR.No.18377
+1cc to the Government Pleader SR.No.18801

WP. No. 20271 of 2009

GPL(CO)
GN(09/06/2022)