IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.10.2022

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THE HON'BLE MR.JUSTICE S.S.SUNDAR

W.P.No.24056 of 2009
and M.P.No.1 of 2009

E.Raju ... Petitioner

Vs.

1. The District Registrar
   Central Chennai
   182 Bharati Dasan Salai
   Royapettah, Chennai - 600 014.

2. The Sub Registrar
   Ashok Nagar, Chennai - 600 083. ... Respondents

Writ Petition is filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorarified Mandamus calling for the records from the 1st respondent in proceedings No.14375/A1/2008 dated 15.07.2009 and quash the same and consequently direct the 1st respondent to drop the proceedings.

For Petitioner : Mr.R.Sivaraman

For Respondents : Mr.E.Vijay Anand
Additional Government Pleader

ORDER

This Writ Petition has been filed to quash the impugned order passed by the 1st respondent in proceedings No.14375/A1/2008 dated 15.07.2009 and direct the 1st respondent to drop the proceedings.

2. The facts that are necessary for disposal of this Writ Petition are as follows :

3. Admittedly, the petitioner is the natural son of Late Mr.V.Easwaran and Mrs.E.Saraswathi. In the case of the petitioner that he was given an adoption by his natural parents on 14.11.1975. It is stated by the petitioner that his natural mother's elder sister and her husband have adopted him in 1975. It is also stated by the petitioner that the adoption was performed after following all the formalities which are required to fulfill the statutory requirements of a valid adoption. It is his specific case that the adoption was performed on 14.11.1975 and a deed of adoption was also made on 16.06.2006. It is the case of petitioner that his adoptive mother by name Mrs.R.Janakiammal executed a deed of settlement on 16.06.2006 which was registered as Doc.No.1784 of 2006. By virtue of this settlement deed, the petitioner became absolute owner of the property at No.26/1,

Ramakrishnapuram, 2nd Street, West Mambalam, Chennai - 600 033. Though a sum of Rs.10,000/- was paid towards Stamp Duty by the petitioner and the document was registered, However, a show cause notice dated 31.12.2008 was issued calling upon the petitioner to show cause why Deficit Stamp Duty of Rs.72,576/- cannot be recovered from the petitioner. Thereafter, by the impugned order, 1st respondent directed the petitioner to pay a sum of Rs.80,891/- towards deficit stamp duty and a sum of Rs.8,321/- towards additional registration fees on the ground that the adoption by adoption deed dated 16.06.2006 is contrary to Section 10(iv) of Hindu Adoptions and Maintenance Act, 1956 and hence, the petitioner cannot be treated as the settlor's son and the settlement should be treated as one fall under Article 58(a)(ii) of the Schedule to Stamp Act. In the adoption deed that was executed on 16.06.2006, it is seen that there is a reference to ceremony of adoption dated 14.11.1975. It is to be seen that the deed of adoption is to record the actual adoption on 14.11.1975 by performance of Datta Homam and physical delivery of the petitioner to his adoptive parents.

4. Section 10(iv) of Hindu Adoptions and Maintenance Act 1956, reads as follows :

"(iv) he or she has not completed the age of fifteen years, unless there is a custom or usage applicable to the parties which permits persons who have completed the age of fifteen years being taken in adoption."

5. Even though the deed of adoption was registered as Doc No.997/Book IV/2006, the respondents were unable to accept the deed of adoption as a valid document to accept adoption and the settlement deed executed by the petitioner's adoptive mother was treated as a document of conveyance in favour of a non member of the family. In other words, the petitioner was not recognized as the adopted son of the settlor and therefore the respondents required the petitioner to pay further amount towards Deficit Stamp Duty. The 1st Respondent / District Registrar passed an order on 15.07.2009 directing the petitioner to pay a sum of Rs.80,891/- towards Stamp Duty and a sum of Rs.8,321/- as Registration Charges. Challenging the said order, the above Writ Petition is filed.

6. The learned counsel appearing for the petitioner submitted that the

petitioner has produced before the respondent the adoption deed as well as the settlement deed to prove that the adoption in 1975 is valid.

7. It is seen that the 1st respondent, in the impugned order, has referred to Section 10(iv) of Hindu Adoptions and Maintenance Act 1956 and came to the conclusion that the adoption as per the adoption deed is not permissible by virtue of Section 10(iv) of Hindu Adoptions and Maintenance Act 1956.

8. The 1st respondent failed to consider the case of the petitioner that the adoption was performed in 1975 and such factum of adoption alone was recorded in the Deed of Adoption. Though the adoption deed is registered and the deed was executed by adoptive mother of the petitioner in the year 2006, this Court is convinced that the document was executed only to confirm the adoption that took place in the year 1975. Therefore, the respondent is not right in declaring the invalidity of adoption deed by calculating the age of the petitioner as on the date of deed of adoption. It is also seen that the respondents have no other verifiable material to conclude that the adoption that was pleaded by the petitioner in 1975 is not a valid adoption.

9. The learned counsel appearing for the respondents submitted that there is an alternative remedy available to the petitioner by way of an appeal before the Inspector General of Registration under Section 80(A) of the Indian Stamp Act.

10. This Writ Petition was filed in the year 2009 and it is pending for more than 13 years. The legal position on the basis of admitted facts is decided by this Court and hence it is not necessary that the matter should be considered only by the Appellate Authority in the appeal that should be filed by the petitioner hereafter. The bar of jurisdiction under Article 226 of the Constitution of the India on the ground of availability of alternative remedy, has several exception and there are several circumstances by which this Court can entertain despite availability of alternative remedy.

11. This Writ Petition is pending for more than 13 years and this Court cannot now direct the petitioner to seek alternative remedy after this length of time. In such a situation, this Court and Hon'ble Supreme Court in several precedents have held that it would not be in the interest of justice to dismiss

the writ petition on the ground of alternative remedy.

12. Accordingly, this Writ Petition is allowed and the impugned order passed by the 1st respondent dated 15.07.2009 is set aside. No costs. Consequently, connected miscellaneous petition is closed.

17.10.2022

raja
Internet : Yes / No
Index : Yes / No
Speaking order / Non-speaking order

To

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S.S.SUNDAR.J,

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