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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.04.2022

CORAM

THE HONOURABLE Mr. JUSTICE M.DHANDAPANI

WP.No.7802 of 2022

R.Vijayakumar

... Petitioner

Vs

1. The Sub Registrar,
Kelamangalam,
Krishnagiri District.

2. Seetharaman, Sub Registrar,
Kelamangalam,
Krishnagiri District.

...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 in refusal Number. RFL/Kelamangalam/3/2022 dated 17.03.2022 on the file of the first respondent and quash the same and further direct the first respondent to register the partition deed dated 09.03.2022 and pass such further or other orders as this Hon'ble Court deems fit and proper on the facts and circumstances of this case.

For Petitioner : Mr. S.C.Viswanth

For Respondents : Mr. Yogesh Kannadasan Spl. GP

ORDER

This writ petition is filed seeking to quash the refusal Number. RFL/Kelamangalam/3/2022 dated 17.03.2022 on the file of the first respondent and further direct the first respondent to register the partition deed dated 09.03.2022.

2. The case of the petitioner is that the land in S.No.75 and 161, situated at Mathirgiri Village belongs to the petitioner's grandfather Late Thanappa and he died on 24.12.2000. The said Thanappan had eight children including the petitioner's father Rajappa. The said Rajappa died on 31.03.1995 leaving his wife, son(petitioner) and his daughter as legal



heirs. After demise of the said Thanappa, the family members had amicably divided the partition of the ancestral properties. Thereafter, the petitioner and his family persons had presented the family partition deed for registration before the first respondent. The sub registrar namely Mr. Seetharaman, who is arrayed as 2nd respondent herein, had demanded a sum of Rs. 5,00,000/- for registering the said partition deed. The petitioner refuted to pay the demanded amount and therefore, the first respondent had issued the present impugned refusal check slip citing that petitioner, his mother and sister were not belonging to family of the deceased Thanappa. Challenging the said refusal check slip, the present writ petition has been filed before this Court seeking with the afore said prayer.

3. Learned counsel for the petitioner submitted that the petitioner and his sister were definitely come under family in terms of the Article 58, Schedule-I of the Indian Stamp Act. They are entitled to claim concession for registering the partition deed. The refusal on the part of the respondents to register the partition deed is not justified. The stand taken by the first respondent cannot be legally sustained. If any dispute on the payment of stamp duty, the same ought to be sent for clarification to the District Registrar (Stamps) for proper evaluation. Without doing so, the first respondent issued the refusal check slip. Nevertheless, the petitioner has agreed to pay the necessary stamp duty for registering the partition deed with respect to his mother, who is the daughter in law of the said Thanappa. Hence, the learned counsel prays to set aside the impugned order and direct the first respondent to register the partition deed.

4. Learned Special Government Pleader submitted that the respondent has no serious objection to register the partition deed if the petitioner is ready to pay the necessary stamp duty and registration charges.

5. Heard, the learned counsel for the petitioner as well as the learned Special Government Pleader appearing for the respondents, and perused the materials available on record.

6. One Thanappa is the Grandfather of the petitioner. The petitioner's father died on 31.03.1995. In respect of the petitioner's father, the petitioner, his wife and his daughter are the legal heirs. After the death of the petitioner's father and grandfather, the family members partitioned the property. When the petitioner was presented the partition deed before the first respondent for registration on 17.03.2022, he refused to register the same.



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7. According to the petitioner, the respondents demanded to pay 2% of the value of the property i.e. 5,00,000/- . According to the respondents, the petitioner has to pay 4% stamp duty and 1% registration fee as the C schedule holders are grandson, granddaughter and daughter in law of the original owner.

8. The learned counsel for the petitioner fairly submitted that the document presented for registration is a family partition deed and the petitioner's father is the son of Late Thanappa and the petitioner's father pre-deceased the said Thanappa. Further, the petitioner, his mother and his sister are also the legal heirs of the deceased Thanappa, who is the original owner of the property. In the factual situation, the first respondent refused to register the partition deed indicating that the grandson, granddaughter and daughter in law of a pre-deceased son is not family members.

9. For better clarification, Article 58(a) of Schedule-I to the Indian Stamp Act, 1899 reads as under:

"58.Settlement--

(a) instrument of (including a deed of a dower)--

Explanation.--

For the purpose of this Article, the word "family" means father, mother, husband, wife, son, daughter, grand child. In the case of any one whose personal law permits adoption, "father" shall include an adoptive father, "mother" an adoptive mother, "son" an adopted son and "daughter" an adopted daughter.'

In view of the above definition, the petitioner and his sister are the family members and legal heirs of the Late Thanappa, who is the original owner of the property and they are entitled to claim the concession with regard to the registration of the partition deed. But, the daughter in law, who is the petitioner's mother, is not mentioned as family member in view of the above said Act. However, the learned counsel fairly submitted that the petitioner is agreed to pay the necessary stamp duty and registration charges in respect of his mother.

10. Recording the submission made by the learned counsel for the petitioner, this Court is inclined to set aside the impugned order and passes the following orders:-

(i) this Court permits the petitioner to represent the partition deed before the first respondent and further, this Court directs the petitioner to pay the requisite stamp duty and registration charges in respect of the daughter in law, who is



the petitioner's mother, within a period of four weeks four weeks from the date of receipt of a copy of this order. However, the petitioner and his sister are entitled to claim concession as per the Article 58 Schedule I of the Indian Stamp Act.

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(ii) Upon receipt of such deed and necessary stamp duty, the first respondent shall entertain the document presented by the petitioner and pass appropriate orders within a period of four weeks, thereafter.

7. With the above observation, the writ petition is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (CS V)

//True Copy//

Sub Assistant Registrar

Rli

To

The Sub Registrar,
Kelamangalam,
Krishnagiri District.

+1cc to Mr. S.C.Viswanth, Advocate, S.R.No.24063
+1cc to the Government Pleader, S.R.No.24151

WP.No.7802 of 2022

SR-II (CO)
CT 17/05/2022