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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 03.01.2022

PRONOUNCED ON : 10.01.2022

CORAM

THE HON'BLE MR.JUSTICE G.K.ILANTHIRAIYAN

WP.NO.17054 OF 2021

1.Nirmala A Jhabakh
2.Anand Mukesh Jhabakh

..Petitioners

Vs.

1. The District Registrar,
Stone House,
Government Arts College Road,
Udhagamandalam Road.

2. The Sub Registrar,
Office of the Sub Registrar,
Coonoor,
Nilgiris.

..Respondents

PRAYER:

The Writ Petition is filed under Article 226 of the Constitution of India to issue a writ of certiorarified mandamus calling for the communication of the second respondent in letter No.88/2021 dated 25.06.2021 and quash the same and further direct the second respondent to receive and register the pending document No.P19/2020 presented on 25.06.2020 in accordance with the Article 45(a) of the Indian Stamp Act, 1899.

For Petitioners : Mr.M.Rajasekhar

For Respondents : Mr.Yogesh Kannadasan,
Special Government Pleader

ORDER

The writ petition is filed to issue a writ of certiorarified mandamus calling for the communication of the second respondent



in letter No.88/2021 dated 25.06.2021 and quash the same and further direct the second respondent to receive and register the pending document No.P19/2020 presented on 25.06.2020 in accordance with the Article 45(a) of the Indian Stamp Act, 1899.

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2. The case of the petitioners is that the property comprised in old survey No.A-66 and A119-D, RS.Nos.2424 and 2422 to an extent of 1.11-1/8 acres situated at Coonoor, Nilgiri District was purchased by the registered sale deed dated 15.10.1956 vide document No.844 of 1956 by the partnership firm 'S.Narayana Rao and Bros.' represented by its partners, Narayana Rao and his brother Venkataramana Rao. The said Venkataramana Rao died leaving his wife and son to succeed to his estates. The other partner V.Narayana Rao executed Will on 01.04.1974 bequeathing his share in favour of his sons i.e. S.N.R.Babu, S.N.Srinivasan and S.N.Nandakumar. The partnership firm was reconstituted after demise of its original partners on 27.03.1973 by induction of their legal representatives. On 09.12.1976, the legal heirs of the deceased Venkataramana Rao retired from the partnership firm by way of executing a joint agreement. However, there was dispute and the legal heirs of the deceased Narayana Rao filed suit in OS.No.691 of 1977 on the file of the District Munsif Court, Coimbatore. At the same time, the legal heirs of the Venkataramana Rao also filed suit in OS.No.455 of 1981 for declaration declaring that the joint agreement dated 09.07.1976 is null and void. By common judgment and decree dated 24.11.1987, dismissed the suit filed by the legal heirs of the said Venkataramana Rao and decreed the suit filed by the legal heirs of the said Narayana Rao. Aggrieved by the same, appeal suit was filed in AS.No.22 of 1988 and the same was also dismissed by the judgment and decree dated 28.02.1990. Thereafter, one of the legal heirs of S.N.R.Babu died on 20.06.1997 leaving behind his wife and children to succeed to his estates. By the registered partition deed dated 11.12.2009, they divided the properties by metes and bounds and accordingly, the other legal heirs i.e. S.N.Srinivasan and S.N.Nandakumar were allotted 30 cents each in RS.Nos.2424 and 2222 in TS.No.9 of Ward C in Block No.6 of Coonoor. The legal heirs of S.N.R.Babu were allotted the remaining extent of 30 cents. Thereafter, the wife and daughter of the deceased S.N.R.Babu relinquished their 2/3 undivided share right and executed release deed in favour of another legal heir C.B.Neelannarayanan by the release deed dated 14.05.2014 registered vide document No.1014 of 2014.

2.1 The further case of the petitioners is that the first petitioner along with another person constituted a partnership firm and registered the same in the name and style of "Jindutt Associates" on 12.03.2014. Thereafter, it was reconstituted on



14.05.2014 inducting the legal heirs of the said Venkataramana Rao and Narayana Rao i.e.S.N.Srinivasan, SN.Nandhakumar and C.B.Neelannarayanan. As their share of capital, brought their property to an extent of 90 cents into the common stock of the firm. In pursuant to the reconstitution, mutations were made in the revenue records in respect of the said property. However, the newly inducted persons were retired from the partnership firm by way of deed of retirement and again partnership firm was reconstituted on 02.06.2014 with continuing partners i.e. first petitioner and another. On 01.04.2020, the second petitioner was inducted as partner of "Jindutt Associates" by reconstitution. On 29.05.2020, the other person retired from the partnership firm under the deed of retirement. All the inductions as well as the retirement of the partners were informed to the Registrar of Firms vide Form V. The said partnership firm was dissolved by deed of dissolution on 15.06.2020 and the same was duly communicated to the Registrar of Firms under Form V on 19.06.2020. In pursuant to the dissolution, the immovable property belongs to the firm to an extent of 90 cents was decided to be partitioned by metes and bounds and executed deed of partition and presented for registration before the second respondent herein along with requisite stamp duty and registration fees on 25.06.2020. The second respondent has kept the document as pending document No.P19 of 2020. Thereafter, the impugned order was passed on 25.06.2021 holding that the partition deed cannot be registered on the ground that the property concerned do not belong to the petitioners absolutely.

3. Mr.M.Rajasekhar, the learned counsel for the petitioners would submit that a document can be refused for registration only on the grounds specified under Section 71 of the Registration Act, 1908 and Rule 162 of the Registration Rules. The document which was presented for registration does not fall either under the grounds specified under Section 71 of the Registration Act, 1908 or in Rule 162 of the Registration Rules. The second respondent also relied upon the circular issued by the Inspector General of Registration which direct that title to the property concerned in the document ought to be verified by production of title deeds or patta is clearly contrary to Rule 55 of the Registration Rules. This Court repeatedly held that such circulars in the form of executive orders cannot be issued contrary to the Rules and statutes. The reference made by the second respondent with regards to the deeds of retirement of partners dated 02.06.2014 and 29.05.2020 executed by retired partners are without any basis and have not been engrossed with requisite stamp, which violates the expressed prohibition under Rule 55 of the Registration Rules and without any basis. When a partner retires, what he receives is his share in the partnership and not any consideration for transfer of his



interest in partnership to the continuing partners and therefore there is no transfer of interest in the partnership assets involved by such retirement. The retirement of partner from the partnership firm is not a transfer of interest within meaning of Transfer of Property Act and Registration Act warranting registration. In support of his contention, the learned counsel for the petitioners relied upon the following judgments:

(i) Express Exclusive Developers Pvt.Ltd rep. by its
Authorised Signatory Mr.Dinesh Kumar B.Jain Vs.

The Inspector General of Registration, Chennai and others in
WP.No.35285 of 2015 dated 22.02.2016 of this Court

(ii) D.B.Prakashchand Jain & Another Vs. The Inspector
General of Registration, Chennai & others reported in
2014 (4) MLJ 594

(iii) L.Jeyaprakash & another Vs. The Sub Registrar,
Tiruporur & another in WP.No.7077 of 2016
dated 23.03.2016

(iv) Radha Krishan Industries Vs. State of Himachal
Pradesh and others reported in 2021 SCC Online SC 334

4. Per contra, the first respondent filed counter and Mr.Yogesh Kannadasan, Special Government Pleader appearing for the respondents submitted that for the documents of retirement from partnership firm or releases of partnership property among non family members, the duty shall be enable as per Article 55 D (ii) of the Stamp Act and compulsorily registrable under the provisions of Section 17 of the Indian Registration Act. Though, both the documents were executed under the Stamp duty of Rs.300/-, both were kept unregistered. Thus, those transactions involved huge evasions of stamp duty with an intent to defraud revenue and defying the provision of compulsory registration and lead to loss of registration fees as well. The provisions of Rule 22 of the Registration Manual mandates that every document shall before acceptance for registration be examined by the registering officer to ensure that all the requirements prescribed in the Act and in these Rules have been complied with. As per the circular No.251/C1/2012 dated 24.05.2012, when the documents presented for registration where the respective previous instruments involved deficit stamp duty and registration fees has to be declined for registration. As against the impugned refusal order passed by the second respondent, under Section 71 of the Indian Registration Act, there is an appeal remedy before the first respondent as contemplated under Section 72 of the said Act. Without exhausting the appeal remedy, the writ petition itself is not maintainable under Article 226 of the Constitution of India.



4.1 Further stated in the counter that as per the provisions of the Rule 55, never permits the registering officer in a blanket manner to go ahead with registration. There is no prohibition to check the duties payable on the connected parent instruments and the documents presented for registration attract provisions under Section 17 of the Indian Registration Act and Article 55 D (ii) of the Stamp Act. In the absence of proper stamp duty and as per legal statute and kept unregistered, these are inadmissible in evidence. Thus, the petitioners evaded stamp duty and registration fees with an intention to defraud revenue. However, the property has been vested with the partnership firm whom the retired partner Mrs.Neha Gulocha was in existence. Hence, she is aware of the properties vest with the partnership firm. When she has relinquished her rights in the firm being a non family member, the said instrument to be stamped as per Article 55 D (ii) of the Schedule I of the Stamp Act and compulsorily registered by paying proper registration fees as per provisions of the Indian Registration Act. The properties vest with the firm bearing undivided share right over the partners of the firm. Thus, whenever a partner retires, there occur a relinquishment of right over the undivided share of the partner. The chargeability of such relinquishment requires stamp duty based on the relationship between the existing and retiring partners as well as requires compulsory registration.

5. Heard, Mr.M.Rajasekhar, the learned counsel for the petitioners, and Mr.Yogesh Kannadasan, Special Government Pleader appearing for the respondents.

6. The first petitioner along with one Neha Gulocha constituted a partnership firm on 12.03.2014 in the name and style of "Jindutt Associates". It was reconstituted on 14.05.2014 by inducting three other partners i.e. S.N.Srinivasan, S.N.Nandakumar and C.B.Neelanarayanan under the deed of reconstitution of partnership. As their share of capital, they brought their subject property into the common stock of the said firm. Thereafter, the mutations of revenue records were made in respect of the said property in the name of the partnership firm. Immediately on 02.06.2014, they retired from the partnership firm by way of deed of retirement and in pursuant to the same, the partnership firm was reconstituted on 02.06.2014. Though it was communicated to the Registrar of Firms, it was not registered under the Registration Act. Thereafter, on 01.04.2020, the second petitioner was inducted as partner of the partnership firm and the partnership firm was reconstituted. Thereafter, the said Neha Gulocha also retired from the partnership firm on 29.05.2020 under deed of retirement. Though it was communicated to the Registrar of Firms on 29.05.2020, the deed of retirement was not registered under



the Registration Act. Immediately, on 15.06.2020, the partnership firm itself was dissolved and in pursuant to the dissolution of partnership firm, the immovable property stands in the name of the partnership firm to an extent of 90 cents comprised in RS.Nos.2424 and 2222 in TS.No.9 of Ward C, Block 6, Coonoor was agreed to be jointly held by the petitioners. Thereafter, they decided to partition the said property by metes and bounds by way of deed of partition and presented for registration before the second respondent. The second respondent refused to register the same and issued the impugned checkslip.

7. The points for consideration in this writ petition are as follows:

(i) Whether the second respondent can refuse to register the partition deed on the ground that the earlier documents on retirement from partnership firm or releases of partnership property among non family members requires stamp duty as per Article 55 D (ii) of the Stamp Act and compulsorily registrable under the provisions of Section 17 of the Indian Registration Act?

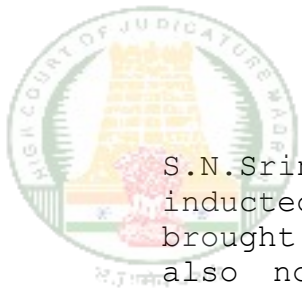
(ii) Whether the second respondent has power to look into the previous instruments involving deficit stamp duty and registration fees when the documents presented for registration?

8. For the release deed affecting immovable property of a partnership firm involving non family members, the stamp duty structure is stipulated under Article 55 (D) ii of the Indian Stamp Act, which is extracted hereunder:

(ii) When such release is between partners who are not family members	(a) (Rupees Seven) for every Rs.100/- or part thereof of the market value of the immovable property which is subject matter of release
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Explanation: For the purpose this Article, the word "family" shall have the same meaning as defined in the Explanation to Article 58.

9. Admittedly, the partnership firm called "Jindutt Associates" was constituted by the first petitioner along with one, Neha Gulocha and they are not family members. Subsequently,



S.N.Srinivasan, S.N.Nandakumar and C.B.Neelannarayanan were inducted as partners. As their share of capital, their property brought into the common stock of the partnership firm. They are also not family members of the first petitioner or another partner Neha Gulocha. After mutation of revenue records in respect of the property in favour of partnership firm, the said three persons were retired from the partnership firm and released their right in favour of other partners. After their retirement, the son of the first petitioner was inducted as one of the partners of the said "Jindutt Associates" partnership firm. Thereafter, other partner Neha Gulocha also retired from the partnership firm on 29.05.2020 under the deed of retirement and relinquished her right in favour of other partners. Therefore, the said three persons i.e. S.N.Srinivasan, S.N.Nandakumar, C.B.Neelannarayanan and Neha Gulocha are not family members of the partners. The property has been vested with the partnership firm whom retired partner Neha Gulocha was in existence. Hence, she is aware of the property vest in the firm. When she relinquished her right in the firm, being a non family member, the retirement deed has to be stamped as per Article 55 D (ii) of Schedule I of the Indian Stamp Act and compulsorily registrable by paying proper registration fees as per provisions of the Indian Registration Act.

10. The properties vest with the partnership firm bearing undivided share right over partners in the firm. Thus, whenever a partner retires, there occur a relinquishment of right over the undivided share of the partner. The chargeability of such relinquishment requires stamp duty based on the relationship between the existing and retiring partners as well as requires compulsory registration. The releases and retirements deeds involving immovable property were not only unduly stamped but also kept unregistered contravening the provisions of Section 17 of the Indian Registration Act which mandates such documents shall be registered within the stipulated period. Therefore, the second respondent can very well look into the earlier documents in pursuant to which, the deed of partition which is presented for registration, with regards to the payment of stamp duty as well as registration fees. The second respondent after scrutinising the previous deeds rightly concluded that the earlier documents are unduly stamped as well as kept it as unregistered and it amounts to violation of stamps and registration laws.

11. On perusal of the deed of retirement, reveals that three partners i.e. S.N.Srinivasan, S.N.Nandakumar and C.B.Neelannarayanan received a sum of Rs.35,65,000/- each and executed deed of retirement. The said deed of retirement was not presented for registration and unregistered one. Thus, it



requires stamp duty under Section 55 D (ii) of the Indian Stamp Act, since it was executed between non family members. It was executed in the three-hundred-rupees stamp paper. Likewise, another partner Neha Gulocha retired from the partnership firm by execution of deed of retirement dated 29.05.2020 and released her rights over the immovable property in favour of the partnership firm. The said deed of retirement was executed in the three-hundred-rupees stamp paper. Admittedly, she is also not a family member of the petitioners herein. Thus, it requires stamp duty under Article 55 D (ii) of the Stamp Act. Therefore, the judgments cited by the learned counsel for the petitioners are not helpful to the case on hand and the second respondent rightly refused to register the deed of partition. As such, this Court finds no infirmity or illegality in the order passed by the second respondent and the writ petition is devoid of merits and liable to be dismissed.

12. Accordingly, this writ petition is dismissed. No order as to costs.

Sd/-
Assistant Registrar(CS-V)

//True Copy//

Sub Assistant Registrar

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To

1. The District Registrar,
Stone House,
Government Arts College Road,
Udhagamandalam Road.

2. The Sub Registrar,
Office of the Sub Registrar,
Coonoor,
Nilgiris.

+1cc to M/s.M.Raja Sekhar, Advocate, S.R.No.1738

+1cc to the Government Pleader, S.R.No.2717

WP.No.17054 of 2021

SSV(CO)
RLP(28/01/2022)