IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	Pronounced on
23.11.2022	**21.12.2022**

CORAM

THE HONOURABLE MR. JUSTICE M.DHANDAPANI

W.P. NO.19633 OF 2022

U.Parthan .. Petitioner

- Vs -

The Sub Registrar
Sembiam, Chennai 600 011. .. Respondents

Writ Petition filed under Article 226 of the Constitution of India praying this Court to issue a writ of certiorarified mandamus calling for the records of the respondent pertaining to the notice dated 13.7.2022 and quash the same as unlawful and arbitrary and to direct the respondent to register the Final Decree C.S. No.314 of 2019 dated 19.08.2021 on payment of registration charges as mentioned in Schedule I Article 45 (c) of the Indian Stamp Act 1899.

For Petitioner : Mr. P.Seshubalan Raja

For Respondent : Mr. C.Kathiravan, Spl. G.P.

ORDER

Assailing the exorbitant registration charge, which has been levied for the purpose of registration of the decree passed in a suit relating to partition of the property among the family members, the present writ petition has been filed.

2. The brief facts of the case, as projected by the petitioner, in the writ petition is that the petitioner's father died intestate leaving behind the petitioner and his brother and his sister, in all three, as his legal heirs. The properties, which were held by the petitioner's father, devolved on all the three legal heirs. Certain familial misunderstanding between the petitioner and his brother necessitated in the filing of the suit in C.S. No.314 of 2019 before this Court seeking partition. During the pendency of the suit, the family members settled the matter by entering into a compromise, which resulted in final decree being passed in accordance with the compromise Memo on 19.08.2021.

3. It is the further case of the petitioner that upon depositing non-judicial stamp papers to the value of Rs.75,000/- for all the three sharers (Rs.25,000/- for each sharer) as directed by the Registry, final decree was made available to the petitioner, which was presented before the respondent for registration. However, the said final decree, which was submitted for registration was kept pending in Document P18/2022/1Book by the respondent citing certain clarification with regard to registration charges to be charged for the said registration. The respondent, while kept the document pending for more than a month, however, curiously by communication dated 13.07.2022 directed the petitioner to pay a sum of Rs.3,10,96,750/- (Rupees Three Crore Ten Lakhs Ninety-Six Thousand Seven Hundred and Fifty only) on the basis of the value of the suit. Though there is no provision under the Indian Stamp Act empowering the respondent to levy such exorbitant charge for registration and further the authorities are bound to register the decree in consonance with the provisions of the Act, the present writ petition has been filed.

4. Learned counsel appearing for the petitioner submits that the impugned order directing payment of registration charges at Rs.3,10,96,750/- is

legally not maintainable as there is no provision in the Indian Stamp Act empowering the registering authority to collect registration charges on the basis of the valuation of the suit. It is the further submission of the learned counsel that registration charges are payable only on the basis of the charges relatable to a Deed of Partition, which is registered and charging on the basis of the valuation of the suit is wholly erroneous and not sustainable.

5. It is the further submission of the learned counsel that the necessity for deposit of non-judicial stamp paper for the purpose of drafting the final decree would not in any way be the yardstick to levy registration charges on the basis of the valuation of the suit as the decree holder cannot be compelled to pay registration charges on the basis of the value of the suit and the non-judicial stamp paper is provided only for the purpose of drafting the decree. It is the further submission of the learned counsel that the registration of a decree of the Court cannot entail collection of exorbitant charges as levied by the respondent by taking the valuation of the suit as the basis for quantification of registration charges.

6. It is the further submission of the learned counsel that registration charges is leviable only in terms of Article 45 (c) of Schedule I of the Indian Stamp Act and Section 78 of the Registration Act would not come into play, as the deed, which is sought to be registered is on the basis of a partition entered into between the members of the family. Therefore, the quantification of registration charges can only be in terms of Article 45 (c) of Schedule I of the Indian Stamp Act.

7. Per contra, learned Special Government Pleader appearing for the respondent submits that the document, which is sought to be registered is not a deed of partition, which would attract registration charges under Article 45 (c) of Schedule I of Stamp Act, but it is a decree of a civil court, which is on the basis of a compromise entered into between the parties and, therefore, necessarily, the registration charges would be governed by Section 78 of the Registration Act.

8. It is the further submission of the learned Special Government Pleader that the document which has been presented by the petitioner is not a partition deed which would fall within the provision of Article 1 (f) of Section 78 of the

Registration Act and it is a decree, which is a document which would squarely fall within Article 1 (b) of Section 78 of the Registration Act. It is the further submission of the learned Special Government Pleader that clause (a) of Article 45 of Schedule I would also not stand attracted to the case of the petitioner for the reason that what is presented by the petitioner is a copy of the decree and not the Deed of Partition.

9. It is the further submission of the learned Special Government Pleader that the certified copy of the final decree produced for registration by the petitioner cannot be construed as a document within the meaning of instrument and, therefore, it would not attract Article 45 of Schedule I of Indian Stamp Act. Therefore, it is submitted that there is no error in the demand made by the respondent demanding registration fee, which does not require any interference at the hands of this Court.

10. This Court gave its anxious consideration to the submissions advanced by the learned counsel appearing on either side and perused the materials available on record.

11. There is no dispute about the fact that what is submitted for registration is the certified copy of the decree pertaining to partition of the property between the petitioner and his family members. It is not a partition deed, which has been entered into between the members of the family, which is sought to be registered.

12. It is the claim of the petitioner that Article 45 (c) of Schedule I of the Indian Stamp Act would stand attracted and, therefore, no registration charges are required to be collected, as the decree is only a deed of partition, given under the seal of the Court and, therefore, the registration charges would only be Rs.4,000/-, which is payable by the petitioner.

13. Article 45 (c) of Schedule I of the Indian Stamp Act, on which much emphasis is laid on behalf of the petitioner, provides for the charges that are to be collected in respect of an instrument relating to partition and for better appreciation, the relevant provision is extracted hereunder :-

45. Partition – Instrument of (as	

defined by Section 2 (15))	
(a) If the instrument of partition is among family members	One rupee for every Rs.100 of part thereof of the market value of the property which is under partition.
(b) In any other case	The same duty as a Bottomry Bond (No.16) of the amount of the value of the separated share or shares of the property : Provided that – (a) When an instrument of partition containing an agreement to divide property in severalty is executed and a partition is effected in pursuance of such agreement, the duty chargeable upon the instrument, effecting such partition shall be reduced by the amount of duty paid in respect of the first instrument but shall not be less than twenty rupees; (b) Where the land is held on Revenue Settlement and paying the full assessment or is an Inam land assessed under the Tamil Nadu Inams (Assessment) Act, 1956 (Tamil Nadu Act XL of 1956) the value for the purpose of duty shall be calculated at twenty five times the annual revenue; (c) Where a final order for effecting a partition passed

		by any Revenue Authority or any Civil Court or an award by an arbitrator directing a partition , is stamped with the stamp required for an instrument of partition, and an instrument of partition in pursuance of such order or award is subsequently executed, the duty on such instrument shall not exceed twenty rupees.

14. However, it is the stand of the respondent that a court decree is not a deed of partition entered into between the family members and, therefore, registration charges are collectable on the value of the suit on as provided u/s 78 of the Registration Act as it is only the certified copy of the decree, which is registered and not the partition deed.

15. Section 78 of the Registration Act prescribes the fees for registration, searches and copies and the respondent lays much stress on the said provision, wherein the table prescribes the fees to be payable in respect of certain documents and for better appreciation, the said provision is quoted hereunder :-

*“**78. Fees to be fixed by State Government -** The State Government shall prepare a table of fees payable –*

(a) For the registration of documents;

(b) For searching the registers;

(c) For making or granting copies of reasons, entries or documents, before, on or after registration and of extra or additional fees payable;

(d) For every registration under section 30;

(e) For the issue of commissions;

(f) For filing translations;

(g) For attending at private residences;

(h) For the safe custody and return of documents; and

(i) For such other matters as appear to the State Government necessary to effect the purpose of this Act.”

16. Before proceeding to analyse the legal issues raised in the present petition, it is to be pointed out that Stamp Act relates to levy of stamp duty on an instrument, which is presented for registration and the Registration Act relates to levy of registration charges that are leviable in respect of documents, which have been properly stamped. The two levies operate in different fields and one cannot be interposed into the other.

17. According to the petitioner, the decree of the court is properly stamped for the value required and that the decree would partake the character of a partition deed as provided u/s 2 (15) of the Stamp Act and, therefore, the charges that are to be levied would only be in terms of Article 45 (c) of Schedule I of the Stamp Act and not as per Section 78 and the table of fees appended thereto to the Stamp Act.

18. Though such a contention, on the face of it looks fanciful and attractive, yet the same could not be accepted by this Court as necessarily the decision of this Court in ***K.Krishnan – Vs – Inspector General of Registration & Ors. (MANU/TN/5556/2019)*** stares writ large on the face of the aforesaid contention. In the said decision, a learned single Judge of this Court has held as under :-

> *"16. Insofar as the second reason of making the payment of the stamp duty or registration charge is concerned, it is the stand of the Government Advocate that, no doubt insofar as the registering the Court decree or order is concerned, party need not pay stamp duty advalorem, but, for registration, the parties will*

have to pay the registration charges applicable to the property concerned covered under the Court decree or order and this has also been reiterated in the said circular issued by the first respondent dated 26.10.2002.

17. In order to appreciate the same, the relevant portion of the said circular dated 26.10.2002 is hereby extracted:-

"4.The registration fee shall be levied only on the total value of the suit and not on the value of the property as per the guidelines or on separated shares as the document is only a copy of decree and not a partition."

18. The very same circular has also been heavily relied upon by the learned counsel appearing for the petitioner and he would submit that, the prayer sought for in this writ petition is only to give a mandamus by way of direction to the registering authority to register the Court decree, after collecting necessary registration charges. Therefore, the learned counsel appearing for the petitioner also agreed that, the petitioner has to pay necessary registration charges as contemplated under Clause 4 of the circular dated 26.10.2002 extracted herein above.

* * * * * * *

21. In the result, this Writ Petition is ordered with the following directions:-

"that the second respondent/registering authority is directed to register the civil Court decree in O.S.No. 686 of 2004 on the file of the learned District Munsif, Madurai Taluk at Madurai by

judgment and decree dated 04.07.2018 without insisting any limitation under Section 23 of the Registration Act, however, by collecting the necessary registration charges for the value of the suit covered under the decree, but not as per the guideline value of the property. The needful as indicated above shall be completed within a period of four weeks from the date of receipt of the document as well as the registration charges from the petitioner. Hence, it is open to the petitioner to resubmit the document ie., civil Court decree with necessary registration charges and any other relevant documents required by the second respondent, immediately.

* * * * * * * *”

19. The aforesaid decision of this Court has also been followed by another learned Judge of this Court in the case of ***M.Rajendran – Vs – The Inspector General of Registration (W.P. (MD) No.8091 of 2020, etc., dated 25.06.2021)***, wherein it has been held as under :-

“22. Insofar as the next issue regarding the registration fee that has to be levied, the law is no longer res integra and this Court in the case of K.Krishnan referred supra has categorically held that the registration fees should be levied only on the total value of the suit and not on the value of the property. Therefore, the respondent cannot insist for the payment of the registration fees based on the value of the property.”

20. This Court is in respectful agreement with the above proposition of law laid down, however, would like to amplify the decision a bit further on the basis of which the levy of registration charges would be on the court decree in terms with Section 78 Registration Act and would not be in terms of Article 45 (c) of Schedule I of the Stamp Act.

21. There is no quarrel about the fact that the suit was laid for partition of the properties and the suit was decreed based on the compromise entered into between the parties. Therefore, technically, there was no partition deed in existence and it is only a compromise in and by which the parties prayed for an order and the manner in which partition could be effected in their favour. Merely because the Court had partitioned the properties on the basis of the compromise and a decree has been granted to the said effect would not make the decree to partake the character of a partition deed.

22. Article 1 (f) of the Table of Fee relating to the fees leviable u/s 78 of the Registration Act, relates to deeds of partition, and for better appreciation, the relevant clause is extracted hereunder :-

> *"(f) In the case of deeds of partition, the value of the separated share or shares on which the stamp duty is payable shall be taken as the value for consideration :*
>
> *Provided that in the case of partition among family members as mentioned in clause (a) of Article 45 of Schedule I to the Indian Stamp Act, 1899 (Central Act II of 1899), the fee shall be leviable as per Article 1 (a) for each share, subject to a maximum of Rs.4,000/- (Rupees Four Thousand only) for each share."*

23. The petitioner claims the benefit under Article 45 (c) of Schedule I of the Stamp Act highlighting that a court decree, which is executed, would have to be charged only as per the said provision and Section 78 of the Registration Act would not be applicable. It is to be pointed out that the suit has been valued and stamp charges have been paid on the said suit. On the basis of a compromise arrived at between the parties, the decree was passed. Had the parties partitioned the properties among themselves without resorting to court proceedings, necessarily Article 45 (a) of Schedule I of the Stamp Act would

stand attracted, as it would merely be a deed of partition, which is sought to be registered.

24. However, in the present case, what is sought to be registered is the certified copy of the decree, which has been passed pursuant to a suit filed by the petitioner, which has been initially valued and, thereafter, on the basis of the compromise, the decree has been passed in and by which the properties, which were the subject matter of the suit were partitioned. What is provided for in Article 45 (c) relates to the execution of an order/award relating to partition in which the duty payable is quantified. The order passed by the court of law cannot be said to be a partition deed within the meaning of Section 2 (15) of the Stamp Act. Section 2 (15) of the Stamp Act deals with *"Instrument of Partition"* which also takes within its fold a court decree to mean that a partition has been effected and given effect to by the said order. The Court decree cannot be termed to be a partition deed, which, in effect, would allow the parties to claim the benefit of Article 45 (c) of Schedule I of the Stamp Act.

25. In the case on hand, the decree had been passed on the basis of a compromise. At best, the compromise could be termed to be a deed of partition, but what is sought to be registered is not the compromise deed, but the decree, which was the result of a compromise arrived at between the parties. Therefore, the said decree cannot be held to be a partition deed, which is provided for under Article 1 (f) of the Table of Fees leviable u/s 78 of the Registration Act. Further, what is provided under Article 45 (c) is stamp duty, whereas, what is provided under Section 78 of the Registration Act is registration charges.

26. To make it more clear, the partition deed does not in any way deal with the value of the property; rather, it merely partitions the various properties between the family members, while the court decree, not only partitions the property, but also values the individual property, which is allotted to the share of the respective sharer and the determination of court fee is made by valuing the properties. Therefore, in a suit, the value of the property is material, whereas, that cannot be said so with regard to a partition deed. Therefore, the said court decree cannot be said to be equivalent to a deed of partition though it is shown to be an instrument of partition u/s 2 (15) of the Stamp Act, which could at best

be for the purpose of determining the stamp duty *ad valorem* and not for the purpose of registration charges and it is only an aid at partitioning the properties and, therefore, would not fall within Article 1 (f) of the Table of Fees provided u/s 78 of the Registration Act.

27. Further, as stated above, registration charge is unconnected with the stamp duty. In respect of a court decree, more particularly on a compromise, while stamp duty *ad valorem* is not chargeable, however, registration charges as provided for u/s 78 of the Registration Act is chargeable on the total value of the suit, as the document, which is sought to be registered, is only a certified copy of the decree and is not a partition deed as provided for Article 1 (f) of the Table of Fees appended to Section 78 of the Registration Act.

28. Such being the case, the stand of the petitioner that registration charges is chargeable only on the basis of Article 45 (c) of the Stamp Act is wholly a misconception of the said legal provision vis-à-vis Section 78 of the Registration Act, as the document, which is sought to be registered is not a partition deed, but is a court decree and, therefore, the registration charges

would be on the basis of the value of the suit and would be chargeable as per Section 78 of the Registration Act.

29. For the reasons aforesaid, the writ petition fails and the same is dismissed. The respondent is directed to charge registration charges on the value of the suit for the purpose of registering the court decree as per Section 78 of the Registration Act. There shall be no order as to costs.

21.12.2022

Index : Yes / No

Internet : Yes

GLN

To

The Sub Registrar
Sembiam, Chennai 600 011.

M.DHANDAPANI, J.

GLN

PRE-DELIVERY ORDER IN
W.P. NO. 19633 OF 2022

Pronounced on
21.12.2022