



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.01.2022

CORAM

THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

W.P.No.29211 of 2017

&

W.M.P.No.31470 of 2017

- 1.J.Harishankar Agarwal
- 2.Harishankar Agarwal (HUF),
represented by its Kartha, J.Harishankar Agarwal
- 3.Aditya Agarwal
- 4.Aditya Agarwal (HUF)
represented by its Kartha, Adithya Agarwal
- 5.Indu Agarwal
- 6.Rajendra Kumar Agarwal
- 7.Suman Agarwal
- 8.Vishal Agarwal
- 9.Anshul Agarwal
- 10.J.Harigopal Agarwal Foundation,
a charitable trust represented by its trustee,
H.Rajendra Kumar Agarwal ...Petitioners

Vs

1. The District Registrar-Chennai Central/Appellate Authority,
182, Bharathi Salai, Royapettah,
Chennai, Tamil Nadu - 600 014.
2. The Sub-Registrar
Office of the Sub-Registrar, Triplicane
182, Bharathi Salai, Royapettah, Chennai,
Tamil Nadu - 600 014. ...Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, to call for the records and quash the order dated 01/08/2017 in proceedings bearing ref:9213/B1/2017 of the 1st respondent and consequently, direct the 2nd respondent to release the Rectification Deed 16/06/2016 and Partition Deed dated 20/10/2014.

For Petitioner : Mr.K.F.Manavalan

For Respondent : Mr.Yogesh Kannadasan
Special Government Pleader



ORDER

The partition deed dated 20.10.2014 is presented for registration before the second respondent, however, the second respondent neither registered nor returned to the petitioners. Therefore, the petitioners requested the second respondent returned the partition deed by the representation dated 24.10.2016. Thereafter, the petitioners found that by oversight in the deed of the partition included the Trust as one of the party, since no property under the Last Will and Testament dated 24.10.1980, bequeathed in the name of Trust called J.Harigopal Agarwal Foundation and whereas the said property of 1/11th undivided share in Schedule A property was allotted in favour of one H.Rajendra Kumar Agarwal in his individual capacity. Therefore, the petitioners have entered into a Deed of Rectification dated 16.06.2016 and presented for registration before the second respondent dated 16.06.2016. However, the second respondent refused to register the Deed of Rectification and kept the same as pending.

2. Aggrieved by the same, petitioners preferred an Appeal as contemplated under Section 72 of the Registration Act, 1908, before the first respondent. The first respondent passed the impugned order dated 01.08.2017, thereby directing the second respondent to accept the Rectification Deed for registration and to keep the same pending. Further observed that, it is made clear that keeping Rectification Deed pending, has to be without prejudice to the action under Section 33 of the Indian Stamp Act, 1899, (in short 'Act') in respect of the pending partition deed dated 20.10.2014 as pending document 190/2014 and the second respondent is directed to speed up the action under Section 33 of the Act with regard to the partition deed.

3. On a perusal of the counter affidavit filed by the second respondent revealed that the deed of partition dated 20.10.2014 entered into between the petitioners and they have to pay stamp duty as if it is only a partition in the family members as they are co-owners. Therefore, the second respondent considered them as they are not family members, in accordance with Article 58 of the Schedule I of the Act. The petitioners 2 and 4 are being separate entity consisting of Kartha, his wife and children are not entitled to partition along with other petitioners who are alone co-owners. Therefore, the deed of partition is chargeable under Article 45(b) of Schedule I of the Act and the settlement in favour of the petitioners 2 & 4 who are non family members is chargeable under Article 58(a)(ii) of the Act and aggregate of the stamp duty is payable under Section 5 of the Act. Since the document was not duly stamped, it was impounded under Section 33 of the Act and forwarded to the first respondent. However, even till today, no notice was issued to the petitioners for the



proceedings initiated under Section 33 of the Act.

4. Considering the above, the first respondent is directed to issue notice to the petitioners on the reference made under Section 33 of the Act, after giving sufficient opportunity of hearing to the petitioners and pass orders in accordance with law within a period of four (4) weeks from the date of receipt of a copy of this order.

5. The writ petition stands disposed of with the above directions. Consequently connected writ miscellaneous petition is also closed. There shall be no order as to costs.

Sd/-

Assistant Registrar(CS-V)

//True Copy//

Sub Assistant Registrar

nst/rkp

To

1. The District Registrar-Chennai Central/Appellate Authority,
182, Bharathi Salai, Royapettah,
Chennai, Tamil Nadu - 600 014.
2. The Sub-Registrar
Office of the Sub-Registrar, Triplicane
182, Bharathi Salai, Royapettah, Chennai,
Tamil Nadu - 600 014.

+1cc to Mr.K.F.Manavalan, Advocate, S.R.No.1913

+1cc to the Government Pleader, S.R.No.2720

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GSM(CO)

CB(03/02/2022)