BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **16.09.2022**

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THE HON'BLE MR.JUSTICE R.VIJAYAKUMAR

W.P(MD)No.20174 of 2014
and
M.P(MD)No.1 of 2014

C.V.Sundaram ... Petitioner

Vs.

The Sub Registrar,
Joint II, Karur,
Karur. ... Respondent

PRAYER : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari, calling for the records relating to the proceedings, dated 11.09.2013, of the respondent and quash the same.

For Petitioners : M/s.R.Murali
for M/s.K.Govindarajan

For Respondent : M/s.S.R.A.Ramachandran
Additional Government Pleader

ORDER

The present Writ Petition has been filed challenging the notice issued by the respondent herein, under which, the respondent has made a demand of deficit stamp duty of Rs.36,000/- from the writ petitioner.

2. According to the learned Counsel for the petitioner, a private family trust was registered on 11.01.2008. As per the objects of the said family trust, a corpus fund was created for the purpose of performing certain poojas and rituals on certain special days to Palamalai Balasubramaniaswamy Temple. As per the said trust deed, a sum of Rs.6,00,000/- was allocated as a corpus fund, over which any of the family members will not have any right. The interest from the said corpus fund has to be utilized for the purpose of performing Manthra Phushpa Seva and other related festivals in Palamalai Balasubramaniaswamy Temple.

3. The said trust deed was registered without any objection from the respondent herein. However, after a period of five years, the impugned notice has been issued on 11.09.2013, alleging that a deficit stamp duty of a sum of Rs.36,000/- has to be paid. However, a perusal of the impugned notice does not disclose any statutory provision, under which, the said notice has been issued. The learned Counsel for the petitioner has contended that the question of recovery of deficit stamp duty will arise only when it falls within the purview of Section 33-A of the Indian Stamp Act, 1899. In case, if there is no under valuation of the property and the document has been registered without any objection by the Sub Registrar, thereafter, the proceedings for recovery of deficit stamp duty has to be initiated within a period of three years from the date of registration of the document and only after conducting an enquiry, a certificate could be issued by the District Registrar. Only thereafter, recovery could be made from the person who has registered the document. However, in the present case, there is no under valuation of the property and Rs.6,00,000/- as a corpus fund has been specifically mentioned in the trust deed. Hence, the demand made by the respondent herein does not fall within the scope of Section 33-A of the Indian Stamp

Act, 1899. Hence, he prayed for quashing the notice issued by the respondent herein.

4. Per contra, the learned Additional Government Pleader for the respondent had contended that Rs.6,00,000/- has been settled by the family and the said document was construed to be a settlement deed among the family members and hence, Article 58 of the Indian Stamp Act would get attracted. Only in view of the said fact, the impugned demand notice was issued by the respondent herein.

5. I have carefully considered the submissions made on either side.

6. A perusal of the trust deed, dated 11.01.2008, indicates that a corpus fund has been created by the family in order to perform Manthra Phushpa Seva and other rituals to a particular temple. No amount has been reserved for the family members. In fact, there is a specific clause that the family members do not have any right to enjoy the corpus fund. The family members have been directed to utilise the interest arising out of the corpus fund to perform the said poojas. Hence, the contention of

the learned Additional Government Pleader for the respondent that the trust deed should be treated as a settlement deed in favour of the family members is not legally sustainable.

7. A perusal of Section 33-A of the Indian Stamp Act clearly reveals that only in cases, where there was a discovery of deficit stamp duty, the said section can be invoked, after conducting an enquiry. In the present case, it is not the case of the respondent herein that the document was valued correctly but stamp was insufficiently paid. In the present case, the trust deed specifically states that a sum of Rs.6,00,000/- has been relegated to the purpose of a corpus fund. Article 64 of the Indian Stamp Act clearly shows that there is no question of payment of ad valorem stamp duty based upon the value mentioned in the document. A fixed stamp duty of Rs.180/- has been mentioned in Article 64. Hence, the value mentioned in the trust deed of a sum of Rs.6,00,000/- has nothing to do with the payment of stamp duty. Therefore, the question of deficit stamp duty will not arise in the case of a trust deed.

8. In view of the above said facts, the impugned notice issued by the respondent herein is without jurisdiction and the same is set aside. The writ petition stands allowed. There shall be no order as to costs. Consequently, connected Miscellaneous Petition stands closed.

16.09.2022

Index : Yes / No
Internet : Yes / No
btr

To

The Sub Registrar,
Joint II, Karur,
Karur.

R.VIJAYAKUMAR, J.

btr

Order made in
W.P(MD)No.20174 of 2014

16.09.2022