BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 25.07.2022

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THE HON'BLE MR.JUSTICE R.VIJAYAKUMAR

W.P.(MD).No.6096 of 2016 and
W.M.P.(MD)Nos.5398 of 2016 and 11937 of 2017

M.Jafar Ali ... Petitioner

Vs.

1.The Chief Controlling Revenue Authority
and Inspector General of Registration,
Chennai – 600 028.

2.The District Registrar (Administration),
District Registrar Office,
Pudukottai District.

3.The Joint Sub-Registrar-II,
Pudukottai. ... Respondents

PRAYER : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, to call for the records of the first respondent in his proceedings in D.Dis.No.55307/P1/2014, dated 30.09.2015, confirming the order of the second respondent in his proceedings in Na.Ka.No.738/Aa1/2014, dated 11.12.2014 and to quash them with a consequential direction to second respondent to release the Release Deed bearing Document No.P.28/2012 to the petitioner.

For Petitioner : Mr.N.Balakrishnan

For Respondents : Mr.J.K.Jeyaseelan
Additional Government Pleader

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ORDER

The present writ petition has been filed challenging the order passed by the second respondent herein under which the petitioner was directed to pay deficit stamp duty a sum of Rs.1,96,500/- on a document styled as partnership release deed.

2.According to the learned Counsel for the writ petitioner, the writ petitioner's father and some other third parties were partners of a partnership firm under the name and style of Hindustan Timber Trading Company. The petitioner's father had executed a release deed on 18.10.2012 releasing his entire partnership rights and interest over the partnership firm valuing at Rs.15,00,000/-. The document was registered on 18.10.2012. However, the said document was not returned after registration and it was kept pending due to non payment of defecit stamp duty.

3.Under the impugned order, the second respondent herein had found that the petitioner being a partner along with his father, the valuation of the document has to be done under Section 55(d)(i) of Schedule I of Indian Stamp Act, 1899. The said valuation of the second respondent herein is under challenge in this writ petition.

4.According to the learned Counsel for the petitioner, this is a release deed executed by the petitioner's father in favour of his son and hence, only Section 55 A would get attracted. Therefore, the petitioner would be liable to pay only at the rate of 1% stamp duty. However, the learned Counsel for the petitioner further pointed out that if the document is branded as one falling under Section 55 D (i) he would be called upon to pay 3% of the valuation of the property conveyed in the said document.

5.Per contra, the learned Additional Government Pleader for the respondents has contended that Section 55 A relates only to a release executed within family members and a property which is not a subject matter of partnership. However, the Section 55 D specifically relates to a partnership property. When there is a specific provision relating to partnership property, the petitioner would not be entitled to invoke the general provision of release deed under Section 55 A. Hence, he contended that the second respondent has properly invoked Section 55 (D) (i) and charged the document under the said provision.

6.I have carefully considered the submissions made on the either sides. A perusal of the schedule of property in the document clearly indicates that the petitioner's father has not only released the share in the partnership business but also his share in the immovable property to a extent of 10980 sq.ft., along with the building and electricity connection. The petitioner has not chosen to value the land and the building in the said survey number. The petitioner's father has chosen to value only his share in the partnership business as Rs.15,00,000/-.

7.A persual of the impugned order clearly indicates that the second respondent herein has not only taken into consideration the one fourth value of the petitioner's father's business but also one fourth share in the immovable properties and the buildings allotted there upon. The petitioner cannot invoke Section 55 A. It is a general provision of release among the family members. In the present case, admittedly, the property dealt with under the document is a partnership property and the partnership business. In such an event, the second respondent has rightly invoked Section 55 (D) (i) of the Act, thereyby, calling upon the writ petitioner to pay 3% of the market value of the property and hence, I do not find any illegality or infirmity in the order passed by the second respondent herein.

8.The petitioner seeks time to pay the entire amount as demanded in the impugned order within a period of four weeks from the date of receipt of a copy of this order. In case, if the said amount is paid, within a period of four weeks from the date of receipt of a copy of this order, the third respondent is directed to release the document without insisting upon any further payment.

9.With the above said observation, the writ petition is disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

25.07.2022

Index : Yes / No
Internet : Yes / No

Tmg

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Pudukottai.

R.VIJAYAKUMAR ,J.

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Note :
In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate / litigant concerned.

Order made in
W.P.(MD).No.6096 of 2016

25.07.2022

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