BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **14.10.2022**

CORAM

THE HON'BLE MR.JUSTICE R.VIJAYAKUMAR

W.P(MD)No.9693 of 2016

K.Mohan ... Petitioner

Vs.

1.The Deputy Inspector General of Registration,
Thanjavur Region,
60, Giri Road, Srinivasapuram,
Thanjavur - 613 009.

2.The District Registrar,
District Registrar Office,
Kumbakonam - 612 001,
Thanjavur District.

3.The Sub Registrar,
Office of the Sub Registrar,
Valangaiman,
Thiruvarur District. ... Respondents

PRAYER : 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 pertaining to the impugned order in Na.Ka.No. 404/Aa/2016, dated 10.02.2016, passed by the first respondent and quash the same as illegal arbitrary, unconstitutional and violation of principles of natural justice and consequently direct the third respondent to remove the entry of due amount of Rs.62,073/- entered as due in the Encumbrance Certificate under the document of release deed, dated 22.05.2002, on the file of the third respondent.

For Petitioner : M/s.T.R.Subramanian

For Respondents : M/s.S.Jeyapriya
Government Advocate

ORDER

The present Writ Petition has been filed challenging an order passed by the first respondent herein, under which, he has refused to do delete the encumbrance entered into for payment of deficit stamp duty. The petitioner has further prayed for removal of the said entry for an amount of Rs.62,073/- from the encumbrance certificate.

2. According to the petitioner, the properties in dispute originally belonged to one Kunjithapatha Kadavarayar. The said Kunjithapatha Kadavarayar had two wives, namely, Radharukmani Ammal and Thangathammal. Anbunadhan and Selvanadhan are the sons of the said Radharukmani Ammal and the Mohan is the only son of Kunjithapatha Kadavarayar through Thangathammal. After the death of Kunjithapatha

Kadavarayar, the brothers, namely, Anbunadhan, Selvanadhan and the writ petitioner have entered into a registered release deed on 22.05.2002. The said release deed was assessed for stamp duty under Article 55-A of the Indian Stamp Act and the document was also released by the concerned authorities. Thereafter, an audit objection was raised that the three brothers cannot be considered to form a single family and the release should only be treated as a release in favour of a non family member, attracting Article 55-C of the Indian Stamp Act. In view of the said audit objection, the respondent authorities have demanded a deficit stamp duty of Rs.62,073/-. The demand was also entered into in the encumbrance certificate. When the petitioner made a request for deleting the said entry in the encumbrance certificate, the said request has been rejected. This order is impugned in the present writ petition.

3. The respondent authorities have considered that the brothers could not form a single family on the ground, that they have been born to two different wives of Kunjithapatha Kadavarayar. The said conclusion arrived at by the authorities is highly illogical, illegal and suffers from legal infirmity. The property in dispute has originally been settled in

favour of Kunjithapatha Kadavarayar, under a registered document number on 20.06.1972. After his death, the sons of the said Kunjithapatha Kadavarayar have entered into a release deed on 22.05.2002. All the three brothers are born to Kunjithapatha Kadavarayar, only the mothers are different. In such an event, when the father is one and the same, the respondent authorities were not right in arriving at a view that Article 55-C of the Indian Stamp Act would get attracted. In view of the above said facts, the order impugned in the writ petition is set aside. The respondent authorities are directed to delete the entry in the encumbrance certificate, under which, they have demanded a sum of Rs.62,073/-.

4. With the above said observations, the writ petition stands allowed. There shall be no order as to costs.

14.10.2022

Index : Yes / No
Internet : Yes / No
btr

To

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R.VIJAYAKUMAR, J.

btr

Order made in
W.P(MD)No.9693 of 2016

14.10.2022