



W.P.No.3184 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Orders Reserved On	05.12.2023
Orders Pronounced On	14.12.2023

CORAM:

THE HON'BLE MR JUSTICE P. VELMURUGAN

W.P.No.3184 of 2016

and

W.M.P.No.2614 of 2016

1.L.K.Jayasekar (Deceased)

2.L.K.Baburaj

3.Tmt.R.Suguna

4.Mrs.J.Ramani

5.Mr.Praveen Kumar

6.Mrs.Bharani

...petitioners

[P4 to P6 substituted as Lrs of the deceased 1st petitioner vide order dated 10.01.2022 made in W.M.P.No.2984 of 2020 in W.P.No.3184 of 2016 by GKIJ]

Versus

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

2.The District Registrar,
Chennai Central

...respondents.



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Prayer: Writ Petition No.3184 of 2016 has been filed under Article 226 of the Constitution of India to issue a writ of Certiorarified Mandamus calling for the records of the 1st Respondent ending with the order dated 02.06.2015 in proceedings No.58102/P1/2014 and quash para 20 (a) regarding deficit stamp duty in respect of settlement in favour of non-family member falling under Article 58 (a) (ii) of the Indian Stamp Act, 1899 as stated in para 12 of the said order dated 02.06.2015 and quash the same consequently direct the respondents to accept the stamps duty already paid in respect of the partition deed dated 19.10.2011 registered as document No.3719 of 2011 on the file of SRO, Anna Nagar.

For Petitioners : Mr.S.Dhayaleswaran
[1st,2nd and 4th to 6th]

3rd Petitioner : Mr.Kuberan.V
for M/s.Rank Associates.

For Respondents : Mr.P.Gurunathan
Additional Government Pleader.

ORDER

This writ petition has been filed under Article 226 of the Constitution of India to issue a writ of Certiorarified Mandamus calling for the records of the 1st Respondent ending with the order dated 02.06.2015 in proceedings No.58102/P1/2014 and quash para 20 (a) regarding deficit stamp duty in respect of settlement in favour of non-family member falling under Article 58 (a) (ii) of the Indian Stamp Act,



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1899, as stated in para 12 of the said order dated 02.06.2015 and quash the same and consequently direct the respondents to accept the stamp duty already paid in respect of the partition deed dated 19.10.2011, registered as Document No.3719 of 2011 on the file of SRO, Anna Nagar.

2. Learned counsel appearing for the petitioners submitted that the persons in whose favour the earlier settlement deeds are executed, are not parties to this deed in question and a person who does not have any right over the property, executed a ratification deed in respect of the instruments already executed by the real owner and, no new right could be conveyed, and therefore, the question of payment of the stamp duty for such ratification/concerned deed, does not arise.

3. The learned counsel for the petitioners further submitted that the property(ties) mentioned in the deed not at all belong to the partnership firm. In fact, they are all self-acquired properties of the individual. Therefore, the settlement is chargeable to “duty”, as the one executed in favour of the family members and therefore, there is no need



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to demand the stamp duty in favour of non family members. Even during the course of personal hearing, the petitioners have explained that originally, the properties belonged to the partnership firm, namely M/s.Sri Devi Brick Works consisting of two partners, by name L.K.Jayasekar and L.K.Baburaj. They entered into a partnership in the year 1975. Subsequently, in the year of 1982, L.K.Jayasekar retired from the partnership firm and he relinquished 50 % of the property in favour of the other partner L.K.Baburaj. Therefore, the said L.K.Baburaj is entitled to entire property. Therefore, the subsequent L.K.Baburaj has executed the properties in favour of his wife and sons. Hence, the impugned order passed by the 1st respondent is perverse in nature.

4. The learned counsel for the petitioners further submitted that the petitioners are challenging the impugned order dated 02.06.2015 passed by the 1st respondent, and pending the writ petition, the 2nd respondent had passed another order dated 20.12.2016 and therefore, separate writ petition in W.P.No.8803 of 2017 was filed and there, three types of orders were passed, whereas, as per the schedules “B” and “E” are concerned, they accepted and are ready to pay the “stamp duty”. As



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far as the schedule “A” is concerned, they are challenging the same.

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5. The learned counsel for the petitioners submitted that, now the main contention of the petitioners is that the parties have disputed the document and it is only among the family members. Though L.K.Jayasekar and L.K.Baburaj were partners and the properties were purchased in the year 1975 in the name of the partnership firm M/s.Devi Brick Works, subsequently, the said L.K.Jayasekar retired from the partnership firm and when there were two partners, one of the partner retired, and automatically the partnership firm will be dissolved. Since, only two partners were in the partnership firm, to continue the partnership firm, two partners should be there, whereas the partnership itself was formed with two partners and, one of the partners retired from the partnership, and therefore, automatically the partnership would get dissolved. One of the partners, namely L.K.Jayasekar had relinquished the right in the partnership property in favour of the other partners viz., L.K.Baburaj who is the absolute owner of the property. Therefore, now only, the said L.K.Baburaj executed a settlement deed in favour of his wife and children and the partnership deed was also executed. The disputed partnership deed would not create any new interference. Since



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already the L.K.Jayasekar relinquished his right, the present document would not create any right or title and since the said L.K.Jayasekar relinquished and he has no right and title over the property and therefore, there is no creation or transfer of any right or interest and therefore, the impugned order is liable to be set aside.

6. Mr.P.Gurunathan, learned Additional Government Pleader appearing for the respondents submitted that though, admittedly L.K.Jayasekar and L.K.Baburaj were partners in the name of M/s Sri Devi Works and the properties were in Ayanampakkam Village which were purchased in the name of the partnership firm M/s Sri Devi Works in the year of 1975 and it is not a registered partnership firm and even though the petitioners have not produced the said partnership deed and though the petitioners have stated that one of the partners L.K.Jayasekar relinquished his right in the year 1982 itself, and also relinquished all his shares in the interest of L.K.Baburaj, absolutely there is no evidence much or less documentary evidence to show that they have produced any document to show that the partnership was dissolved and also the said L.K.Jayasekar relinquished all his reign, whereas the disputed document



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clearly shows that the settlement deed in the year 2009 by the said L.K.Baburaj/2nd petitioner herein and the deceased/1st petitioner/ L.K.Jayasekar retired and relinquished his right from the said property and the 2nd petitioner executed settlement deed in favour of his wife and son and they have not shown the same and the partnership deed, which is already filed in the suit in O.S.Nos.36 and 164 of 2011 on the file of the District Munsif Court, Ambattur and the same were already withdrawn on 05.07.2011.

7. The learned Additional Government Pleader further stated regarding oral partition, they divided the properties separately and there is already an oral partition between the writ petitioners and hence there is no need to execute the present partition deed, and therefore, it all creates doubt and also now there is no even an iota of proof to show that L.K.Jayasekar relinquished his right from the property, even in the year 1982 and therefore, now in order to set-right the legal flaw, they had executed the document in question. Mere cloning of documents will not take the right of the respondents to collect the same and a joint reading of the recitals of the documents clearly show that the properties are settled



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in favour of non-family members and therefore, under these circumstances, the petitioners are not entitled to the relief sought for.

6. Heard both sides and perused all the materials available on record.

8. Admittedly, the petitioners presented the document in question and the 1st respondent passed the impugned order stating that they have to pay the stamp duty, as the settlement deed in favour of the non-family members falls under Article 58 (a) (ii) of the Indian Stamp Act, 1899 and therefore, they have to pay the necessary stamp duty.

9. The impugned order of the 1st respondent states the reasons in para “10,11 and 12” and the same are extracted below for ready reference:-

“10. Though the aforesaid 6 settlement deeds were executed by the 2nd Party in the year 2009, yet the following recitals available in page 9 of the current Document No.3719/2011 undoubtedly indicate that owing to certain disputes prevailing between all the 3 parties herein, the 1st Party has filed O.S.No.36/2011 on the file of District Judge, Tiruvallur and O.S.No. 164/2011 on the file of District Munsiff Court, Ambattur against the 2nd & 3rd Parties claiming certain reliefs in respect of entire properties dealt in Schedule



A of this deed and subsequently after withdrawing the said suits, the 1st party by this current Document No.3719/2011, has chosen to confirm and ratify She said 6 Settlement deeds, which were executed by the 2nd party to and in favour of his Wife and Son :-

Page 9 of the document :-

"15. And whereas disputes arose between the 2 sons of Late. L. Kothandapani Naidu resulting in the 1st son Mr. L.K. Jayasekar, the party of the 1st Part herein filing O.S.No.36/2011 on the file of the District Judge, Thiruvallur against his brother Mr. L.K. Baburaj, his sister Mrs. Suguna and others for partition and separate possession of the family properties, which are mentioned as demo 1 to 4 in Schedule-A hereunder."

"16. And whereas the said L.K.Jayasekar has also filed O.S.No. 164/ 2011 on the file of the District Munsiff Court, Ambattur against L.K. Baburaj and others claiming certain reliefs in respect of Schedule-A mentioned properties."

"17.And whereas both the above mentioned suits viz. O.S.No.36 / 2011 &O.S.No. 164/2011 were withdrawn on 5.7.2011 and8.6.2011 respectively as per the mediators suggestion for settlement.

*18. And whereas on the advice of the well wishers and family relations the dispute between the 2 brothers L.K. Jayasekar (party of the 1st part), L.K. Baburaj (party of the 2nd part) and Mrs. Suguna (party of the 3rd part) came to be settled and they entered into a Family Arrangement and oral partition based on which the Deed is executed among the parties by which the Schedule-A mentioned items of property were divided among the parties herein superseding the earlier Settlement Deeds as well as other agreements and dissolution deeds **except those Settlement Deeds confirmed and ratified by the parties herein relating to the lands at Ayanambakkam Village."***

11. Further, the counsel of the Appellant during the



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course of personal hearing has advanced his argument by saying that when the properties situate in "Ayanambakkam Village" are not at all divided among the parties herein, levying duty for the same is illogical.

This argument made by the counsel in support of his contention, not only do not support his contention but on the other hand, appears to me, to be going against his own contention made during enquiry held at my office on 19.5.2015. If the said properties are not intended to be divided by this instrument then, actually there would be no necessity to narrate the details of those properties in the subject document and so also the 1st party has no need to give his consent/ratification for the earlier 6 Settlement deeds executed by the 2nd party favouring his wife and son. It is obvious that it is done for the reason that the 1st party did not release his 50% interest over the said properties to and in favour of 2nd party, by the legally recognised mode i.e. by way of executing a proper release deed and getting the same duly registered. As through this mode the title conveyed to the wife and son of the 2nd party is found to be bad and hence through the six settlement deeds, the 1st party by this Document No.3719/2011 has confirmed and ratified the said Settlement deeds so as to ensure a better title to cure the legal defects.

12. In this regard it is also to be noted that the said 50% release of right made by the 1st Party to and in favour of the 2nd Party is getting recorded in this Partition deed for the first time and the same is not supported by any duly registered and duly stamped instrument. As per the provisions contained in Section 49 of Registration Act, 1908, such oral Release of right reported to have been made, will not affect the interest in the said immovable properties in the absence of Registered instrument, since its registration is made compulsory by Section 17 of the said Act. It is also pertinent to state that before getting a duly registered release deed from the 1st party, the 2nd party, by claiming as though he is the absolute owner for the entire property including the 50% share belonging to the 1st party, had settled such incomplete and defective title in favour of his wife and son, which gets cured only through this current deed. In this back drop, but for the



ratification now made by the 1st party in respect of the aforesaid 6 settlements, which were executed in favour of the wife and son of the 2nd party, no valid title would normally accrue to the Settlees (wife and son of the 2nd party) even though the said 6 Settlement deeds were already registered in the year 2009. The apparent reason is that the 6 Settlement deeds executed by the 2nd party favouring his wife and son by claiming as though the 2nd party is the absolute owner is not sustainable in the eye of law, In view of the fact that the 50% right, title and interest in respect of those properties, belonging to the 1st party would continue to vest with him but for the ratification now made by him through this current document No.3719/2011 only he ceases to have his 50% right, title etc. In other words, the sum and substance is that the 1st party through this document alone conveys and transfers his 50% right, title and interest in respect of the properties comprised in the said 6 Settlement deeds to and in favour of his Brother's wife (Sister-in-law) and Brother's son (Nephew). Hence, such disposition of 50% right should be treated as a "Settlement in favour of non-family members" falling under Article 58(a)(ii) of the Schedule I to the Indian Stamp Act, 1899, as the said relationships existing between the transferor and transferees do not fall within the definition of "Family" appended to Article 58 of Schedule I to the Indian Stamp Act, 1899."

10. Therefore, on a reading of the recitals of the document in question and the impugned order and the material available on record, as pointed out by the learned Additional Government Pleader, there are no materials to show that the said L.K.Jayasekar relinquished his rights, even way-back in 1982 and the 2nd petitioner herein executed the settlement deed in favour of his wife and children and the 1st petitioner



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relinquished his right in favour of the 2nd petitioner and already the 2nd petitioner is the absolute owner of the property and the settlement deed was in favour of his wife and his children and there is no necessity to execute the disputed document in the year up to 2011, which clearly shows that 1st petitioner has no right to realize the properties of the firm in the said Aynambakkam Village and therefore, in the absence of relinquishment deed by the 1st petitioner in favour of the 2nd petitioner, the contention of the learned counsel for the petitioners is not acceptable. This court does not find any perversity, illegality or infirmity in the impugned order passed by the 1st respondent and the impugned order passed by the 1st respondent is well founded and established in law and therefore, the writ petition is liable to be dismissed.

11. Accordingly, with the above observations, the writ petition is dismissed. There shall be no order as to costs. Connected miscellaneous petition is closed.

14.12.2023

Index	:	Yes/No
Speaking Order	:	Yes/No
Neutral Citation Case	:	Yes/No



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To:

- 1.The Chief Controlling Revenue Authority,
and Inspector General of Registration,
Santhome High Road,
Chennai – 600 028.
- 2.The District Registrar,
Chennai Central.



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P. VELMURUGAN.J

nst

Pre-Delivery Order in

W.P.No.3184 of 2016

and

W.M.P.No.2614 of 2016

Order Pronounced On