IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.04.2023

CORAM :

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

W.P.No.30379 of 2014 and
M.P.No.1 of 2014

1. K.Mani
2. K.Dhanapackiam .. Petitioners

vs

1. The Special Deputy Collector (Stamps)
   O/o The Special Deputy Collector (Stamps)
   Room No.311, 3rd Floor, Collectorate Complex
   Salem – 636 001.

2. The Joint Sub Registrar – I
   Namakkal. .. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari, calling for the records of the first respondent relating to the proceeding in S.R.No.4961/2007/NKL1 dated 02.04.2013 quash the same.

For Petitioner : Mr.Abrar Md Abdullah

For Respondents : Mr.Abishek Murthy
Government Advocate

ORDER

The order passed by the Special Deputy Collector (Stamps) in proceedings dated 02.04.2013, fixing the stamp duty payable in respect of the partition deed registered by the petitioners under Section 47A of the Indian Stamp Act is under challenge in the present writ petition.

2. The petitioner states that they have purchased 1/10th share to an extent of 15,037 ½ Sq.ft of land in Survey No.485/4B, T.S.No.64/1, Namakkal Village and one Sankaralingam and the other registered sale deed dated 20.12.2006, registered as Document No.3700/2006. Thereafter, on 22.12.2006, the petitioners had entered into a partition with the other co-owners, under which, the entire partition was allotted to the petitioner and other co-owners were allotted a sum of Rs.14 lakhs towards the value of the share over the common property. The said partition deed was registered as Document No.3099/2006 in the office of the District Registrar, Namakkal on 23.12.2006. The registered partition deed was handed over to the petitioners.

3. The second respondent issued a notice on 09.02.2007 calling upon the petitioner to pay a sum of Rs.13,18,085/- as deficit stamp duty for partition deed dated 22.12.2006. The second respondent had treated the partition deed as conveyance and not as a partition deed. The petitioner filed W.P.No.29416 of 2007. This Court allowed the writ petition on 21.12.2009 quashing the demands and granting liberty to the authorities to initiate appropriate action.

4. On 02.12.2011, the second respondent sent a notice claiming to be under the Samathan Scheme, requiring the petitioners to approach the officials concerned for availing the benefit of the Samathan Scheme for the purpose of paying the stamp duty. The first respondent thereafter sent a notice on 11.07.2012 in Form 2 under Rule 6 of the Tamil Nadu Stamps (Prevention of undervalue of Instruments) Rules, 1968 read with Section 47A of the Indian Stamp Act, requiring the petitioners to appear for enquiry on 27.07.2012. The petitioners had presented their objections to the first respondent on 27.07.2012 pointing out that the first respondent cannot conduct an enquiry under Section 47A or under the Rules. The first respondent had sent another notice dated 02.04.2013 requiring the petitioners to pay a sum of Rs.13,18,085/-. The said order has been passed under Section 47A(1)(3) of the Tamil Nadu Stamp Rules, 1968. The said demand notice is now under challenge in the present writ petition.

5. The learned counsel appearing on behalf of the writ petitioner mainly contended that Section 2(15) of the Indian Stamp Act defines the instrument of partition as "Instrument of Partition means any instrument, whereby, co-owners of any property divide or agree to divide such

property in severalty, and includes also a final order for effecting a partition passed by any revenue authority or any Civil Court and an award by an arbitrator directing a partition."

6. The learned counsel for the petitioner mainly relied on Section 47A of the Indian Stamp Act, wherein there is no mention about the partition deed and therefore reference made under Section 47A is improper and untenable. The reference about exchange or gift or release of benami rights or settlement alone has been mentioned in Section 47A and therefore, the reference made under Section 47A itself is improper.

7. In this context, the learned counsel for the petitioner relied on Schedule I of Stamp Duty of Instruments, wherein the Si.No.45 denotes partition. As per Clause 45 of Schedule I, the fixed stamp duty is to be collected for partition deed and in the present case, the authorities have erroneously construed the partition deed as conveyance and therefore, the order of demand is to be set aside.

8. The learned Government Advocate appearing on behalf of the respondents relied on the counter affidavit filed by the second respondent

and contended that Mr.K.Mani and Mrs.K.Dhanapackiyam , the petitioners herein, jointly purchased to the extent of 1503.75 Sq.ft out of 1503.50 Sq.ft in Survey No.64/1 Block No.24, Ward D, Namakkal Town from Mr.Karuppiah, the Power Agent of Mr.Sankaralingam and others vide document No.3700/2006 dated 20.12.2006. After two days, they have registered the partition deed in Document No.3099/2006 on 22.12.2006 before the second respondent, through which they have got the entire extent of 15037.50 Sq.ft. The petitioners had executed the Document No.3700/2006 and purchased an extent of 1/10th share i.e., 1503.75 Sq.ft and thereafter, executed the partition deed after two days in Document No.3099/2006 and got the entire extent of 15037.50 Sq.ft in the capacity of joint owners. Thus, the petitioners ought to have paid the stamp duty for the entire extent excluding the property on 1503.75 Sq.ft purchased vide document No.3077/2006.

9. Since such Document No.3099/2006 contains deficit stamp duty, the second respondent referred the matter to the first respondent for fixing the value of the land under Section 47A(3) of the Indian Stamp Act. Accordingly, the first respondent fixed the market value of the property and sent notice to the petitioners to pay the sum of Rs.13,18,085/- towards

the deficit stamp duty. The petitioners were instructed to avail the benefit of the Samathan Scheme and to pay the deficit Stamp Duty as per the Rules. But, the petitioners failed to avail the Samathan Scheme. Thus, the first respondent again issued a notice on 02.04.2013 to pay the deficit stamp duty. The respondents have stated that the petitioners had executed the partition deed only to avert the stamp duty and thereby, caused financial loss to the Government.

10. Considering the arguments, Section 47A(1) of the Indian Stamp Act unanimously stipulates that "If the registering officer appointed under the Indian Registration Act, 1908, while registering any instrument of conveyance (exchange, gift, release of benami rights or settlement) has reason to believe that the market value of the property, which is the subject matter of conveyance has not been truly set forth in the instrument, he may, after registering such document refer the same to the Collector for determination of the market value of such property and the property duty payable thereon."

11. The learned counsel for the petitioners state that only in respect of exchange, gift, release of right of settlement such reference can

be made under Section 47A of the Indian Stamp Act. However, the provision stipulates "any instrument of conveyance". Therefore, all the instruments, where ever the right has been conveyed, then such instrument can be the subject matter of reference under Section 47A of the Indian Stamp Act. The substitution of exchange or gift by way of amendment in TN Act 42 of 1981 is an addition and further clarification and therefore, all the instruments of conveyance are falling under the scope of Section 47A. If the registering authority has a reason to believe that the market value of the property of which the subject matter of conveyance has not been truly set forth in the instrument, then, the registering officer has a reason to believe that the instrument of conveyance is not properly and truly set forth, then, he can refer the matter to the Collector for determination of market value.

12. In the present case, the registering officer found that the petitioner had executed the Document No.3700/2006 and purchased an extent of 1/10th share i.e., 1503.75 Sq.ft and thereafter executed the partition deed after two days in Document No.3099/2006 and got the entire extent of 15037.50 Sq.ft in the capacity of joint owners. Therefore, excluding the land purchased vide Document No.3700/2006, the

petitioners are bound to pay the stamp duty for the remaining land purchased through the partition deed. Thus, the registering officer had a reason to believe that the petitioners have averted to pay the stamp duty and therefore, referred the matter under Section 47A of the Indian Stamp Act for determination of market value for the purpose of recovering the stamp duty.

13. In respect of Schedule I Clause 45, the partition deed registered in the present case by the petitioners are falling under Clause 45(b). The partition deed is not executed within the family members and therefore, it is not falling under Section 45(A). Thus, the subject "partition deed" is falling under "in any other case". Thus, the sale deed as bottomry bond (No.16) for the amount value of the separate share or value of the share is to be collected. In the present case, the petitioner has registered the document on 22.12.2006. The first demand notice was challenged by the petitioner in W.P.No.29416 of 2007 and the demand was quashed and this Court granted liberty to the authorities to take appropriate action. Accordingly, proper action was taken and the petitioners were permitted to avail the Samathan Scheme, but the petitioners had not chosen to avail the Samathan Scheme and submitted their objections to the Samathan Scheme.

Thus, the impugned demand notice has been technically issued asking the petitioners to pay the stamp duty as fixed by the District Collector (Stamps).

14. This being the factum, the petitioners have not established any acceptable grounds for the purpose of interfering with the impugned order passed by the first respondent. Accordingly, the writ petition stands dismissed. There will be no order as to costs. Consequently, the connected miscellaneous petition is closed.

Index : Yes/No **17.04.2023**
Neutral Citation : Yes/No

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To:

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   Room No.311, 3rd Floor, Collectorate Complex
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2. The Joint Sub Registrar – I
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S.M. SUBRAMANIAM, J.

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