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.8803 of 2017
and
W.M.P.Nos.7714 and 9653 of 2017

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 10.01.20222 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.

Prayer: Writ Petition No.8803 of 2017 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 20.12.2016 in proceedings No.10075/A/2014 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.

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

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 20.12.2016 in proceedings No.10075/A/2014 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. Mr.S.Dhayaleeswaran, learned counsel for the petitioners submitted that they are not challenging the findings given by the 2nd respondent and, they are only challenging the "A" schedule in para No.3 of the impugned order dated 20.12.2016 in proceedings No.10075/A/2014 issued by the 2nd respondent.

3. The learned counsel for the petitioners further submitted that, the main contention of the petitioners is that the property originally belonged to a partnership firm, namely M/s.Sri Devi Brick Works, consisting of two partners by name L.K.Jayasekar and L.K.Baburj and subsequently the 1st petitioner/ L.K.Jayasekar retired/relinquished from the partnership and also relinquished the rights to the 2nd petitioner/ L.K.Baburj, who is the absolute owner of the property and subsequently the 2nd petitioner executed a settlement deed in respect of the property in favour of his wife and sons in the year 2009 there is no even an iota of evidence to show that the 1st petitioner had relinquished his rights on 03.04.1982. Oral release of the rights of the properties of the firm by the 1st petitioner in favour of the 2nd petitioner, is not valid and though it is an unregistered deed, there is no documentary evidence to show the 1st petitioner relinquished the property in favour of the 2nd petitioner and hence, the finding of the 1st respondent that as per the provisions contained in Section 49 of the Registration Act, 1908, such oral release of right of the first petitioner will not affect the interests in the immovable properties in the absence of registered instrument, since its registration is made compulsory under Section 17 of the Registration Act, which is untenable. Since there is no evidence to show that the 2nd petitioner is the absolute owner of the property and in the absence of the same, the 50% of the relinquishment of the petitioner should be treated as only settlement deed in favour of the non family members, whereas wife, sons, sisters and brothers of the 2nd petitioner. Therefore, the contention of the petitioners is not acceptable in law and this court does not find any perversity, illegality or irregularity in the impugned order passed by the 2nd respondent and therefore, the impugned order issued by the 2nd respondent levying deficit stamp duty, is not in violation of the Indian Stamp Act and therefore, under these circumstances this writ petition also is liable to be dismissed and the relief sought by the petitioners cannot be entertained by this court.

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

14.12.2023

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

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

2.The District Registrar,
Chennai Central.

P. VELMURUGAN.J

nst

Pre-Delivery Order in

W.P.No.8803 of 2017
and
W.M.P.Nos.7714 and 9653 of 2017

Order Pronounced On

14.12.2023

(2/2)