IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.06.2023

CORAM

THE HON'BLE MR.SANJAY V.GANGAPURWALA, CHIEF JUSTICE
AND
THE HON'BLE MR.JUSTICE P.D.AUDIKESAVALU

W.A.No.858 of 2021

1.The Chief Controlling Revenue Authority-cum-
Inspector General of Registration,
100, Santhome High Road,
Chennai-600 028.

2.The District Registrar,
Court Campus, District Registrar's Office,
Cantonment, Tiruchirapaalli-620 001.

3.The Sub Registrar,
K.Sathanur, 372, Rajaram Salai,
Tiruchirapalli-620 021. .. Appellants

Vs

1.M/s.M.Mohamed Siddique & Co.,
rep. by its Managing Partner
M.Syed Mohamed

2.Janab M.Syed Mohamed
3.Janab M.S.Mohamed Siddique
4.Janab M.S.Mohamed Rafique
5.Janaba M.S.Subaida Begum
6.Janaba M.S.Thameem Fathima

7.Janaba M.S.Faeela Begum
8.Janaba M.S.Safeena Begum
9.Janaba M.S.Dilshath Begum
10.Janaba K.M.Noor Jahan .. Respondents

Prayer: Appeal filed under Clause 15 of the Letters Patent against the order made in W.P.No.2514 of 2016 dated 21.02.2019.

For the Appellants : Mr.K.M.D.Muhilan
Government Advocate

For the Respondents : Mr.V.Raghavachari
Senior Counsel
along with
Ms.R.Abirame
for Ms.V.Srimathi

JUDGMENT
(Delivered by the Hon'ble Chief Justice)

The appellants assail the judgment and order passed by the learned Single Judge of this Court dated 21.02.2019 in W.P.No.2514 of 2016.

2. The respondents herein have filed the aforesaid writ petition challenging the order of the appellants 1 and 2 withholding

the document bearing No.18 of 2014 on the ground that sufficient stamp duty has not been paid. The learned Single Judge of this Court allowed the writ petition setting aside the orders passed by respondents 1 and 2 in the writ petition and the third respondent in the writ petition was directed to release the document, if it is otherwise in order.

3. We have heard Mr.K.M.D.Muhilan, learned Government Advocate for the appellants and Mr.V.Raghavachari, learned senior counsel along with Ms.R.Abirame for the respondents.

4. The issue involved is whether stamp duty is payable on the document executed amongst the respondents dated 15.09.2014 titled as "partition deed".

5. Learned Government Advocate submits that the partition of the properties amongst the respondents took place in respect of partnership firm properties. The partition took place when the firm is ongoing firm. The firm was dissolved on 1.10.2014. In view of

the fact that the properties in question were not owned by the respondents as joint properties and the properties are of the firm, the partition deed would attract stamp duty as contemplated under Article 58(ii) of the Indian Stamp Act, 1899 (for brevity, "*the Stamp Act*"). The learned Single Judge of this Court has committed an error while applying Article 46B(ii) of the Stamp Act. The document has not been read properly by the learned Single Judge while passing the impugned order. The auditor letter also would substantiate the case of the present appellants.

6. According to learned counsel for the respondents, the partition deed will have to be read as a whole. The partnership firm comprised of the partners who are related to each other and family members. The learned Single Judge has correctly applied Article 46B(ii) of the Stamp Act.

7. We have considered the submissions canvassed by the parties and also perused the order passed by the learned Single Judge.

8. It does not appear to be a matter of debate that the respondents herein are members of the same family and had formed a partnership firm in the name and style of "M/s.Mohamed Sithik & Co". It transpires that on 15.09.2014, the partners who are members of the family partitioned the properties of the partnership firm amongst themselves. The document titled as "partition deed" is subject-matter of interpretation. It would be appropriate to refer to the document. It is trite that the nomenclature of the document may not be much relevant. Moreover, the document as a whole will have to be read and considered. The document states that in the past few years the partnership firm was not involved in any of the business activities. It further states that as the family members are the partners of the firm and apart from the properties in question of the firm there was no other movable or immovable properties belonging to the firm, as per the ratio of capital investment made by the family members, the properties were divided. The properties were divided in tune with the ratio of the investment made by the partners in the

partnership firm. The document further states that the partnership firm will continue to be ongoing firm till the execution of the document. The English translation does not appear to be in tune with the original document. The learned Single Judge, in his judgment and order, has re-produced the text from the original document in vernacular language, where it records that the firm will be ongoing firm till the execution of the document in question i.e. the partition deed dated 15.09.2014.

9. In the light of that, Article 46B(ii) of the Stamp Act would squarely apply. The said Article provides that when dissolution involves partition of immovable properties of the firm among the partners who are family members or when such dissolution involves partition of movable properties, the stamp duty payable is one rupee for every Rs.100/- or part thereof of the market value of the property which is under partition. The said Article further states that the word "family" shall have the same meaning as defined in the Explanation to Article 58.

10. The learned Single Judge has construed the document correctly. Only because the auditor has given a letter stating that the firm stands dissolved on 1.10.2014 would not be sufficient to negate the contents of the document dated 15.09.2014, wherein it is clearly stated that the partnership firm will be ongoing firm till the date of the execution of the said document i.e. the partition deed dated 15.09.2014.

11. In view of the above, the learned Single Judge has rightly passed the order.

12. The writ appeal, as such, is dismissed. There will be no order as to costs. Consequently, C.M.P.No.4994 of 2021 is closed.

(S.V.G., CJ.) (P.D.A., J.)
07.06.2023

Index : Yes/No
Neutral Citation : Yes/No
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THE HON'BLE CHIEF JUSTICE
AND
P.D.AUDIKESAVALU, J.

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