BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 08.08.2023

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)No.16682 of 2015
and
M.P(MD)No.1 of 2015

Sigappi ... Petitioner

Vs

1.The District Registrar,
Registration Department,
Thanjavur.

2.The Deputy Registrar,
Registration Department,
Thanjavur.

3.The Sub Registrar Joint – I,
Thanjavur District,
Thanjavur. ... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, to call for the records relating to the impugned order bearing Na.Ka.No.1115/Aa/2014 dated 08.06.2015 passed by the second respondent and quash the same and consequently direct the respondents to return the unregistered deed of release (Pending document No.9 of 2014) dated 08.04.2014.

For Petitioner : Mr.R.Ghireedharan

For Respondents : Mr.S.Shanmugavel
Additional Government Pleader

ORDER

Heard the learned counsel on either side.

2. The basic facts are not in dispute. The case on hand involves a partnership firm, namely, M/s.South Arcot Pesticides Industries. The firm was run by Radhakrishnan, Singaram and Chandramohan. There was reconstitution of partnership and eventually the firm comprised Singaram, Mani and the petitioner. The petitioner wanted to release her share in the firm executed Document dated 08.04.2014 in favour of her brother Singaram and her sons, namely, Senthilnathan, Balaji and Narayanan. The document was presented for registration before the third respondent. The petitioner remitted stamp duty of Rs.1000/- (Rupees One Thousand only). The petitioner was under the impression that since the document was executed among the family members, the document would fall within Schedule 55(D) of the Stamp Act.

3. The registering authority did not register the document but kept it pending. The registering authority took the stand that since parties to the

document are the nephews of the petitioner, they would not fall within the expression “family”. The petitioner was called upon to pay the deficit stamp duty to the tune of Rs.32,15,480/- (Rupees Thrity Two Lakhs Fifteen Thousand Four Hundred and Eighty only). Finding the demand to be exorbitant, the petitioner called upon the registering authority as well as the second respondent to return the document. The second respondent rejected the petitioner's request and insisted that the petitioner must pay the deficit stamp duty. Challenging the stand of the second respondent, the present writ petition came to be filed.

4. The learned counsel appearing for the petitioner reiterated all the contentions set out in the affidavit filed in support of the writ petition and called upon this Court to set aside the impugned communication and grant relief as prayed for.

5. Per contra the respondents have filed counter affidavit and the learned Additional Government Pleader took me through its contents. He contended that the impugned order is in consonance with the statutory scheme set out in the Stamp Act and it deserves to be sustained. He pressed for dismissal of the writ petition.

6. I carefully considered the rival contentions and went through the materials on record.

7. The issue as to whether the document was executed among the family members does not admit of any doubt. As rightly pointed out by the learned Additional Government Pleader, the issue has been decided by the Hon'ble Division Bench in W.P(MD)No.58 of 2012 ***(T.Muthu Balu Vs The Inspector General of Registration and another)*** dated 24.02.2014. The Hon'ble Division Bench had held that the definition of the word "family" as found in Explanation of Article 58(a) of Schedule-I would mean only such of those persons mentioned in the Explanation. Of course, by issuing G.O(Ms)No.126 Commercial Taxes and Registration (J1) Department dated 30.09.2013 the siblings have also been included. But nephews have not been brought under the definition. Therefore, the registering authority was justified in taking the stand that in as much as the petitioner's nephews were parties to the said document, the classification relied on by the petitioner will not come to her rescue.

8. The next question that calls for consideration is that the petitioner is entitled to seek return of the document.

9. The learned counsel appearing for the petitioner relies on the order dated 28.06.2011 made in W.P.Nos.7700 and 7701 of 2008 ***(Accel Tele.Net Limited & Another Vs The Inspector General of Police & Another)***. A learned Judge of this Court following an earlier decision had held that a party to the document is entitled to demand return of the document and the authority cannot insist that the executants must pay the deficit stamp duty and complete the formalities of the registration. There is nothing on record to show that the said decision has been over ruled.

10. Respectfully applying the ratio laid down in the aforesaid order, the impugned order is set aside. The respondents 2 and 3 are directed to return the petition mentioned document that has not been registered and which is kept as pending document.

11. This writ petition is allowed accordingly. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

08.08.2023

Index : Yes / No
Internet : Yes / No
NCC : Yes / No
MGA

G.R.SWAMINATHAN, J.

MGA

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