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WP.No.988 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.04.2024

CORAM

THE HONOURABLE MR. JUSTICE N. SATHISH KUMAR

WP.No.988 of 2022

Anushya

.. Petitioner

Versus

1.The District Registration Authority
District Registration Office
Arakkonam, Vellore District – 631 001

2.The Sub Registrar, Arcot
Cheyyar Road,
Arcot – 632 503

.. Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus, directing the 2nd respondent to register the pending Doc.No.P61/2015 which was presented on 11.05.2015 and return the same to the petitioner.

For Petitioner : Mr.Sunny Sheen
for M/s.V.Raghavachari

For Respondents : Mr.B.Vijay
Additional Government Pleader

ORDER

This writ petition has been filed directing the 2nd respondent to register the pending Doc.No.P61/2015 which was presented on 11.05.2015 and return the same to the petitioner.



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2. It is the case of the writ petitioner that the property originally owned by one Muniammal. The petitioner and her deceased sister Logambal are the daughters of the said Muniammal. The petitioner and her sister Logambal were allotted 24 cents each vide registered partition deed dated 31.03.1986 vide Doc.No.518/1986. The property was allotted to the petitioner and the deceased Logambal jointly and they were in joint possession and enjoyment of the same. The said Logambal died on 29.06.2008, leaving behind her legal heirs/children namely Geeva and daughter Geetha. The property remained as a joint family property until her death, after her death, the legal heirs of the Logambal decided to settle the share of 24 cents in favour of the petitioner. As a result, the partition deed was presented before the Sub Registrar Office, Arcot on 11.05.2015. Subsequently, the second respondent has sent a letter dated 07.07.2015 in Na.Ka.No.2529/A1/2015 and it was intimated that the joint family fund allotted to the legal heirs of the deceased Logambal as A Schedule in the partition deed is treated as partition and immovable property which is allotted to the petitioner as B Schedule to be treated as settlement to non family members under Article 58 (ii) of Schedule I to the Indian Stamp Act and Rules.



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3. The petitioner was directed to pay a sum of Rs.4,49,976/- apart from the fees of Rs.25,000/- as a stamp duty and the document is kept pending in Doc.No.P61/2105. Hence, it is the contention of the writ petitioner that the partition deed has been registered as per Section 15 (c) of Tamil Nadu Stamp Act, 1899 and only a minimum fee of Rs.25,000/- ought to have been collected by the respondent. Hence, seeks a direction to register the impounded document.

4. Counter has been filed by the respondents 1 and 2 stating that the partition deed is between non family members, hence, the Sub-Registrar, Arcot through his letter dated 10.06.2015 to the first respondent had sought clarification with respect to the collection of stamp duty and registration fees for B Schedule properties. The District Registrar through his reply letter in Na.Ka.No.2529/A1/2015 dated 26.06.2015 had directed the 2nd respondent to collect the stamp duty and the registration fees from the petitioner with respect to B Schedule property of the Doc.No.P61/2015 as per the Stamp Act under Article 58 (ii) of Schedule I to the Indian Stamp Act. Accordingly, a letter has been sent to the petitioner on 07.07.2015. After receipt of the said letter, the petitioner has not paid the deficit stamp duty and registration fees. Hence, the document has been impounded on 16.07.2015. The petitioner has preferred an appeal before the Inspector General of Registration on 07.07.2015. The



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appellate authority also confirmed the findings of the Sub-Registrar through letter No.21986/P1/2016 dated 13.05.2016.

5. The learned counsel for the petitioner submitted that the partition deed is executed between the co-owners. Therefore, treating the said document from the non family members is not valid in the eye of law. It is the further contention that the Section 2(15) of the Indian Stamp Act, 1899 clearly contemplates that instrument of partition means any instrument whereby co-owners of any property divide the property. Therefore, admittedly, the petitioner and other parties who presented the document are the co-owners. Hence, it is his further contention the explanation of the word "family" defined under Article 58 of the Schedule I to the Indian Stamp Act is only illustrative one and not exhaustive one. Therefore, the demand of the respondents to deficit stamp duty treating the document as between non family members cannot be sustained in the eye of law.

6. Whereas, it is the contention of the learned Additional Government Pleader that the word "family" has been defined under the explanation of Article 58 of the Schedule I to the Indian Stamp Act, the said definition would apply to partition also. A deed presented before the Registration is between



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non family members. Therefore, the definition of the word "family" under the Indian Stamp Act which is fiscal act cannot be given restrictive meaning and it is exhaustive. Therefore, the writ petitioner cannot seek a remedy.

7. Heard both sides and perused the entire materials placed on record.

8. The very affidavit of the writ petitioner when carefully perused makes it very clear that originally properties are allotted to the petitioner and her sister Logammal by partition deed dated 31.03.1986 vide Doc.No.518/1996. The said Logammal died on 29.06.2008, now the legal heirs of the said Logammal and the petitioner presented a document as a Partition Deed. It is relevant to note that in paragraph 3 of the affidavit filed by the petitioner, wherein, it is clearly averred that the legal heirs of the Logammal decided to settle their shares of 24 cents to the petitioner. Therefore, when the petitioner herself has admitted that the legal heirs of Logammal has decided to settle the properties, now it cannot be said that only partition deed has been presented. It is relevant to note that the stamp duty payable to the partition deed as per the Article 45 of the Schedule I to the Indian Stamp Act. Article 45(a) of the Schedule I to the Indian Stamp Act makes it clear that when an instrument of partition is among family members, One rupee for every Rs.100 or part thereof



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of the market value of the property which is under partition. Similarly,

Explanation to the Article 45(b) of the Schedule I to the Indian Stamp Act makes it clear that for the purpose of this Article, the word "family" shall have the same meaning as defined in the Explanation to Article 58 of the Schedule I to the Indian Stamp Act.

9. Explanation to the Article 58 of the Schedule I to the Indian Stamp Act is as follows:

"Explanation.- For the purpose of this Article, the word "family" means father, mother, husband, wife, son, daughter, grand child, brother or sister. In the case of any one whose personal law permits adoption, "father" shall include an adoptive father, "mother" an adoptive mother, "son" an adopted son and "daughter" an adopted daughter"

10. The definition of a family mentioned under Article 58 of the Schedule I to the Indian Stamp Act is exhaustive and not mere illustrative. The Stamp Act being a fiscal legislation, the Court cannot supply any purposive interpretation appended to Article 45 of the Schedule 1 of the Indian Stamp Act. The very deed presented before the Registrar indicate that legal heirs of



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one Logammal namely her daughter Geetha and son Geeva and the petitioner have executed the deed. The executants of the document does not fall within the ambit of the word "family" as defined under the explanation of Article 58 of the Schedule I to the Indian Stamp Act. They cannot claim the concession granted by the legislation only to the family members, merely because the legal heirs of one Logammal is also co-owner of the property. It is the not the case of the petitioner that the petitioner's mother Muniyamma died intestate, therefore, they are entering into partition. Whereas, the partition had already took place between the petitioner and sister on 31.03.1986.

11. The explanation appended to the Article 58 of the Schedule I to the Indian Stamp Act clearly indicate that the very explanation is defined by the Legislature by using the word "means". Therefore, the use of word "means" clearly states that the definition is exhaustive and no other meaning can be assigned to the expression defined in the definition. Though the learned counsel appearing for the petitioner has relied upon a judgment of this Court in the case of *S.V.L.S.Ranga Rao Vs. The Secretary to the Government, Commercial Taxes (JI) Department and others* reported in 2009 (2) CTC 800, the said judgment held to be no longer a good law by the Division Bench of this Court in a judgment reported in 2014 (5) CTC 265 in the case of *T.Muthu*



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Bala Vs. The Inspector General of Registration and another, wherein, in para

19 of the said judgment, the Division Bench held as follows:

"19. We, therefore, hold that the word "family" defined in the Explanation to Article 58(a) of Schedule -I, appended to Indian Stamp Act, 1899, would mean only such of those persons mentioned in the Explanation. Further, the definition to the word "family" found in Article 58(a) of Schedule-I of the Indian Stamp Act, 1899, is exhaustive and not illustrative and it is applicable only to such of those persons indicated therein and it will not extend to other persons who do not form part of the definition "family". In the present case, since the settlement is in favour of great grandchild (great grand-daughter), the benefit of Explanation to Article 58(a) of Schedule-I of the Indian Stamp Act will not be applicable."

12. Considering the above judgment and the document executed by non members does not fall within the ambit of "family" as defined under the Stamp Act which is fiscal Act and claiming stamp duty cannot be faulted.



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13. Even in the document, for other legal heirs no immovable properties have been allotted, whereas, the immovable properties have been allotted to the petitioner. The writ petitioner averments itself indicate that legal heirs of Logammal have decided to settle their shares in favour of the petitioner. Such view of the matter, the contention of the writ petitioner that only Article 45(A) of Schedule I to the Indian Stamp Act will apply for the purpose of stamp duty cannot be countenanced.

14. Therefore, when the authorities have invoked the right provisions of law and demanded the stamp duty and the appeal also appears to be rejected, the writ petitioner cannot seek a mandamus to release the document. Accordingly, this writ petition stands dismissed. No costs.

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To

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