IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : **08.03.2024**

CORAM :
THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM
AND
THE HONOURABLE MR. JUSTICE K.RAJASEKAR

Writ Appeal No.480 of 2022

1.Nirmal A Jhabakh
2.Anand Mukesh Jhabakh ... Appellants

Vs.

1.The District Registrar,
Stone House,
Government Arts College Road,
Udhagamandalam Road.

2.The Sub Registrar,
Office of the Sub Registrar,
Coonoor,
Nilgiris. ... Respondents

Prayer: Writ Appeal filed under Clause 15 of Letters Patent to set aside the order dated 10.01.2022 made in W.P.No.17054 of 2021.

For Appellants : Mr.M.Rajasekar

For Respondents : Mr.P.Anandakumar
Government Advocate

JUDGMENT

(Judgment of the Court was delivered by S.M.SUBRAMANIAM)

The intra-Court appeal on hand has been instituted challenging the order dated 10.01.2022 passed in W.P.No.17054 of 2021.

2. The writ petitioners are the appellants before us. The writ petitioners presented a Partition Deed dated 25.06.2020, before the Registering Authority under the Registration Act for registration. The Registering Officer asked the appellants to pay Stamp Duty under Article 55 (D) (ii) of the Indian Stamp Act, 1899.

3. In view of the demand regarding payment of Stamp Duty, the appellants instituted a writ proceedings to quash the order passed by the Sub-Registrar in proceeding dated 25.06.2020.

4. Mr.M.Rajasekar, learned Counsel for the appellants would mainly contend that there is no transfer of property involved in the Partition Deed. Admittedly, the property stands in the name of the partnership firm in

which the appellants are the partners. Therefore, by way of Partition Deed, no transfer of property involved. Thus, the order impugned is not in accordance with the provisions of the Indian Stamp Act.

5. Mr.M.Rajasekar, would further contend that the appellants are only partners in the firm. The erstwhile partners, who all are non-family members have executed Deed of Retirement from partnership firm and in lieu of their shares, they have released the immovable property measuring to an extent of 90 cents. Thus, the immovable property measuring 90 cents transferred in the name of the firm, on account of the Deed of Retirement executed by other partners, who all are non-family members. Thus, there is no impediment for the Registering Authority to register the same and the Stamp Duty need not be paid.

6. In support of the said contention, the learned Counsel for the appellants would rely on the Judgment of the Hon'ble Supreme Court in the case of ***Addanki Narayanappa and another Vs. Bhaskara Krishnappa, (dead) and Others*** reported in ***1966 0 AIR (SC) 1300.*** The Apex Court made

an observation that a trading asset of partnership has no exclusive right to property. Further, he also relied on Judgments to establish that the Partnership Deed need not be registered so also the retirement of partners from the firm.

7. We are of the considered opinion that the Partnership Deed and the Deed of Retirement of partners from a firm is not compulsorily registrable. Since it is optional, the said question would not arise in the present case. The question which would arise is that the Partition Deed presented by the appellants for registration is chargeable under the Indian Stamp Act or not?

8. In this context, Mr.P.Anandakumar, learned Government Advocate appearing on behalf of the respondents would submit that the appellants have failed to establish their right over the property for registration of a Partition Deed. Right to title is to be established by producing all relevant documents before the Registering Officer for the purpose of registration of a document under the Act. Since the Sub-Registrar raised a doubt about the title and not satisfied with the document relating to

partnership firm produced by the appellants, the order of rejection was passed asking the petitioner to pay the Stamp Duty under Article 55 (D) (ii) of the Indian Stamp Act, 1899.

9. Learned Single Judge considered these aspects and dismissed the writ petition.

10. As per the Deed of Partnership dated 12.03.2014, it is found that Mrs.Nirmala A Jhabakh and Mrs. Neha R Golechha are the partners in “Jindutt Associates”. Subsequently, they have inducted 3 non-family members as partners in the partnership firm namely “Jindutt Associates”. The non family partners were Mr.S.N.Srinivasan S/o Late S.Narayana Rao, Mr.S.N.Nandakumar S/o Late S.Narayana Rao and Mr.C.B.Neelanarayanan S/o Late S.N.R.Babu. Thereafter, the Deed of Retirement was executed by the inducted partners *viz.,* Mr.S.N.Srinivasan, Mr.S.N.Nandakumar and Mr.C.B.Neelanarayanan on 02.06.2014. Admittedly, the said Deed of Retirement is unregistered. Clause 3 of the Deed of Retirement reads as under:

"3. It is declared that except as hereinafter provided, the Retiring Partners hereby release all their share, right, title, interest in the business of the said partnership, its assets both movable and immovable, (expressly including the land measuring 0.90 acres, in T.S.Nos.C/6/9 of Coonoor Town, Niligiris District which property was brought into the common stock of the firm, when the Retiring Partners herein were admitted into the Partnership of 'Jindutt Associates', by virtue of which it became the property of the Firm, within the meaning of Section 14 of the Indian Partnership Act), as also goodwill, all licenses and permits held by the said Firm, its outstandings, dues, book-debts, receivables and outstanding contracts and the Retiring Partners shall not have any claim over the above, which shall belong absolutely to the continuing Partners alone."

11. After the retirement of non family members as stated above, another Deed of Retirement was executed on 29.05.2020 between Mrs.Neha R Golechha and "Jindutt Associates". As per the said Deed of Retirement, Mrs.Neha R Golechha also retired from the Partnership firm. Accordingly, Mrs.Nirmala A Jhabakh and Mr.Anand Mukesh Jhabakh alone continued as partners of "Jindutt Associates" partnership firm. Through a Deed of Dissolution dated 15.06.2020, the partnership firm was dissolved. All the

documents including the Deed of Partnership, Deeds of Retirement and Dissolution are admittedly unregistered documents.

12. The Partition Deed, which is the subject matter of Registration dated 25.06.2020 is between the Mrs.Nirmala A Jhabakh and Mr.Anand Mukesh Jhabakh. The said Partition Deed was presented for registration under the Registration Act.

13. Rule 55-A of the Tamil Nadu Registration Rules was inserted by G.O.Ms.No.120, Commercial Taxes and Registration (J2) Department dated 05.09.2022. Based on the Judgment of the Hon'ble Division Bench of this Court, Section 77-A was inserted by TN Act 41 of 2022 with effect from 16.08.2022. Section 77-A provides cancellation of registered documents in certain cases. Section 77-B provides appeal. Consequently, Rule 55-A was inserted with effect from 05.09.2022. Sub-clause (i) to Rule 55-A stipulates *"the Registering Officer before whom a document relating to immovable property is presented for registration, shall not register the same, unless the presentant produces the previous original deed by which the executant acquired right over the subject property and an Encumbrance Certificate pertaining to the property*

obtained within ten days from the date of presentation." Section 35 of the Indian Stamp Act, 1899 denotes that ***Instruments not duly stamped inadmissible in evidence, etc.****"no instrument chargeable with duty shall be admitted in evidence for any purpose by any person having by law or consent of parties authority to receive evidence, nor shall it be acted upon or registered, or authenticated by any such person or by any public Officer, unless it is duly stamped."*

14. Therefore, it is mandatory on the part of the presentant of a document for registration to produce the previous original Deed, by which the Executant acquired right over the subject property and encumbrance certificate pertaining to the property obtained within 10 days of the presentation.

15. In the present case, the appellants produced the Partnership Deed, Retirement Deed and Deed of Dissolution of Partnership for the purpose of complying with the Rule 55-A of the Registration Rules.

16. The Registering Authority scrutinized the document and found that the subject property involved in the Partition Deed presented for

registration was transferred through an unregistered Deed of retirement by the erstwhile partners, who were non-family members. In other words, the right to property of those erstwhile non-family member partners was transferred in favour of the firm without any registration and without paying the Stamp Duty as required. Such transfer of right of an immovable property cannot be recognized. Therefore, the Registering Authority asked the petitioner to pay the Stamp Duty for registration.

17. *Per Contra,* the appellants would submit that there is no transfer of property involved, since the firm was dissolved and the existing 2 partners are executing Partition Deed, which would not involve payment of any Stamp Duty under the Indian Stamp Act.

18. The very idea of the appellants would be sufficient to form an opinion that the methodology adopted by them would result in evasion of Stamp Duty under the provisions of the Indian Stamp Act.

19. The appellants have made an attempt to acquire the right of title of an immovable property through a Partition Deed, without producing the

documents relating to acquisition of property right through a document. In the present case, the subject property originally stood in the name of the partnership firm. The 3 non-family member partners executed the Deed of Retirement. Consequently, the property transferred in the name of the firm. Thereafter, one family member partner executed Deed of Retirement. The existing 2 partners have presented Partition Deed for registration. Thus, the rights of the 3 non family member partners have involved and their right to property was released through an unregistered document without paying Stamp Duty.

20. That being the factum, we are of the considered opinion that the Partition Deed presented for registration by the appellants are chargeable under the Indian Stamp Act and the reason given by the learned Single Judge is tenable and there is no infirmity.

21. Consequently the order impugned stands confirmed and the Writ Appeal is dismissed. No costs.

[S.M.S.J.] [K.R.S.J.]
08.03.2024

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

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2.The Sub Registrar,
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<u>S.M.SUBRAMANIAM,J.</u>
<u>AND</u>
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Judgment in
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