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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 19.10.2024

PRONOUNCED ON : 30.10.2024

CORAM

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

W.P.No.3579 of 2018

M.V.Revathi

... Petitioner

vs.

1.The Sub Registrar,
Office of the Sub Registrar,
Walajapet,
Vellore District.

2.The Special Deputy District
Collector, (Stamps),
Collectorate,
Sathuvachari,
Vellore-9.

3.The Collector,
Collectorate, Sathuvachari,
Vellore District,
Vellore-9.

... Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the entire records on the file of the second respondent pertaining to the order dated 14.12.2006 and demand of deficit stamp duty in Form 2 dated 14.12.2006



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vide No.Ci.Pa.Ku.Mu.Ka.No.275/2006/WLJ and quash the same and consequently direct the first respondent to release the Registered Document No.3043 of 2005 dated 24.06.2005 on the file of the first respondent to the petitioner.

For Petitioner : Mr.K.V.Ananthakrushnan

For Respondents : Mr.B.Vijay
Additional Government Pleader

ORDER

The writ petition is filed challenging the Form-2 Notice in Ci.Pa.Ku.Mu.Ka.No.275/2006/WLJ, dated 14.12.2006 issued by the 2nd respondent provisionally determining the market value of the property covered by the settlement executed in favour of the petitioner dated 24.06.2005 and stamp duty payable thereon.

2. It is the case of the petitioner that land and building bearing Plot No.124 in Ranipet Industrial Estate comprised in Survey Nos.62, 63, 68, 69 and 70 of Karai Village and in Survey Nos.225, 226, 352 and 353 of Narashingapuram Village, Walaja Taluk, Vellore District was originally owned by petitioner's father M.S.Venkatasamy Raja. He purchased the same



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under a Sale Deed dated 11.07.1991 from SIDCO, Vellore. The petitioner's father was carrying on manufacturing activities in the said property under the name and style of 'Revathy Industries' as a Sole Proprietor. The petitioner's father out of love and affection settled the subject property in favour of the petitioner by executing a Gift Deed dated 24.06.2005. The same was registered at the office of the 1st respondent and assigned with Registration No.3043 of 2005. The petitioner paid stamp duty of Rs.10,000/-, which was the maximum stamp duty payable at that point of time, for settlement deeds executed among the family members as per the Article 58(a)(i) of Ist schedule to Indian Stamp Act, 1899. After registration, the document was not released to the petitioner and it appears the 1st respondent referred the matter under Section 47-A of Indian Stamp Act, 1899, for determination of market value to the 2nd respondent. It is also stated by the petitioner that the 2nd respondent without conducting any enquiry passed provisional order determining market value of the property at Rs.38,28,150/- and the stamp duty payable on the instrument at Rs.3,06,256/-. As a consequence, the 2nd respondent issued impugned Form-2 Notice directing the petitioner to pay deficit stamp duty of Rs.2,96,256/-. Aggrieved by the same, the petitioner has come before this Court.



3. Mr.K.V.Ananthakrushnan, learned counsel appearing for the petitioner submitted that in the instant case Gift Deed was executed by father in favour of his daughter and therefore, it shall be treated as a settlement among family members eligible for concessional stamp duty under Article 58(a)(i) of Schedule-I to Indian Stamp Act, 1899. However, the 2nd respondent treating the same as a gift in favour of the non-family member demanded stamp duty at the *ad valorem* rate of 8% under Article 58(a)(ii)(B) of Schedule-I to Indian Stamp Act, 1899. Therefore, the Form-2 Notice issued by the 2nd respondent on the assumption that it is a Gift Deed in favour of a non-family member is erroneous and liable to be set aside.

4. The learned counsel further submitted that before issuing Form-2 Notice, the 2nd respondent has not issued Form-1 Notice and conducted any enquiry. The learned counsel further submitted that the 2nd respondent after issuing Form-2 Notice, failed to pass any final orders within three months from the date of Form-2 Notice and kept the matter pending for nearly 12 years and therefore, there is no possibility for the petitioner to file an appeal and hence, even on the ground of delay, the impugned Form-2 Notice is liable to be quashed.



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5. Mr.B.Vijay, learned Additional Government Pleader appearing for

the respondents would contend that the impugned Form-2 Notice is only a provisional order and the petitioner is expected to appear before the 2nd respondent and make her objections to the provisional determination made by the 2nd respondent and if any final order is passed against her, it is for the petitioner to file an appeal before the Appellate Authority namely the Inspector General of Registration. Therefore, it is the contention of the learned Additional Government Pleader that the writ petition filed by the petitioner challenging the Form-2 Notice, which is provisional in nature is not entertainable. The learned Additional Government Pleader also submitted that the property was allotted to Revathy Industries and the Sale Deed was executed by SIDCO in favour of a business undertaking called Revathy Industries. The petitioner's father in his capacity as proprietor of Revathy Industries gifted the property in favour of the petitioner. Therefore, the gift cannot be treated as the one by father in favour of his daughter and as a consequence, the gift cannot be treated as the one between the family members eligible for concessional stamp duty.



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6. The learned Additional Government Pleader further submitted that time limit of three months prescribed under Rule 7 of Tamil Nadu Stamp (Prevention of Undervaluation of Instruments) Rules, 1968 is only directory and not mandatory and therefore, failure of the 2nd respondent to pass final orders within three months cannot give any right to the petitioner to challenge the provisional order determining the market value.

7. Under normal circumstances, this Court will not entertain the writ petition against Form-2 Notice issued by the 2nd respondent provisionally determining the market value of the subject matter under Section 47-A of Indian Stamp Act, 1899 read with Rule 4(4) of the Tamil Nadu Stamp (Prevention of Undervaluation of Instruments) Rules, 1968. Because under Form-2 Notice, the Collector only provisionally determines the market value and communicates the same to the presentant calling upon him to putforth his/her objections, if any. After consideration of objections by the presentant, as prescribed, Collector is expected to pass final order under Rule 7 of the said Rules and any such final order is liable to be challenged by way of appeal before the Appellate Authority under Section 47-A(5) of Indian Stamp Act, 1899.



8. Further, against the order passed in appeal, a further second appeal

lies to this Court under Section 47-A(10) of the said Act. Therefore, Indian Stamp Act provides effective alternative remedy for the aggrieved party and hence, the writ petition need not be entertained. Further, Form-2 Notice is in the nature of show cause notice calling for objections against the provisional determination of market value. However, in the case on hand, the document was registered by 1st respondent as early as 2005 and impugned Form-2 Notice was issued on 14.12.2006. It is seen from the typed-set of papers, the petitioner submitted her explanation on 22.12.2006 clearly explaining that the subject instrument was a Gift Deed among family members and hence, she was entitled to concessional stamp duty subject to the maximum of Rs.10,000/-. However, it appears that the objection of the petitioner has not been considered and no final order has been passed for more than 10 years. Subsequently, a demand notice appeared to have been sent by the 2nd respondent, calling upon the petitioner to pay deficit stamp duty and threatening her with coercive action, if she failed to pay the amount, as seen from his proceedings in Na.C.P.No.275/2006-WLJ dated 20.10.2015. Thereafter, the 2nd respondent appeared to have issued notice on 22.02.2017 directing the petitioner to appear for enquiry and in these



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circumstances, the petitioner was constrained to file this writ petition.

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9. The writ petition has been pending on the file of this Court for the past six years and the matter came up before this Court and adjourned at request of the respondents for several times for filing counter affidavit. Ultimately, the counter affidavit was filed by the 2nd respondent on 19.08.2024. In view of long passage of time, this Court is inclined to hear the petitioner and respondents and dispose of the writ petition. Since this is one of rarest of rare cases where no final order has been passed by the 2nd respondent after Form-2 Notice for several years, this Court decides to dispose of writ petition on merits, without directing petitioner to appear before 2nd respondent and file her objection. As stated earlier, petitioner already submitted her objection and the same has not been considered by 2nd respondent for several years.

10. A perusal of the pleadings would also establish that there is no dispute with regard to market value of the property. The market value mentioned by the petitioner in the document has been adopted and approved by the 2nd respondent in his provisional order under Form-2. The only



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dispute is with regard to the application of the correct charging article to the instrument in question. Therefore, this Court decides to hear the parties and adjudicate lis, which revolves around narrow campus. As submitted earlier, the learned counsel for the petitioner claims, the Gift Deed is by the father in favour of his daughter and hence entitled to concessional stamp duty. However, a perusal of the impugned order and counter affidavit filed by the 2nd respondent would establish, the 2nd respondent treated the Gift Deed as the one in favour of a person outside the family and demanded *ad valorem* stamp duty of 8%.

11. A perusal of the Sale Deed in favour of the petitioner's father/settlor dated 11.07.1991 would establish that SIDCO executed a Sale Deed in favour of Revathy Industries, a proprietary concern represented by its proprietor-M.S.Venkatasamy Raja. The learned Additional Government Pleader appearing for the respondents would contend that the property belongs to Revathy Industries and the same was gifted by proprietor of the concern in favour of his daughter. Therefore, it cannot be treated as a gift in favour of daughter by her father, making it eligible for concessional stamp duty.



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12. A proprietary concern is not a legal personality like a company.

The proprietary concern is a business name used by an individual and properties of the proprietary concern shall be treated as property of individual proprietor. In other words, when a proprietary concern is not a separate legal entity, it is incapable of holding any property. Therefore, a proprietary concern's property shall be treated as the property of the individual proprietor.

13. In ***Ashok Transport Agency vs. Awadhesh Kumar and another*** reported in ***(1998) 5 SCC 567***, while explaining the legal status of proprietary concern, the Apex Court observed as follows:-

“6. A partnership firm differs from a proprietary concern owned by an individual. A partnership is governed by the provisions of the Indian Partnership Act, 1932. Though a partnership is not a juristic person but Order XXX Rule 1 CPC enables the partners of a partnership firm to sue or to be sued in the name of the firm. A proprietary concern is only the business name in which the proprietor of the business carries on the business. A suit by or against a proprietary concern is by or against the proprietor of the business. In the event of the death of the proprietor of a proprietary concern, it is the legal



representatives of the proprietor who alone can sue or be sued in respect of the dealings of the proprietary business. The provisions of Rule 10 of Order XXX which make applicable the provisions of Order XXX to a proprietary concern, enable the proprietor of a proprietary business to be sued in the business names of his proprietary concern. The real party who is being sued is the proprietor of the said business. The said provision does not have the effect of converting the proprietary business into a partnership firm. The provisions of Rule 4 of Order XXX have no application to such a suit as by virtue of Order XXX Rule 10 the other provisions of Order XXX are applicable to a suit against the proprietor of proprietary business "insofar as the nature of such case permits". This means that only those provisions of Order XXX can be made applicable to proprietary concern which can be so made applicable keeping in view the nature of the case."

14. The legal status of proprietary concern was very well explained by the Apex Court in ***Vinayak Purshottam Dube (Deceased) vs. Jayashree Padamkar Bhat and others*** reported in ***2024 INSC 159*** in following words:-

“13. In this regard, it is necessary to discuss the jurisprudential status of a proprietary concern. In a report of the



Insolvency Law Committee submitted in February, 2020, the definition of ‘Proprietorship Firms’ reads as under:

“2.DEFINITION OF ‘PROPRIETORSHIP FIRMS’

2.2 Proprietorship firms are businesses that are owned, managed and controlled by one person. They are the most common form of businesses in India and are based in unlimited liability of the owner.

Legally, a proprietorship is not a separate legal entity and is merely the name under which a proprietor carries on business. [Raghu Lakshminarayanan vs. Fine Tubes (2007) 5 SCC 103.]

Due to this, proprietorships are usually not defined in statutes. Though some statutes define proprietorships, such definition is limited to the context of the statute. For example, Section 2 (haa) of the Chartered Accountants Act, 1949 defined a ‘sole proprietorship’ as “an individual who engages himself in practice of accountancy or engages in services...”. Notably, ‘proprietorship firms’ have also not been statutorily defined in many other jurisdictions.”

[Source: Report of the Insolvency Law Committee, Page No.117-118, Government of India (Ministry of Corporate Affairs, February, 2020).]”



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15. In ***M/s.ICICI Bank Limited vs. A.Praveen Kumar and another***

in CRP.No.155 of 2020, a Division Bench of this Court explained legal status of proprietary concern in following words:-

“7. The legal position is rather well settled. There is no difference between the proprietary concern and the proprietor. It is nobody's case that the first respondent is not a proprietor of the proprietary concern.”

16. In ***A.Senthil vs. K.B.Viswanathan*** reported in ***2024 SCC Online Mad 3624***, this Court observed as follows:-

“5. A company is a juristic body having independent existence of his own which can be sued and sue. Whereas a proprietary firm is not a juristic entity, having independent legal existence. It has to be represented by the proprietors.”

17. Therefore, it is clear that a proprietary concern is not a separate legal entity as distinguished from its individual proprietor. The liability of the proprietor is unlimited. The proprietary concern is only a business name in which the individual proprietor is carrying on his business. Therefore, even though in the Sale Deed executed by SIDCO, the property was sold in



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favour of Revathy Industries represented by petitioner's father-M.S.Venkatasamy Raja, in legal sense, the property shall be treated as individual property of M.S.Venkatasamy Raja and on his death, the property would devolve on his legal representatives. Now, the individual proprietor wants to settle the property in favour of his daughter and the same shall be considered as a gift by individual proprietor in favour of his daughter, not as a gift by non-existent proprietary concern in favour of a third party.

18. In other words, the proprietary concern, which is not legal entity is incapable of holding or conveying the properties in its own name. It is individual proprietor, who actually holds the property and conveys the same. In view of the above discussion, I have no hesitation in coming to the conclusion that the Gift Deed presented for registration is only a gift by father in favour of his daughter. Therefore, the same is eligible for concessional stamp duty as per Article 58(a)(i) of Schedule I to Indian Stamp Act, 1899.

19. It is not in dispute, at the relevant point of time the maximum stamp duty payable on the settlements in favour of a family member was



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only Rs.10,000/-. The petitioner affixed Rs.10,000/- as stamp duty on the instrument. Therefore, the demand made by the 2nd respondent on the face of it is not in accordance with law. The petitioner also submitted her explanation in response to the Form-2 Notice as early as 22.12.2006 to the 2nd respondent claiming concessional stamp duty treating the subject instrument as family settlement.

20. In view of the conclusion reached above, I do not think it is necessary to direct the 2nd respondent to pass final orders and then decide about the release of the document. Once we come to the conclusion, the Gift Deed shall be treated as a gift in favour of a family member and as a consequence, entitled to concessional stamp duty, the stamp duty affixed by the petitioner is in accordance with law and provisional determination made by the 2nd respondent with regard to the stamp duty payable on the instrument treating the same as gift in favour of non-member of the family is liable to be quashed to the extent of stamp duty fixed by the 2nd respondent under Article 58(a)(ii)(B) of Schedule I to Indian Stamp Act, 1899.



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21. As far as determination of market value of the property is concerned, there is no dispute and hence, the question of directing the petitioner to pay deficit stamp duty will not arise as the petitioner had already paid the maximum stamp duty chargeable under Article 58(a)(i) of Schedule I to Indian Stamp Act, 1899 . Hence, the impugned order is quashed to the extent it demands deficit stamp duty from the petitioner. In other respects, the same is confirmed. Accordingly, the respondents are directed to release the document to the petitioner immediately.

22. Accordingly, the Writ Petition stands allowed by quashing the impugned order in so far as demand made by the 2nd respondent directing the petitioner to pay a deficit stamp duty of Rs.2,96,256/- and the respondents are directed to release the document to the petitioner immediately. No costs.

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Index :Yes
Speaking order :Yes
Neutral Citation :Yes
dm



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To

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- 1.The Sub Registrar,
Office of the Sub Registrar,
Walajapet,
Vellore District.
- 2.The Special Deputy District
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- 3.The Collector,
Collectorate, Sathuvachari,
Vellore District,
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S.SOUNTHAR, J.

dm

Pre-delivery order made in
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