IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.06.2024

CORAM:

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

WP.Nos.15815 & 15817 of 2024 &

WMP.No.17238 & 17241 of 2024

Sripal B Jain ...Petitioner in W.P.No.15815 of 2024

Chetan B Jain ...Petitioner in W.P.No.15817 of 2024

Vs

1. The Inspector General of Registration,
   Rajaji Salai, Santhome, Chennai.

2. The Sub Registrar,
   The Sub Registrar Office,
   Ambattur, Chennai – 600 053 ... Respondent in both WPs

Common Prayer:- Writ Petitions filed under the Article 226 of Constitution of India, to issue a Writ of Certiorari calling for the records of the 2nd Respondent in issuing impugned undated demand notice sent in October 2023 demanding for the payment of deficit Stamp Duty of Rs.28,98,206/- and 28,92,719/- and Deficit Registration Fees of Rs.16,66,403/- and 16,63,268/- respectively in respect of the Settlement Deed Dt. 19.08.2021 registered as Doc.No. 11050 of 2021 & 11051 of

2021 at SRO Ambattur and the Consequential undated order sent by the 2nd Respondent in November 2023 creating encumbrance/charge over the petitioners property subject matter of the Settlement Deed Dt. 19/08/2021 registered at Doc. No. 11050 of 2021 and 11051 of 2021 at SRO Ambattur and Quash the same and to direct the respondents to remove the charge/Encumbrance created over the Petitioner property subject matter of the above settlement deed from the encumbrance certificate as intimated by them through the second respondent's undated Order sent in November 2023.

For Petitioner in both WPs	: Mr.N.Nagu Sah
For Respondent in both WPs	: Mr.P.Anandhakumar Government Advocate

COMMON ORDER

With the consent of both sides, these Writ Petitions are taken up for disposal at the admission stage itself.

2. Since the issue involved in both these Writ Petitions are one and the same, these Writ Petitions are disposed of by way of a common order.

3. Challenge has been made to the demand notice claiming

Rs.28,92,719/- and deficit registration fee of Rs.16,63,268/- deficit deficit Stamp Duty of Rs.28,98,206/- and 28,92,719/- and Deficit Registration Fees of Rs.16,66,403/- and 16,63,268/- respectively in respect of the Settlement Deed dated 19.08.2021 registered as Doc.No. 11050 of 2021 & 11051 of 2021 at SRO Ambattur.

4. It is the case of the writ petitioners that the property originally settled in the name of the firm and after dissolution of the firm, the property remained as joint family property and the property was allotted to the father of the petitioner in O.S.No.97 of 2020 on the file of the III Additional District and Session Judge, Tiruvallur @ Poonamallee. Thereafter, on 19.08.2021, the petitioner's father executed a settlement deed in favour of the petitioner and the document was registered on 19.08.2021 and the document has also been released to the petitioner. Now the impugned notice has been issued on the basis of the audit objections. Challenging the same, the present Writ Petition has been filed.

5. At the time of admission, when this Court posed a question, how

the impugned notices have been issued, the learned Government Advocate on instructions submitted that the subject impugned notices have been issued pursuant to the audit objections. According to him, the Audit has raised objections since originally the suit property was in the name of Indian Engineering Industries and thereafter, a settlement ought to have been entered among the family members and the family member executed settlement, Article 58A [1]will apply.

6. Since the matter is related to limited issue, whether the property is allotted to a family member, stood in the name of the individual or in the name of the company or firm, on the basis of the admitted document filed before this Court, this Court is of the view that no counter is required.

7. The very decree and the judgment produced before this Court indicate that the property covered under the settlement deed is one of the schedule property in the schedule of the final decree in O.S.No.97 of 2020 wherein the said property is allotted to the settlor. Thereafter, he

has executed a settlement deed in favour of his son. Therefore, this Court is of the view that after dissolution of the firm, the properties have been partitioned among the family members and the subject property is allotted to an individual family member, who inturn has executed a settlement deed as a member of the family. Therefore, the reason assigned in the Order that the property originally stood in the name company, it is the property of the company cannot be countenanced. That apart, the document has already been registered. Therefore, merely on the basis of the audit objections, the deficit stamp duty cannot be determined. The only procedure for determination of deficit stamp duty is by way of determination under section 47 [A] [3] of the Indian Stamp Act and not on the basis of the audit objections. In such view of the matter, the impugned notices are to be quashed. As the demand notices are quashed, the encumbrance/charge created over the petitioner's subject matter of the settlement deeds dated 19.08.2021 automatically goes.

8. Accordingly, these Writ Petitions are allowed and the impugned

demand notices for payment of deficit stamp duty issued by the second respondent stands quashed. Consequently, the second respondent is directed to make necessary entries with regard to the quashing of the demand notices for deficit stamp duty over the settlement deeds dated 19.08.2021 registered as Doc.No. 11050 of 2021 & 11051 of 2021 at SRO Ambattur. Consequently, connected miscellaneous petitions are closed.

20.06.2024

Index:Yes/No

Neutral Citation : Yes/No

vrc

To,

1. The Inspector General of Registration,
   Rajaji Salai, Santhome, Chennai.

2. The Sub Registrar,
   The Sub Registrar Office,
   Ambattur, Chennai – 600 053

N.SATHISH KUMAR, J.

vrc

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