IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.06.2024

CORAM

THE HONOURABLE MR. JUSTICE N. SATHISH KUMAR

WP.No.13376 of 2024
and W.M.P.No.14527 of 2024

1.V.Harikrishnan
2.H.Nirmala .. Petitioners

Versus

1.The Inspector General of Registration
Office of the Inspector General of Registration
No.100, Santhome High Road
Chennai – 600 028

2.The Additional Inspector General of Registration
Office of the Inspector General of Registration
No.100, Santhome High Road
Chennai – 600 028

3.The Deputy Inspector General of Registrar
Santhome, Chennai

4.The District Registrar (Audit)
Office of the District Registrar
Kuralagam, 2nd Floor
Chennai – 600 001

5.The Sub Registrar
Office of the Sub Registrar
Madhavara
Chennai. .. Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the records pertaining to the order passed by the 3rd respondent in proceedings Na.Ka.No.5392/E1/2023 dated 07.02.2024 and quash the same and consequently issue direction to the 5th respondent to withdraw the demand notice issued to the petitioners dated 10.01.2022 issued by him for recovery of sum of Rs.2,05,000/-.

For Petitioner : Dr.D.Simon

For Respondents : Mr.Yogesh Kannadasan for R1 to R5
Special Government Pleader

ORDER

Challenge has been made against the order passed by the third respondent dated 07.02.2024, quash the same and consequently issue direction to the 5th respondent to withdraw the demand notice issued to the petitioners dated 10.01.2022 issued by him for recovery of sum of Rs.2,05,000/-.

2. It is the case of the writ petitioners that an extent of 1200 sq.ft., was originally owned by the first petitioner. He has settled the property in favour of his 2 sons and four grandchildren in Doc.No.2573 of 2011. Thereafter, now the two sons and four grandchildren re-settled the property to the petitioners in Doc.No.5782 of 2020. When the matter stood thus, the demand notice has been issued to the petitioners on 10.01.2022 for payment of deficit stamp duty on the ground that the settlement deed is not within the family members, grandchildren executing the settlement deed in favour of the grand father will

not fall within the ambit of family as defined under Article 58 of the Schedule I to the Indian Stamp Act. In furtherance to the demand notice, the impugned order is passed for payment of deficit stamp duty. Challenging the same, this writ petition.

3. The learned counsel for the petitioner submitted that the Division Bench of this Court in the case of *Inspector General of Registration and another vs. R.Santhosh and another* made in *W.A.No.85 of 2015*, by judgment dated *23.10.2017* has held that the settlement deed executed in favour of the grandparents should also be covered under Article 58 (a)(i) of the Schedule I to the Indian Stamp Act. Hence, the impugned order cannot be sustained in the eye of law.

4. Whereas, the learned Special Government Pleader submitted that the Division Bench in W.A.No.85 of 2015, (judgment dated 23.10.2017) has not followed and discussed the earlier judgment of the Division Bench reported in *2014 (5) CTC 265* in the case of *T.Muthu Bala vs. The Inspector General of Registration and another*, wherein, the present issue has been elaborately discussed. Further, he also submitted that even the Division Bench of this Court in W.A.No.544 2021, (judgment dated 04.06.2024) has followed the

judgment reported in *2014 (5) CTC 265.* Hence, according to him, the judgment cited by the writ petitioner cannot help his case.

5. Heard both sides and perused the materials placed on record. By consent of both parties, this writ petition is taken up for final disposal.

6. The short issue involved in this writ petition is whether the grandparents fall within the ambit of the "family" as defined under Explanation to the Article 58 of the Schedule I to the Indian Stamp Act.

7. Explanation to the Article 58 of the Schedule I to the Indian Stamp Act reads 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"*

8. The Division Bench in the case of *T.Muthu Bala vs. The Inspector General of Registration and another,* reported in *2014 (5) CTC 265* took note of the fact that the word "means" found in the definition clause and held that "family" found in Article 58(a) 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 to such definition clause. The Hon'ble Apex Court has also in a judgment reported in *2009 (2) CTC 800* reported in *S.V.L.S.Ranga Rao Vs. The Secretary to the Government, Commercial Taxes (J1) Department and others* held that 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. This has been taken note in the judgment reported in *2014 (5) CTC 265.*

9. The Division Bench in W.A.No.85 of 2015, despite the fact that earlier judgment reported in *2014 (5) CTC 265* was brought to the notice has not gone into the issue and simply followed the findings of the learned Single Judge without discussing the issue involved. Therefore, the judgment cited by the learned counsel for the petitioner will not be binding precedent. It is also to be noted the Division Bench of this Court in W.A.No.544 of 2021 (judgment dated 04.06.2024) in the case of *The Sub Registrar vs. Dr.Usha Dorairajan,* in

fact, followed earlier judgment reported in *2014 (5) CTC 265* has clearly considered the word “means” and held that grand parents cannot be included in the explanation appended to the Article 58 of the Schedule I to the Indian Stamp Act, 1899.

10. Similarly, this Court in earlier occasion, in the case of *Anushya vs. The District Registration Authority and another* made in *W.P.No.988 of 2022* vide order dated *25.04.2024* has also held that purposive interpretation cannot be given and no other meaning can be assigned to the expression defined in the definition. Such view of the matter, the contention of the learned counsel for the petitioner that the grand parents are also to be treated as family members as defined under Article 58 of the Schedule I to the Indian Stamp Act, 1899 cannot be countenanced. Since the Stamp Act is a fiscal legislation, we cannot supply any other meaning other than the one defined under the Act.

11. At this stage, the learned counsel for the petitioner submitted that if the deficit stamp duty is paid, necessary entries are to be made in the encumbrance. The learned Special Government Pleader submitted that if the payment is made, the subsequent entry will be made in the encumbrance. Such statement is recorded.

12. Accordingly, this writ petition stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

18.06.2024

dhk
Index :Yes/No
Internet :Yes/No
Neutral Citation : Yes/No

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Office of the Sub Registrar
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N. SATHISH KUMAR, J.

dhk

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