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W.P.Nos.28854, 28856 & 28857 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Orders Reserved on : 07..06..2024
Orders Pronounced on : 20..06..2024

Coram

THE HON'BLE MR JUSTICE N.SATHISH KUMAR

Writ Petition Nos.28854, 28856 & 28857 of 2022
and
W.M.P.Nos.28145, 28147 & 28148 of 2022

W.P.No.28854 of 2022:-

P.Kamalakannan

..... Petitioner

-Versus-

1.The Chief Controlling Revenue Authority &
Inspector General of Registration,
Chennai 600 028.

2.The District Registrar,
District Registration Office,
Coonoor Road,
Udhagamandalam 643 001.

3.The Joint Sub Registrar-I,
Udhagamandalam 643 001.

..... Respondents

Petition filed under Article 226 of The Constitution of India, praying to issue a Writ of Certiorarified Mandamus calling for the records relating to the impugned order passed by the 1st respondent in No.39863/P1/2016 dated 13.12.2019 confirming the order passed by the 2nd respondent in proceedings No.2426/2016 dated 08.07.2016 and to quash the same and consequently direct



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the 3rd respondent herein to register the pending Document No.P.129/2015, accepting the stamp duty and registration charges already paid by the petitioner under Article 55-A of the Indian Stamp Act, 1899.

W.P.No.28856 of 2022:-

P.Sridhar

..... Petitioner

-Versus-

- 1.The Chief Controlling Revenue Authority &
Inspector General of Registration,
Chennai 600 028.
- 2.The District Registrar,
District Registration Office,
Coonoor Road,
Udhagamandalam 643 001.
- 3.The Joint Sub Registrar-I,
Udhagamandalam 643 001.

..... Respondents

Petition filed under Article 226 of The Constitution of India, praying to issue a Writ of Certiorarified Mandamus calling for the records relating to the impugned order passed by the 1st respondent in No.39861/P1/2016 dated 13.12.2019 confirming the order passed by the 2nd respondent in proceedings No.2427/2016 dated 08.07.2016 and to quash the same and consequently direct the 3rd respondent herein to register the pending Document No.P.131/2015, accepting the stamp duty and registration charges already paid by the petitioner under Article 55-A of the Indian Stamp Act, 1899.



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W.P.No.28857 of 2022:-

P.Loganathan

..... Petitioner

-Versus-

1.The Chief Controlling Revenue Authority &
Inspector General of Registration,
Chennai 600 028.

2.The District Registrar,
District Registration Office,
Coonoor Road,
Udhagamandalam 643 001.

3.The Joint Sub Registrar-I,
Udhagamandalam 643 001.

..... Respondents

Petition filed under Article 226 of The Constitution of India, praying to issue a Writ of Certiorarified Mandamus calling for the records relating to the impugned order passed by the 1st respondent in No.39862/P1/2016 dated 13.12.2019 confirming the order passed by the 2nd respondent in proceedings No.2428/2016 dated 08.07.2016 and to quash the same and consequently direct the 3rd respondent herein to register the pending Document No.P.130/2015, accepting the stamp duty and registration charges already paid by the petitioner under Article 55-A of the Indian Stamp Act, 1899.

*For Petitioner(s) : Mr.C.S.K.Sathish for
petitioner in all Writ
Petitions*

*For Respondent (s) : Mr.B.Vijay,
Addl. Government Pleader
for RRI to 3*



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COMMON ORDER

Challenge in all these writ petitions is to the impugned orders dated 13.12.2019 passed by the 1st respondent / revisional authority confirming the orders dated 08.07.2016 passed by the 2nd respondent-District Registrar demanding (i) payment of deficit stamp duty and penalty of (i) Rs.2,52,950/- and Rs.50/- from the petitioner in W.P.No.28854 of 2022; (ii) payment of deficit stamp duty and penalty Rs.3,31,703/- and Rs.50/- from the petitioner in W.P.No.28856 of 2022; and (iii) payment of deficit stamp duty and penalty of Rs.2,43,685/- and Rs.50/- from the petitioner in W.P.No.28857 of 2022 and for a consequential direction to the 3rd respondent to register the pending documents in P.No.129, 131 & 130 of 2015 respectively based on the stamp duty and registration charges already paid by the petitioner under Article 55-A of the Indian Stamp Act, 1899.

2. The brief facts leading to the filing of these writ petitions in common are as under:-

(a) The petitioners are full-blood brothers and partners of M/s. Hotel Prince Palace having its registered office presently at No.153-A, Ganesh Hall, Walsham Road, Udagamandalam 643 001. The said hotel is a partnership firm registered under the Indian Partnership Act, 1932 with Registrar of Firms vide Registration No.517 of 1989 on the file of the Registrar of Firms, Coimbatore.

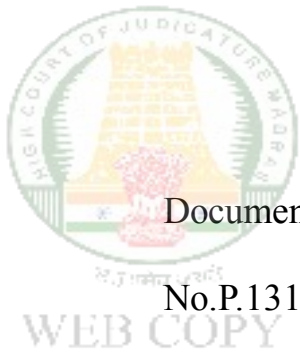


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The partnership firm through its partners owns and exclusively possess the following immovable properties:-

Sl. No.	Writ Petition Number	Name of the Petitioner	Survey Number	Extent in Cents	Patta No.
1	W.P.No.28854 of 2022	P.Kamalakannan	R.S.No.1 680/2 at Ootakam und Village	7.50	GR-1143-R.S.No.D -3/30
2	W.P.No.28856 of 2022	P.Sridhar	R.S.No.1 680/2 at Ottakam und Village	9.625	GR-1729-R.S.No.D -3/29
3	W.P.No.28857 of 2022	P.Loganathan	R.S.No.1 680/2	7.25	GR-1729-R.S.No.D -3/29

(b) In order to effectively manage the property, two of the partners have decided to release their respective 1/3rd share in the properties described above in favour of the other partner. Accordingly, the two partners of the firm executed the deeds individually in favour of the other partner releasing their respective 1/3rd share in the property. When those release deeds were presented for registration before the 3rd respondent with a stamp duty of Rs.25,000/- in respect of Pending Document No.P.129/2015; Rs.25,000/- in respect of Pending



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Document No.P.130 of 2015; and Rs.25,000/- in respect of Pending Document No.P.131 of 2015 under Article 55-A of the Stamp Act, valuing the properties covered under the deed at Rs.6,00,000/-, Rs.6,00,000/- and Rs.6,00,000/- respectively, the 3rd respondent registering authority valuing the market value of the property covered under the deeds at Rs.92,65,000/- ; Rs.89,56,170/-; and Rs.44,58,781/-

(c) The 3rd respondent has valued the documents under Article 55-D (ii) of the Indian Stamp Act, 1899 and as a result of the same, he has kept the document presented by the respective petitioners as pending in P.No.129, 131 & 130 of 2015 respectively and forwarded the same to the 2nd respondent for further action in this regard. The 2nd respondent in his proceedings dated 08.07.2016 in Nos.2426/2016, 2427/2016 & 2428/2016 passed orders reiterating the stand of the 3rd respondent classifying the deeds which are sought to be registered are required to be stamped under 55-D(i) and directing the parties to pay deficit stamp duty and penalty as mentioned under first paragraph of this order.

(d) Challenging the orders passed by the 2nd respondent, the respective petitioners filed revision petitions before the 1st respondent and the 1st respondent / revisional authority in turn passed an order confirming the order passed by the 2nd respondent holding that deeds are required to be stamped as



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per Article 55-A(i) of the Indian Stamp Act and thereby dismissed the revision petitions.

(e) The releasors and the releasee(s) are partners of the partnership firm M/s.Hotel Prince Palace and that they are members of the one single family. Therefore, the release deeds would be required to be stamped only under Article 55-A of the Indian Stamp Act and not as demanded by the respondent under Article 55-D (i) of the Indian Stamp Act. The grievance of the petitioners is that the respondents have failed to take note of the above factual aspects. Hence, the present writ petitions.

(3) The 2nd respondent – District Registrar, Nilgiris, Udthagamandalam, filed his counter affidavits.

(a) In the counter affidavit the 2nd respondent *inter alia* contended that though two of the partners have executed the deeds releasing their 2/3rd share in favour of the other partner, the recitals in the documents would indicate that entire right over an immovable properties have been transferred by two of the partners in favour of the other partner, however the deeds were stamped with a stamp of Rs.25,000/- under the pretext that the same is liable to be stamped at the rate of 1% subject to a maximum of Rs.25,000/- under Article 55-A of the Indian stamp Act, 1899.

(b) It is further contended by the 2nd respondent that on presentation of



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the documents for registration, considering the fact that properties belong to the partnership firm, wherein all the partners are family members, the 3rd respondent - Joint Sub-Registrar-I was of the view that deeds are required to be stamped at the rate of 3% on the market value of the property as per Article 55-D(i) of the Indian Stamp Act, 1899 and therefore, he had decided to impound the documents as the same was found to be not sufficiently stamped with reference to Article 55-D(i) and forwarded the documents to the 2nd respondent-District Registrar, Uthagamandalam for further action. The 2nd respondent in turn passed an order holding that the documents are required to be stamped only under Article 55-D(i) and directed the executants to pay the deficit stamp duty and penalty as mentioned in the first paragraph of this order. Aggrieved by the same, the respective petitioners taken up the matter on revision before the 1st respondent and the 1st respondent by way of orders impugned in the writ petitions dismissed the revision petitions holding that two of the partners have executed deeds of release relinquishing their right over the immovable properties in favour of the other partner, who are family member and the deeds would fall within the ambit of Article 55-D(i) of the Schedule I to the Indian Stamp Act, 1899 and thereby upheld the orders of the 2nd respondent.

(c) According to the 2nd respondent, as per the scheme of Article 55, the main test for classifying the release deed under clause B or C or D of Article 55



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is to check whether the document falls within the scope of clauses B or C or D of Article 55 and only if it is found that such release deed is not capable of being classified under clause B or C or D then only the same can be classified under Article 55-A. The documents in questions are not capable of being classified under clauses B or C or D and therefore, the stamp duty payable on the documents would be under Article 55(D)(i) alone and as such question of classifying the documents in question under Article 55-A is out of context. Therefore, the 2nd respondent prays for dismissal of the writ petitions.

4. Heard the learned counsel appearing for the petitioners and the learned Additional Government Pleader appearing for the respondents 1 to 3.

5.1. The learned counsel appearing for the respective petitioners would strenuously submit that though two of the partners have executed release deeds in favour of the other partners, there were only adjustments among the partners and as such Article 55-A alone would apply. According to the learned counsel, since firm is not a legal entity, the partnership property will vest in all the partners and in that sense every partner has an interest in the property of the partnership. The entire property whether brought in by the partners on constitution of the partnership or acquired in the course of business of the firm, would constitute property of the firm. During the subsistence of the partnership, partners are entitled to an undefined share in such property but after dissolution



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and settlement of accounts, partners are entitled to proportionate share in residue of the property.

5.2. According to the learned counsel, the partnership property will vest in all the partners and in that sense, every partner has an interest in the property of the partnership. During the subsistence of the partnership no partner can deal with any portion of the property as his own nor he can assign his specific item in the partnership property to anyone. His right is to obtain such profits, if any, as fall to his share from time to time and upon the dissolution of the firm to a share in the assets of the firm which remain after satisfying the liabilities set out in clause (a) and sub-clauses (i), (ii) and (iii) of clause(b) of Section 48 of the Indian Partnership Act. Therefore, at no stretch of imagination, the deeds of release in question can be treated as deeds of conveyance or release of entire right by two of the partners in favour of the other partner. At the most, it should be held as adjustment among the partners. Therefore, according to the learned counsel stamp duty required to be paid on the deeds shall be under Section 55-A alone.

5.3. The learned counsel would further submit that even assuming that Article 55-D(i) is applicable, without ascertaining the market value, demand for deficit stamp duty and penalty ought not to have been made. Demand for deficit stamp duty and penalty made merely relying upon the guideline value as market



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value cannot be sustained in the eye of law. According to him, the market value of any property shall be estimated to be the price such property would have fetched or would fetch, if sold in the open market on the date of execution of the documents. Therefore, orders passed by the 2nd respondent demanding deficit stamp duty and penalty on the basis of such guideline value without determining the market value cannot be sustained in the eye of law.

5.4. The learned counsel for the petitioners would further add that the documents ought to have been impounded and referred to under Section 33 or 47-A of the Indian Stamp Act, 1899 on the contrary if the registering authority has reason to believe that the value has not been truly set forth in the instrument, he shall register such instrument and thereafter refer the same to the Collector for determination of market value of such property and proper duty payable thereon. Such a procedure has not been followed in the instant cases and hence, the orders impugned in the writ petitions cannot be sustained in the eye of law.

5.5. The learned counsel for the petitioners in support of his submissions placed reliance upon the following judgements of the Hon'ble Supreme Court and the Division Bench and single Bench judgements of this court:-

(1) Addanki Narayanappa and others v. Bhaskara Kristappa and 13 others [AIR 1966 SC 1300: 1966 SCC OnLine SC 6];



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- (2) S.V.Chandra Pandian and others v. S.V.Sivalinga Nadar and others [(1993) 1 SCC 589];**
(3) N.Khadervali Saheb and another v. N.Gudu Sahib and others [(20003) 3 SCC 229];
(4) T.T.Meenakshi Achi and 4 others v. The District Registrar and another [1994 - 1 - LW 317];
and
(5) SB Steel Industries rep. By its Partners v. India Re-rolling Mills [2017 SCC OnLine Mad 1390]

6.1. Per contra, the learned Additional Government Pleader would contend that the recitals of the documents presented for registration would clearly show that two of the partners have released their right over the immovable property in favour of the other partner. If any such release among the partners who belong to the same family stamp duty payable would under Article 55-D(i) of the Indian Stamp Act as per Amendment made by the State of Tamil Nadu by way of Tamil Nadu Amendment Act 1 of 20000 w.e.f. 06.03.2020. When the amendment was brought in through fiscal legislation and the same has not been put to challenge so far, the registering authority has no other option except to follow the said Article while computing the stamp duty. When the legislature in its wisdom has amended the Indian Stamp Act stipulating the nature of the rate payable principle contained in the Indian Partnership Act cannot be applied while computing the stamp duty. Since the



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documents in questions have been stamped with Rs.25,000/- valuing each of the properties at Rs.6,00,000/- and presented for registration, the registering authority has rightly impounded the documents and referred to the same for determination of stamp duty payable. Accordingly, orders have been passed by the 2nd respondent holding that stamp duty required to be paid would be under Article 55-D(i) at the rate of 3% for every hundred rupees on the market value of the immovable properties. The guideline value of the each of the properties is Rs.92,65,000/-. Therefore, according to the learned Additional Government Pleader, the registering authorities were right in passing the impugned orders holding that Article 55-A would not apply and the stamp duty required to be paid on the documents would be as per Article 55(D)(i) of the Indian Stamp Act.

6.2. Insofar as the market value of the properties is concerned, the learned Additional Government Pleader would contend that the guideline market value was fixed by the valuation committee, the guideline value fixed by the committee has to be treated as market value of the of the property. The learned Additional Government Pleader therefore prayed for dismissal of the writ petitions.

7. This court has considered the rival submissions carefully.

8. On considering the submissions made on either side, the common



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questions that arise for consideration in these writ petitions are:

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(1) Whether the stamp duty required to be paid on the deeds in question titled “**Release Deed**” executed by two of the partners of the firm in favour of the other partner, who are members of the same family, would attract stamp duty payable only under 55-A of the Indian Stamp Act, 1899?

(2) Whether the market value determined by the registering authorities in respect of the subject properties while computing the stamp duty payable on the documents were in accordance with law?

Point No.1:-

9. It is relevant to note that the documents in question when perused two of them among three brothers who are partners have executed the release deeds in favour of the other brother partner releasing their 2/3rd right over three different immovable properties. Admittedly, there is no dispute that all the three brothers constituted the partnership firm. But, two of them have executed release deeds in respect of their 1/3rd share each in the three different properties in favour of the other partner.



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10. No doubt, as per the scheme of the Indian Partnership Act, 1932, any property originally brought into the stock of the firm, acquired, purchased or otherwise by or for the firm or for the purposes and in the course of business of the partnership firm, such property vests with the firm. This aspect has been settled in the case of **Addanki Narayanappa and others v. Bhaskara Kristappa and 13 others** [AIR 1966 SC 1300 : 1966 SCC OnLine 6] by the Hon'ble Supreme Court. Para 5 of the judgement of the Hon'ble Supreme Court read as under:-

“5. We have quoted extensively from this decision because of the argument that the decision in *Rodriguez case* (5) would have been otherwise but for Section 22 of the English Act. Adverting to this Lindley has said:

“From the principle that a share of a partner is nothing more than his proportion of the partnership assets after they have been turned into money and applied in liquidation of the partnership, whether its property consists of land or not, must, as between the real and personal representatives of a deceased partner, be deemed to be personal and not real estate, unless indeed such conversion is inconsistent with the agreement between the parties. Although the decisions upon this point were conflicting, the authorities which were in



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favour of the foregoing conclusion certainly preponderated over the others, and all doubt upon the point has been removed by the Partnership Act, 1890, which contains the following section:

22. Where land or any heritable interest therein has become partnership property it shall, unless the contrary intention appears, be treated as between the partners (including the representative of a deceased partner), and also as between the heirs of a deceased partner and his executors or administrators, as personal or movable and not real or heritable estate.””

11. In the case of **S.V.Chandra Pandian and others v. S.V.Sivalinga Nadar and others [(1993) 1 SCC 589]** also the Hon'ble Supreme Court has held that the entire property brought in by the partners on the constitution of the partnership firm or that which is acquired in the course of business of the partnership, such property shall become the property of the firm and an individual partner shall only be entitled to his share of profits, if any, accruing to the partnership from the realisation of this property and upon dissolution of the partnership to a share in the money representing the value of the property.

12. In the case of **N.Khadervali Saheb and another v. N.Gudu Sahib and others [(20003) 3 SCC 229]** also the Hon'ble Supreme Court has held that



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a partnership firm is not an independent legal entity and that the partners are the real owners of the assets of the partnership firm. Actually the firm name is only a compendious name given to the partnership for sake of convenience. The assets of the partnership belong to and are owned by the partners of the firm. So long as partnership continues each partner is interested in all the assets of the partnership firm as each partner is owner of the assets to the extent of his share in the partnership. On dissolution of the partnership firm, accounts are settled amongst the partners and the assets of the partnership are distributed amongst the partners as per their respective shares in the partnership firm. Thus, on dissolution of a partnership firm, the allotment of assets to individual partner is not a case of transfer of any assets of the firm. The assets which hereinbefore belonged to each partner, will after dissolution of the firm stand allotted to the partners individually. There is no transfer or assignment of ownership in any of the assets. This is the legal consequence of distribution of assets on dissolution of a partnership firm.

13. In the case of **T.T.Meenakshi Achi and 4 others v. The District Registrar and another [1994 - 1 - LW 317]**, a Division Bench of this Court has held as under:-

“As per clause (10) of Section 2 of the Indian Stamp Act, conveyance includes a conveyance on sale and every instrument by which property, whether



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movable or immovable, is transferred inter vivos and which is not otherwise specifically provided for by Schedule I. As already pointed out, as regards the deed of the nature in question releasing the interests of some of the partners in favour of other who continue the partnership, there is no transfer inter vivos and there is no fresh right or interest being conveyed to others. This aspect is already pointed out, while referring to the aforesaid decision of the Supreme Court. Article 23(b) is attracted only if the document is a conveyance as defined under Section 2(1) of the Act. Therefore, we are of the view that the order passed by respondents 1 and 2 cannot be sustained.”

14. In the case of **SB Steel Industries rep. By its Partners v. India Re-rolling Mills [2017 SCC OnLine Mad 1390]** this court has held as follows:-

“34. A careful reading of the above Section makes it very clear that even any transfer made by one of the partners in respect of his interest in the firm, the transferee cannot interfere in the conduct of the business and even he cannot demand accounts during the continuance of that firm. At the most he is only entitled to receive share of profits of his transferring share in the partnership firm and he is bound to accept the accounts of profits agreed to by the partners. Therefore, except to receive any profits agreed to by the partners he will not



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get any right to claim title or interest either in the property or assets of the partnership firm. Only when the firm is dissolved, his rights if any to the share of the assets will accrue as per sub-section (2) of the Section 29. Therefore, the appellant all along prolonged the issue to squat on the property without paying any rent to the firm now cannot take advantage of the alleged assignment”

15. On perusal of the above judgements, absolutely there is no dispute over the settled position of law with regard to position of the partners during the existence of the firm. Only upon dissolution of the partnership, the property will be distributed as per their share in the partnership firm after satisfying the liabilities from their respective shares. At the risk of repetition, I am to state that absolutely there is no dispute that during the existence of the firm, the property vest with the firm. Every partner has an interest in the property of the partnership. This is the scheme of the partnership Act.

16. Now, an incidental question that arises is that merely on the basis of the scheme of the Indian Partnership Act, whether the petitioners can contend that they are not liable to pay stamp duty under Article 55-D(i) of the Indian Stamp Act, 1899.

17. It would be more relevant to extract here the provisions contained in Article 55-A of the Stamp Act, 1899 which read as under:-



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55. A. Release, that is to say, : One rupee for every Rs.100 or any instrument (not being part thereof of the market such a release as is provided value of the property which is for by Section 23-A or a under release release referred to in clauses B, C and D of this article Minimum stamp duty is whereby a person renounces reduced to Rs.25,000/- by a claim upon another person G.O.Ms.No.125, C.T. & R (J1), dated the 30th September, or against any specified 2013] property

18. Article 55-D was incorporated by way of amendment by the State of Tamil Nadu through fiscal legislation – Tamil Nadu Act 1 of 2000 which reads as under:

55. D. Release of right in favour of partners - : Three rupees for every Rs.100.- or part thereof of the market value of the immovable property which is the subject matter of release

(i) A release of right by a partner or partners in favour of other partners relinquishing his or their rights over the immovable property when the release is between family members who constitute the partnership or when the property is movable property

(ii) when such release is between partners who are not family members

(a) Rupees Eight for every Rs.100/- or part thereof of the market value of the immovable property which is the subject matter of release when such property is situated within the Chennai Metropolitan Planning Area and the Urban agglomeration



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of Madurai, Coimbatore, Salem and Tiruchirappalli and the City of Tirunelveli.

(b) Eight rupees for every Rs.100/- or part thereof of the market value of the immovable property which is the subject matter of release, when such property is situated in other areas.

Explanation.- For the purpose of this Article, the word “family” shall have the same meaning as defined in the Explanation to Article 58.

The above said amendment was brought in w.e.f. 06.03.2000 which still holds the field good and the same has not been put to challenge by anybody till date.

19. In view of the State Amendment brought into the Indian Stamp Act, 1899, this court is of the opinion that stamp duty required to be paid on the release deeds should be as per Article 55-D(i) alone. The contention of the learned counsel for the petitioners that Article 55-A would apply has no legs to stand as a careful perusal of the provision in Article 55-A would make it clear that for release other than a release referred to in clauses B, C and D of Article 55-A, the stamp duty payable would be Rs.25,000/- and not for the other release. When a document falls within any of clauses B, C and D of Article 55-A, then the stamp duty required to be paid would be as per Article 55-D(i). A careful reading of the recitals in each of the deeds in question would make it



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clear that it is nothing but a release of right by two of the partners in favour of the other partner relinquishing their rights over the immovable property. Though transactions were between the family members who constitute the partnership, such transactions would certainly come under the purview of Article 55-D(i) alone. Therefore, the contention of the learned counsel for the petitioners that Article 55-A alone would apply to the deeds in question cannot be countenanced for the simple reason that the court cannot supplant the wisdom of legislature with its wisdom or give any purposive interpretation on the fiscal legislation which was brought into by way of State Amendment through Tamil Nadu Act 1 of 2000 to the Parent Act, viz., Indian Stamp Act, 1899 w.e.f. 06.03.2000. As long as such amendment was not challenged, it cannot be argued that such amendment would not apply to the facts of the present cases.

20. No doubt, as per the scheme of the Indian Partnership Act, 1899, till the dissolution is effected and shares have been determined, the property vest with the partnership firm. But, when the Special Act has been introduced by way of State Amendment through fiscal legislation as to the nature of stamp duty to be payable on the release, now, taking advantage of the scheme of the Indian Partnership Act, it cannot be said that the registering authority ought not to have made a demand for deficit of stamp duty and penalty as per fiscal legislation. Though this court has taken note of certain discriminations in



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computing the stamp duty as far as the release by a partner or partners in favour of other partners relinquishing his or their rights over the immovable property after dissolution of partnership and partition of the property held by the firm, such discriminations cannot be a ground at this stage to interfere with the impugned orders, unless suitable amendment is made in this regard.

21. Article 46-B which was substituted by Tamil Nadu Act 1 of 2000, w.e.f. 06.03.2000 reads as under:-

46. Partnership -

A.

..... ..

B. Dissolution of -

(ii) when such dissolution involves partition of immovable parties of a firm among the partners, who are not family members

(a) Seven rupees for every Rs.100/- or part thereof of the market value of the immovable property dealt with in such deed of dissolution, when such property is situated within the Chennai Metropolitan Planning Area and the Urban agglomeration of Madurai, Coimbatore, Salem and Tiruchirappalli and the City of Tirunelveli.

(b) Seven rupees for every Rs.100/- or part thereof the market value of the immovable property dealt with in such deed of dissolution when such property is situated in other areas



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(ii) when such dissolution involves partition of immovable properties of the firm among the partners who are family members or when such dissolution involves partition of movable properties : One rupee for every Rs.100/- or part thereof of the market value of the property which is under partition.

Explanation.- For the purpose of this Article, the word “family” shall have the same meaning as defined in the Explanation to Article 58.

(iii) In any other case One hundred rupees.

22. The discriminations noted by this court in computing the stamp duty payable on such release are as follows:-

(a) Even for adjustments or release of any share, stamp duty payable is three rupees for every Rs.100/- or part thereof of the market value of the immovable property which is subject matter of release.

(b) Whereas Article 46-B (ii) which has been substituted by Tamil Nadu Act 1 of 2000 w.e.f. 06.03.2000, when dissolution involves partition of immovable properties of a firm among the partners who are family members, stamp duty payable would be only one rupee for every Rs.100/- or part thereof of the market value of the property which is under partition. As a matter of fact, if only there is dissolution and shares have been worked out and allotted to the respective partners, there would be creation or extinguishing of rights of the parties. For that minimum stamp duty is stipulated. Whereas for mere



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adjustment among the partners of the firm who are family members, higher stamp duty at the rate of 3% i.e., three rupees for every Rs.100/- or part thereof of the market value of the property which is the subject matter of release, is charged under Article 55-D(i) which in the opinion of this court is a discrimination. Therefore, it is for the legislature to take note of such discrimination and make suitable amendment to set right the discrimination in the payment of stamp duty chargeable for two transactions in respect of property of the partnership.

Point No.2:

23. The orders impugned in the writ petitions have been passed impounding the documents by invoking the powers Under Section 33 of the Indian Stamp Act, 1899 and thereafter, orders have been passed under Section 40 of the Registration Act. Orders have been passed merely on the basis of the fact that stamp duty have not been paid on the market value and deficit stamp duty and penalty was directed to be paid on the basis of the guideline value.

24. It is relevant to note that the very procedures adopted by the registering authorities in impounding the documents were not in accordance with law.

25. In the case of **Govt. of Uttar Pradesh v. Mohammad Amir Ahmad Khan**, [AIR 1961 SC 787] the Hon'ble Supreme Court has held as under:-



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“5. After an inordinately long delay, the Collector determined the amount of duty payable and impounded the document. Power to impound is given in Section 33 of the Act. Under that section any person who is a Judge of is in-charge of a public office before whom an instrument chargeable with duty is produced or comes in the performance of his functions is required to impound the instrument if it appears to him not to be duly stamped. The question is does this power of impounding arise in the present case? The instrument in dispute was not produced as a piece of evidence nor for its being acted upon e.g. registration, nor for endorsement as under Section 32 of the Stamp Act but was merely brought before the Collector for seeking his advise as to what the proper duty would be. The words “every person... before whom any instrument... is produced or comes in the performance of his functions” refer firstly to production before judicial or other officers performing judicial functions as evidence of any fact to be proved and secondly refer to other officers who have to perform any function in regard to those instruments when they come before them e.g. registration. They do not extend to the determination of the question as to what the duty payable is. They do not cover the acts which fall within the scope of Section 31, because that section is complete by itself and it ends by saying that the Collector shall determine the duty with which, in his judgment, the



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instrument is chargeable, if it is chargeable at all. Section 31 does not postulate anything further to be done by the Collector. It was conceded that if the instrument is unexecuted i.e. not signed and the opinion of the Collector is sought, he has to give his opinion and return it with his opinion to the person seeking his opinion. The language in regard to executed and unstamped documents is no different and the powers and duties of the Collector in regard to those instruments are the same, that is, when he is asked to give his opinion, he has to determine the duty with which, in his judgment, the instrument is chargeable and there his duties and powers in regard to that matter end. Then follows Section 32. Under that section the Collector has to certify by endorsement on the instrument brought to him under Section 31 that full duty has been paid, if the instrument is duly stamped, or it is unstamped and the duty is made up, or it is not chargeable to duty. Under that section the endorsement can be made only if the instrument is presented within a month of its execution. But what happens when the instrument has been executed more than a month before its being brought before the Collector? Section 31 places no limitation in regard to the time and there is no reason why any time limit should be imposed in regard to seeking of opinion as to the duty payable.” [Emphasis supplied]



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26. From the above dictum, it is very clear that the powers under Section 33 of the Indian Stamp Act, 1899 does not extend to the determination of the question as to what the duty payable is? It is relevant to note here that if the registering authority while registering any instrument of conveyance, exchange, gift, release of benami right or settlement, has reason to believe that the market value of the property which is the subject-matter of conveyance, exchange, gift, release of benami right or settlement, has not been set forth in the instruments, he may, after registering such instrument, refer the same to the Collector for determination of the market value of such property and the proper duty payable thereon.

27. This court is, therefore, of the view that if at all the registering authority has reason to believe that any instrument presented for registration do not contain true market value of the property which is the subject matter of instrument, then the registering authority has to refer the same to the Collector only for determination of the market value after registering the instrument. Thereafter, it is for the collector to determine the market value as per the rules in this regard.

28. On the contrary, in the instant cases, at the instance of the 3rd respondent registering authority, the 2nd respondent-District Registrar invoking power under Section 33 of the Indian Stamp Act, 1899 demanded deficit stamp



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duty and penalty on the basis of the guideline value of the properties.

29. It is relevant to note here that the guideline value is only a guiding factor and it cannot be the real value or in other words, the guideline value fixed by the registering department is not final but only a *prima facie* rate prevailing in an area. The term “market value” has not been defined in the Indian Stamp Act, 1899. It is, however, settled law that 'market value' of the property shall be estimated to be the price which such property would have fetched or would fetch if sold in the open market on the date of execution of any instrument. The guideline value fixed by the registration department, as already stated, is not final it is only a *prima facie* rate prevailing in an area. It is always open to a person seeking registration of a instrument to prove actual value of the property in the particular area which is the subject-matter of such instrument. The guideline values fixed and supplied to registration department were intended merely to assist them to ascertain *prima facie* whether the market value has been truly set forth in the instrument. The guideline values of the properties cannot be taken as substitute for market value or the guideline values will not foreclose the enquiry of the Collector under Section 47-A of the Act. The guideline value are prepared based on data gathered broadly with reference to classification of lands, grouping of lands and the like. Therefore, the guideline value fixed by the authorities cannot beheld to be the exact market value.



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30. No doubt, as far as release by a partner or partners of a partnership firm is concerned, who are family members, the stamp duty payable would be under Section 55-D(i). However, without ascertaining the market value of the property which is the subject-matter of release deed, by fixing the market value of such property, the registering authority cannot levy stamp duty and penalty on the basis of the guideline value of the property in that particular area. While registering the instrument, if at all the registering officer has reasons to believe that the market value of the subject-matter of the instrument, after registering such instrument, he ought to have referred the matter to the Collector for determination of the market value of such property for the purpose of proper stamp duty payable thereon. It is relevant to note here that while determining the market value the collector is required to provisionally determine the market value by taking into consideration various factors mentioned in the Tamil Nadu Stamp (Prevention of Undervaluation of Instruments) Rules, 1968 and not merely the guideline value.

31. Rule 5 of the Tamil Nadu Stamp (Prevention of Undervaluation of Instruments) Rules, 1968 provides for guidelines for determination of market value which reads as under:-

“5. Principles For Determination Of Market Value:- The Collector shall, as far as possible, have also



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regard to the following points in arriving, at the provisional market value,-

(a) In the case of lands-

(i) classification of the land as dry, manavari, wet and the like;

(ii) classification under various tarams in the settlement register and accounts;

(iii) the rate of revenue assessment for each classification;

(iv) other factors which influence the valuation of the land in question;

(v) points, if any, mentioned by the parties to the instrument or any other person which requires special consideration;

(vi) value of adjacent lands or lands in the vicinity;

(vii) average yield from the land, nearness to road and market, distance from village site, level of land, transport facilities, facilities available for irrigation such as tank, wells and pumpsets;

(viii) the nature of crops raised on the land; and

(ix) the use of land, domestic, commercial, industrial or agricultural purposes and also the appreciation in value



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when an agricultural land is being converted to a residential, commercial or an industrial land.

(b) In the case of house sites-

- (i) the general value of house sites in the locality;
- (ii) nearness to roads, railway station, bus route;
- (iii) nearness to market, shops and the like;
- (iv) amenities available in the place like public offices, hospitals and educational institutions;
- (v) development activities, industrial improvements in the vicinity;
- (vi) land tax valuation of sites with reference to taxation records of the local authorities concerned;
- (vii) any other features having a special bearing on the valuation of the site; and
- (viii) any special feature of the case represented by the parties.

(c) In the case of buildings-

- (i) type and structure;



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- (ii) locality in which constructed;
- (iii) plinth area;
- (iv) year of construction;
- (v) kind of materials used;
- (vi) rate of depreciation;
- (vii) fluctuation in rates;
- (viii) any other features that have bearing on the value;
- (ix) property tax with reference to taxation records of local authority concerned;
- (x) the purpose for which the building is being used and the income if any, by way of rent per annum secured on the building; and
- (xi) any special feature of the case represented by the parties.

(d) Properties other than lands, house sites and buildings-

- (i) the nature and condition of the property;
- (ii) purpose for which the property is being put to use; and
- (iii) any other special features having a bearing on the valuation of the property.”

32. On a careful perusal of the principles set out in the said rule, what is

sine qua non is - grant of opportunity of being heard after taking into account



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various factors and also recording evidence, value has to be fixed, but that has not been done in the instant cases. Before arriving at final value, the collector has to pass an order provisionally determining the market value of the property and the duty payable as per Rule 6 of the Tamil Nadu Stamp (Prevention of Undervaluation of Instruments) Rules, 1968. After hearing the objections, he shall pass final order as per Rule 6 of the Tamil Nadu Stamp (Prevention of Undervaluation of Instruments) Rules, 1968. Therefore, the authorities without following such mandatory procedures cannot simply take into account the guideline value as market value and demand deficit stamp duty and penalty. Though, as already held herein above, the authorities were right in holding that the provision under Article 55-D(i) of the Indian Stamp Act would only attract for stamp duty and charges payable on the release deeds in question, the market value was not determined by the Collector as required under the Act. Such view of the matter, this court is of the view that the orders impugned in the writ petitions demanding stamp duty and penalty on the basis of the guideline value without determining the market value of the properties cannot be sustained in the eye of law. The orders impugned in the writ petitions are liable to be set aside. The writ petitions succeed accordingly.

In the result, the writ petitions are allowed. The orders of the 1st



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respondent impugned in the writ petitions dismissing the revision petitions filed by the respective petitioners confirming the orders of the 2nd respondent demanding the stamp duty and penalty are set aside. The 3rd respondent is directed to register the release deeds presented by the respective petitioners, if the same are otherwise in order, and refer the same to the Collector concerned under Section 47-A of the Indian Stamp Act and the Collector concerned shall, on such reference, determine the market value of the respective properties after following the due procedures in this regard. The Collector shall pass appropriate orders on the references so made to him for recovery of deficit stamp duty, taking note of the true market value of the property on the date of presentation of the documents for registration. The inquiry under Section 47-A of the Indian Stamp Act, 1899 shall be completed within the time limit stipulated in the rules made thereunder. No costs. Consequently, connected WMPs are closed.

Index : yes / no
Neutral Citation : yes
Speaking Order
kmk

20..06..2024

To

1.The Chief Controlling Revenue Authority & Inspector General of
Registration, Chennai 600 028.

2.The District Registrar, District Registration Office,Coonoor Road,



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Udhagamandalam 643 001.

3.The Joint Sub Registrar-I, Udhagamandalam 643 001.

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N.SATHISH KUMAR.J.,

kmk

Pre Delivery Common Order
in
Writ Petition Nos.28854, 28856 & 28857 of 2022

20..06..2024