IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 01.02.2024
PRONOUNCED ON : 23.04.2024

CORAM:

THE HONOURABLE MR. JUSTICE **P.VELMURUGAN**

W.P.No.33487 of 2023 and
W.M.P.No.33325 of 2023

1. S.V.Ranga Parthasarathy
2. S.Radha @ Radha Lakshmi
3. S.V.Anil Kumar
4. Raghuram Samudrala Venkat
5. S.V.Sunil Kumar ...Petitioners

vs.

1. The Inspector General of Registration
   Department of Registration,
   No.100, Santhome High Road,
   Forshore Estate, Chennai – 600 004.

2. The District Registrar (Administration)
   Office of the District Registrar,
   Chennai South, Chennai.

3. The Sub-Registrar
   Joint Sub-Registrar – I,
   South Chennai, Chennai. ...Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying for the issuance of Writ of Certiorarified Mandamus to call for the records of the first respondent in his proceedings in D.Dis No.24622/P1/2021 dated 19.09.2023, quash the same and consequently to direct the respondents to register the document dated 09.11.2020 in P.No.508 of 2020 on the file of the Sub Registrar, Joint Sub Registrar – I, South Chennai, Chennai.

For Petitioners : Mr.M.L.Ramesh

For Respondents : Mrs.V.Yamunadevi,
Special Government Pleader

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ORDER

The writ petition has been filed to quash the proceedings of the first respondent in his proceedings in D.Dis No.24622/P1/2021 dated 19.09.2023 and consequently to direct the respondents to register the document dated 09.11.2020 in P.No.508 of 2020.

2 It is the case of the writ petitioners that originally the properties situated at Ekkattuthangal, Guindy Taluk, in R.S.No.172, T.S.No.120, Block No.3, measuring an extent of two grounds and two thousand and seventy three square feet (6873 sq.ft.) in plot No.1A, Door No.6, Poomagal

3rd street, Ekkattuthangal was owned and possessed by one C.Nandagopal and he sold the same to the second petitioner, one K.Seshadri and one Andal, mother of the first petitioner, mother-in-law of the second petitioner and grandmother of the petitioners 3 to 5 under registered sale deed dated 27.07.1981 in Doc.No.2053 of 1981. Similarly the property situated at Ekkattuthangal, Guindy Taluk in R.S.No.172, T.S.No.120, Block No.3 measuring an extent of one ground and five hundred and forty four sq.ft. (2944 sq.ft.) now in plot No.1, Door No.6, Poomagal 3rd street, Ekkattuthangal, Chennai, was originally belonged to one C.Nandagopoal and he had sold the same to one N.G.Jagannathan under registered Doc.No.2051 of 1981 and he sold the same to the second petitioner, one K.Seshadri and one S.Andal under registered sale deed dated 19.01.1983 in Doc.No.144 of 1983. Therefore the second petitioner, K.Seshadri and S.Andal had become the joint owners of the entire extent of 9817 square feet of land and they had purchased jointly in their individual names out of their own personal source and thereby they had become joint owners of the said property`.

3 The second petitioner and the said Seshadri had started a partnership firm in the year 1980 in the name and style of M/s.Unitech Engineering Industry. Thereafter S.Andal was also inducted as a partner in the year 1982 and the property was leased for the said business. Thereafter in the year 2001 the said S.Andal died intestate leaving behind her children namely the first petitioner, S.V.Rajagopal, Ramadevei, Yashoda Mohan, S.V.Vijayaraghava @ Vijay and A.Subashree. As the said S.Andal died intestate, her one third share in the joint properties were succeeded by her above said legal heirs and the property never vested with the partnership firm and hence the said legal heirs released their shares in the property to the first petitioner by Doc.No.7754 of 2019 dated 08.07.2019. Further the said K.Seshadri had also released his one third share in the properties in favour of the second petitioner herein under registered release deed dated 24.10.2019 in Doc.No.11765 of 2019 on the fie of the Joint Sub-Registrar, Chennai South. Thus, the petitioners 1 and 2 had become joint owners of the properties equally and since they have become old, they executed a settlement deed jointly settling the properties in favour of their children namely the petitioners 3 to 5 in P.No.508 of 2020 on the file of the Sub-

Registrar I, Chennai South, but the third respondent referred the said document under Section 58(a) (ii) (A) of the Stamp Act stating that the settlement is not between the family members since the property belonged to the partnership firm namely M/s.Unitech Engineering Industry and insisted the petitioners to pay difference of Stamp duty of Rs.22,77,090/-.

4 The third respondent also issued show cause notice, for which, the petitioners 1 and 2 submitted their explanation on 12.12.2020 stating that the properties never vested with the partnership firm, but it only belongs to the individual partners. The document mentioned property was only used for the purpose of business on lease and the property was not transferred under the provisions of Transfer of property Act and when the property was purchased by investing their individual money, not from the firm money, the determination of the third respondent is absurd. Even otherwise, the firm got dissolved on 02.11.2020 and therefore the property would not vest with the firm as one of the co-sharers K.Seshadri had released his share in favour of the second petitioner and the Andal's share also after her death released by her legal heirs in favour of the first petitioner.

5 The second respondent had passed the order dated 25.03.2021 in Na.Ka.No.11196/A1/2021 confirming the order of the third respondent dated 09.11.2020 in Na.Ka.No.1/2020 and aggrieved against the same the petitioners filed an appeal before the first respondent and since the same was not heard for a long time, the petitioners filed writ petition in W.P.No.17227 of 2023 and based on the directions issued by this Court on 12.06.2023 to hear the petitioners' appeal, the first respondent after issuing notice, passed its orders in D.Dis.No.24622/P1/2021 dated 19.09.2023, confirming the order of the second respondent, against which present writ petition has been filed.

6 The third respondent filed its counter stating that the petitioners 1 and 2 presented the settlement document in question for registration, the registering officer opined that it should be treated as settlement under Article 58(a)(ii) of the Indian Stamp Act, 1989, and accordingly impounded the same by forwarding to the District Registrar Chennai (South) for further action. The District Registrar in the proceedings under Section 40 of the Indian Stamp Act, considering the fact that the property stands in the name of the partnership firm, classified the document as a settlement in favour of Non-family members falling under Article 58(a)(ii) of the Indian Stamp Act, 1899 and passed the order to pay deficit stamp duty of Rs.22,77,090/- and penalty of Rs.2,910/- and the first respondent also in an appeal filed by the petitioners, after affording due opportunity of hearing, passed the order in No.24622/P1/2021 dated 19.09.2023 confirming the orders of the second respondent.

6.1 Section 48 of the Indian Stamp Act provides for considering the property as the asset of the firm until the same are allotted in pursuance of the dissolution. Page 4 of the document in question itself states that "whereas this property with superstructure was shown as the asset of Unitech Engineering Industry, a Partnership firm run by the second settlee namely Mrs.Radha S alias Radhalaksmi S, Mr.K.Seshadri and Late.S.Andal". But, curiously the petitioners in their affidavit have stated that 'where the partnership had been dissolved and the partners have taken the equal share of the property and dealt with the same. Therefore if the property was never vested with the partnership firm as claimed by the petitioners, there could have been no necessity for the partners to divide the property as stated by writ petitioners. Hence it is clear that the property was vested in the partnership firm. The division bench of this Court in the decision reported in AIR 1970 Mad 5, has held that when a partner brings some of his assets with an intention to treat the same as partnership asset, by virtue of Section 14 of the Partnership Act, such property could be thrown into the partnership stock without any formal document so as to make it the property of the firm.

6.2 The release deed executed by the legal heirs of Andal in favour of the first petitioner, it is to be noted that they were not the partners in the firm and they only released their right as the legal heirs of the deceased Andal in the one third of the property owned by the Andal in favour of the first petitioner and hence it was rightly classified under Article 55A of the Indian Stamp Act, but, the release deed executed by K.Seshadri, who was one of the partners in favour of the other partner viz the second petitioner and hence it was classified under Article 55(D)(ii) of the Indian Stamp Act, 1899 as a 'release of right in favour of a partner who is not a family member.

6.3 In the deed of dissolution dated 02.11.2020 executed between first and second petitioners nothing has been stated regarding settlement of accounts as regards the property of the firm and hence in the absence of settlement of accounts in tune with Section 48 of the Indian Partnership Act, 1932, the claim of the petitioners that the property fell to their share is devoid of merits.

6.4 Once the property is brought into the stock of the firm, it constitutes the property of the firm regardless of its mode of acquisition and this legal position has been emphasised in the decision of the Hon'ble Supreme Court reported in ***1993 SCR (1) 58*** and the relevant portion is extracted hereunder:

> "*Regardless of its character the property brought into the stock of a firm or acquired by a firm during its subsistence for the purpose and in the course of its business shall constitute*

the property of the firm unless the contract between the partners provides otherwise.

6.5 The deed of dissolution dated 02.11.2019 which is engrossed on stamp paper of Rs.300/-, contrary to the claim of the writ petitioners and it does not whisper anything about dividing of property in equal share between the partners. If the same had provided for dividing the property in equal share as stated by the writ petitioners, the deed would have attracted much more stamp duty under Article 46B(ii) of the Indian Stamp Act, 1899.

6.6 Further, the writ petitioners who all along claimed that the property does not belong to the partnership firm, in their own affidavit has stated that upon dissolution of the partnership firm, the property has been divided between the partners in equal shares. Therefore from the above it is clear that the property was vested with the partnership firm.

7 Learned counsel for the writ petitioners would submit that originally the properties were purchased by the second petitioner along with one K.Seshadri and one Andal jointly in the year 1981 and 1983 and 2nd petitioner and the said K.Seshadri started a Partnership Firm in which Andal also joined as partner. The properties jointly purchased was leased to the firm for its business and the said Andal died on 27.10.2001 intestate. Thereafter the legal heirs had succeeded the estate and all the legal heirs had released their respective shares in these properties in favour of the first petitioner, who is son of the deceased Andal. Thereafter one of the partners K.Seshadri had released his share in the properties in favour of the second petitioner and thereby 1st and 2nd petitioners had become joint owners of the properties. The partnership firm was dissolved by a dissolution deed dated 02.11.2020.

7.1 The learned counsel further contended that at any point of time, the properties were not purchased by the partnership firm or out of money earned from the partnership firm. The properties were purchased by the individuals out of their own money and later the property was used to carry out the business. After dissolution of the partnership firm, the properties came into the hands of the petitioners since already the other legal entities released their rights in the property. Therefore the first and second petitioners are become absolute owners of the properties and hence the property never vested with the partnership firm.

7.2 The document mentioned property was only used for the purpose of business on lease and the property was not transferred under the provisions of Transfer of property Act and when the property was purchased by investing their individual money, not from the firm money, the determination of the third respondent that the property belong to the partnership firm is absurd. Even otherwise, the firm got dissolved on 02.11.2020 and therefore the property would not vest with the firm as one of the co-sharers K.Seshadri had released his share in favour of the second petitioner and the Andal's share also after her death released by her legal heirs in favour of the first petitioner.

7.3 The first respondent without any documents or basis, had come to the conclusion, that the property is belong to the partnership firm and passed the impugned order, which is not sustainable in law and the same is liable to be quashed.

8 Learned Special Government Pleader for the respondents would submit that Section 48 of the Indian Stamp Act provides for considering the property as the asset of the firm until the same are allotted in pursuance of the dissolution. Page 4 of the document in question itself states that “whereas this property with superstructure was shown as the asset of Unitech Engineering Industry, a Partnership firm run by the second settlee namely Mrs.Radha S alias Radhalaksmi S, Mr.K.Seshadri and Late.S.Andal”. But, curiously the petitioners in their affidavit have stated that 'where the partnership had been dissolved and the partners have taken the equal share of the property and dealt with the same. Hence it is clear that the property was vested in the partnership firm.

8.1 In the deed of dissolution dated 02.11.2020 executed between first and second petitioners nothing has been stated regarding settlement of accounts as regards the property of the firm and hence in the absence of settlement of accounts in tune with Section 48 of the Partnership Act, 1932, the claim of the petitioners that the property fell to their share is devoid of merits.

8.2 Once the property is brought into the stock of the firm, it constitutes the property of the firm regardless of its mode of acquisition and this legal position has been emphasised in the decision of the Hon'ble Supreme Court reported in ***1993 SCR (1) 58*** and the relevant portion is extracted hereunder:

> "*Regardless of its character the property brought into the stock of a firm or acquired by a firm during its subsistence for the purpose and in the course of its business shall constitute the property of the firm unless the contract between the partners provides otherwise.*

8.3 Further, the writ petitioners who all along claimed that the property does not belong to the partnership firm, in their own affidavit has stated that upon dissolution of the partnership firm, the property has been divided between the partners in equal shares. Therefore from the above it is clear that the property was vested with the partnership firm.

9 Heard the learned counsel on either side and perused the materials available on record.

10 The grievance of the writ petitioners are that the document presented by them were registered and they were asked to pay the deficit stamp duty stating that the property is belongs to the partnership firm and it is not the settlement between the family members. The explanation offered by the petitioners were not considered and the appeal was filed by the petitioners before the Inspector General of Registration under Section 47 (A) of the Registration Act. The first respondent, after due opportunity, passed the order, confirming the order of the second respondent, which is impugned in this writ petition.

11 It is the main contention of the writ petitioners that the property never vested with the partnership firm and in fact it was purchased by the individuals out of their personal income and there is no document to prove that the property belongs to the partnership firm.

12 Per contra, the learned Special Government Pleader for the respondent contended that since the property stands in the name of the partnership firm the registering authority impounded the same and insisted to pay the deficit stamp duty. Even though the partnership firm become dissolved, in the deed of dissolution dated 02.11.2020 executed between first and second petitioners, nothing has been stated regarding settlement of accounts as regards the property of the firm and hence in the absence of settlement of accounts in tune with Section 48 of the Indian Partnership Act, 1932, the contention of the petitioners that the property belong to the individuals is not acceptable.

13 This Court carefully perused the Deed of Partnership firm namely M/s.Unitech Engineering Industry and the subsequent Reconstitution of Partnership deeds reveal that nowhere it is stated that the property in dispute is an asset of partnership firm. It is seen that in page No.84 of the typeset filed by the writ petitioners viz. Reconstitution of Partnership deed dated 01.04.2002 where it is recited that the legal representatives of Andal namely S.V.Rajagopal, S.V.Vijayaragavachrlu, Ramadevi, Yasodha Mohan, Subashree have executed release deed on 01.04.2002 releasing their undivided share in the immovable property at No.8, Poomagal III Cross Street, Ekkaduthangal, Chennai – 600 097 and 20% share in the partnership firm M/s.Unitech Engineering Industry in favour of S.V.Rangaparthasarathy. The property originally was purchased by the individuals, out of their personal income and later one of the owners namely Andal also joined in the partnership firm as one of the partners. The release deed dated 01.04.2002 is only executed by the legal heirs of the deceased Andal releasing their right in the undivided property in favour of the first petitioner and also rights of shares in the partnership firm, which does not mean that the property is belong to the partnership firm. None of the documents proves that the properties belong to the partnership firm. But the document produced by the writ petitioners shows that the property has been purchased under the individual capacity.

14 Further it is useful to refer Section 14 of the Partnership Act, 1932, which is extracted hereunder:

THE PROPERTY OF THE FIRM.

Subject to contract between the partners, the property of the firm includes all property and rights and interest in property originally brought into the stock of the firm, or acquired, by purchase or otherwise, by or for the firm for the purposes and in the course of the business of the firm, and includes also the goodwill of the business. Unless the contrary intention appears, property and rights and interest in property acquired with money belonging to the firm are deemed to have been acquired for the firm.

15 In this case, there is no document between the parties showing that the disputed property belongs to the partnership firm. Therefore at any point of time, the property does not cover either under the Deed of Partnership or subsequent Reconstitution of Partnership Deeds.

16 Under these circumstances, this Court is of the view that the properties in dispute is not belong to the partnership firm and the impugned order is liable to be quashed.

17 For the foregoing observations and reasons, the writ petition stands allowed and the respondents are directed to register the Settlement Deed presented by the petitioners, if it is otherwise in order. No costs. Consequently connected miscellaneous petition is closed.

23.04.2024

Index: Yes/No
Neutral citation : Yes/No
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To

1. The Inspector General of Registration
   Department of Registration,
   No.100, Santhome High Road,
   Forshore Estate, Chennai – 600 004.

2. The District Registrar (Administration)
   Office of the District Registrar,
   Chennai South, Chennai.

3. The Sub-Registrar
   Joint Sub-Registrar – I,
   South Chennai, Chennai.

P.VELMURUGAN, J.,

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<u>Pre-Delivery Orders in</u>
<u>W.P.No.33487 of 2023 and</u>
<u>W.M.P.No.33325 of 2023</u>

23.04.2024