IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.06.2024

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

AND

THE HONOURABLE MR.JUSTICE C.KUMARAPPAN

W.A.No.544 of 2021

The Sub Registrar,
In the cadre of District Registrar,
Anna Nagar, Chennai – 600 040. ... Appellant

Vs.

Dr.Usha Dorairajan ... Respondent

Prayer: Writ Appeal filed under Clause 15 of Letters Patent to set aside the order dated 16.03.2009 made in W.P.No.4663 of 2007 passed by the learned Judge of this Court.

For Appellant : Mr.B.Vijay
Additional Government Pleader

For Respondent : Mr.M.Rajendhera Kumar

J U D G M E N T

[Judgment was delivered by **S.M.SUBRAMANIAM, J.**]

The writ appeal has been instituted challenging the order dated 16.03.2009 made in W.P.No.4663 of 2007.

2. The respondent / Sub Registrar in the writ petition is the appellant before us. The appellant / Sub Registrar issued a demand notice dated 29.01.2007 asking the respondent herein to pay the stamp duty on the family Settlement Deed executed by the son, daughter and grandchildren in favour of the grandparents.

3. As far as the son and daughter are concerned, admittedly, they are falling within the definition of 'family' under Article 58(a) Explanation. Therefore, the appellant has demanded deficit stamp duty with reference to the grandchildren, who executed the Settlement Deed in favour of their grandparents.

4. As far as the son and daughter are concerned they executed

Settlement Deed in favour of their parent, which did not attract further stamp duty. Therefore, the demand was restricted only to the grandchildren, who executed Settlement Deed in favour of their grandparents.

5. The learned Single Judge considered the Explanation to Article 58(a) of the Indian Stamp Act, 1899 and formed an opinion that "family" includes not only son and daughter but also the grandchildren. Accordingly, the demand notice was set aside by the Writ Court, which resulted in filing of the present writ appeal.

6. Mr.B.Vijay, the learned Additional Government Pleader appearing on behalf of the appellant would submit that the scope of the provision has been expanded by the Writ Court, which is impermissible and thus, the order passed in the writ petition is liable to be set aside.

7. The Explanation to Article 58(a), which is to be read in its letter and spirit and expanding its scope by adding the grandchildren would result in revenue loss to the 'State' and therefore, the order of the learned Single Judge is perverse and to be set aside.

8. Explanation to the Article 58 of the Schedule I to the Indian Stamp Act is 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.”*

9. The definition of a family mentioned under Article 58 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 appended to Article 45 of the Schedule 1 of the Indian Stamp Act. The executants of the document does not fall within the ambit of the word "family" as defined under the explanation of Article 58 of the Schedule I to the Indian Stamp Act, 1899.

10. The explanation appended to the Article 58 of the Schedule I to the Indian Stamp Act, 1899 clearly indicate that the very explanation is defined by the Legislature by using the word “means”. Therefore, 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. Though the learned counsel for the respondent has relied upon a judgment of this Court in the case of ***S.V.L.S.Ranga Rao Vs. The Secretary to the Government, Commercial Taxes (J1) Department and others*** reported in ***2009 (2) CTC 800***, the said judgment held to be no longer a good law by the Division Bench of this Court in a judgment reported in ***2014 (5) CTC 265*** in the case of ***T.Muthu Bala Vs. The Inspector General of Registration and another***, wherein, in para 19 of the said judgment, the Division Bench held as follows:

> “***19.*** *We, therefore, hold that the word "family" defined in the Explanation to Article 58(a) of Schedule -I, appended to Indian Stamp Act, 1899, would mean only such of those persons mentioned in the Explanation. Further, the definition to the word "family" found in Article*

58(a) of Schedule-I of the Indian Stamp Act, 1899, is exhaustive and not illustrative and it is applicable only to such of those persons indicated therein and it will not extend to other persons who do not form part of the definition "family". In the present case, since the settlement is in favour of great grandchild (great grand-daughter), the benefit of Explanation to Article 58(a) of Schedule-I of the Indian Stamp Act will not be applicable."

11. With reference to the facts of the case on hand, admittedly the demand notice was issued by the appellant / Sub Registrar only with reference to the execution of Settlement Deed by the grandchildren in favour of their grandparents. Since the grandparents are not falling under the definition "family" as defined under the Explanation of Article 58(a), the respondent is not entitled for the relief in the writ petition.

12. The Writ Court has interpreted the Explanation Clause beyond the scope, which resulted in revenue loss to the 'State'. Thus, we are inclined to

interfere. Accordingly the order under challenge dated 16.03.2009 passed in W.P.No.4663 of 2007 is set aside and the Writ Appeal stands allowed. However, there shall be no order as to costs.

[S.M.S., J.] **[C.K., J.]**
04.06.2024

Jeni
Index : Yes
Speaking order
Neutral Citation : Yes

S.M.SUBRAMANIAM, J.
and
C.KUMARAPPAN, J.

Jeni

W.A.No.544 of 2021

04.06.2024