IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON :19.08.2024

PRONOUNCED ON :29.08.2024

CORAM:

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

W.P.Nos.31202 and 31205 of 2018
and WMP.Nos.36401 and 36406 of 2018

W.P.No.31202 of 2018:
Anjali Devi

... Petitioner

vs.

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

2.The District Registrar,
Villupuram Registration District,
Office at Collector's Office Compound,
Villupuram – 605 602.

3.The Sub Registrar of Assurances,
Trichy Main Road,
Vikravandi,
Villupuram District – 605 652.

... Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, calling for the records of the 2nd respondent culminating in issuing of order No.4921/B1/2016-1, dated 21.06.2018 and the consequent certificate of recovery in No.4921/B1/2016, dated 13.08.2018 under Section 33A of Stamp Act and to quash the same.

For Petitioner : Mr.A.R.Ramanathan

For Respondents :Mr.B.Vijay
Additional Government Pleader

W.P.No.31205 of 2018:
Anjali Devi

... Petitioner

vs.

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

2.The District Registrar,
Villupuram Registration District,
Office at Collector's Office Compound,
Villupuram – 605 602.

3.The Sub Registrar of Assurance,
Trichy Main Road,
Vikravandi,
Villupuram District – 605 652.

... Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, calling for the records of the 2nd respondent culminating in issuing of order No.4921/B1/2017-2, dated 21.06.2018 and the consequent certificate of recovery in No.4921/B1/2016, dated 13.08.2018 under Section 80A of Registration Act and to quash the same.

For Petitioner : Mr.A.R.Ramanathan

For Respondents :Mr.B.Vijay
Additional Government Pleader

COMMONORDER

These two writ petitions are filed challenging the order passed by second respondent seeking the petitioner to pay Deficit Stamp Duty and registration charges payable under registered release deed executed by the petitioner's sisters in her favour, registered with 3rd respondent as document No.1003 of 2016, dated 30.03.2016 and consequential certificate issued by second respondent for recovery of alleged Deficit Stamp Duty and registration charges.

2. According to the petitioner, the property situated in S.No.77/1, in Mundiambakkam Village, originally belonged to her father viz., Shanmugam. He died on 07.02.1997 leaving behind the petitioner and two of her sisters viz., Lakshmi and Ramani and petitioner's brother Ganesan as his

legal heirs. It is claimed by the petitioner that two of her sisters viz., Lakshmi and Ramani executed a release deed on 30.03.2016 registered as document No.1003 of 2016 on the file of the 3rd respondent. At the time of registration, the necessary stamp duty was collected from the petitioner and the document was released. After release of the document, the second respondent based on directions issued by the first respondent passed an impugned order stating that the document shall be treated as a conveyance chargeable to stamp duty under Article 23 of Schedule (I) to Indian Stamp Act. The second respondent also issued a consequential certificate for collection of deficit stamp duty and registration charges treating the release deed executed by sisters as a deed of conveyance. Aggrieved by the same, the petitioner is before this Court.

3. Mr.A.R.Ramanathan, the learned counsel appearing for the petitioner submitted that when the original registered document was already released to the petitioner and the same was not in custody of the respondents, the second respondent was not justified in passing the impugned order directing the petitioner to pay deficit stamp duty as well as deficit registration charges. It is the specific contention of the learned counsel that only when the

original document is in the custody of the registering authority, he can invoke Section 33 (A) of Stamp Act and seek payment of deficit stamp duty and after release of the documents when the custody of the document is not available with him, he is not entitled to invoke Section 33(A) of Indian Stamp Act. In this regard, the learned counsel relied on the following judgments:

(i) ***Jupudi Kesava Rao Vs. Pulavarthi Venkata Subbarao and others*** reported in ***AIR (1971) SC 1070***;

(ii) ***Rashtrothana Parishat Vs. State of Karnataka and others*** reported in ***AIR (1992) Karnataka 388***;

4. The learned counsel for the petitioner further submitted that the 2nd respondent exercising the statutory power available under Section 33(A), without application of independent mind was carried away by the directions issued by the first respondent and therefore, the impugned order cannot be allowed to stand. The learned counsel further submitted that though against the impugned order, the petitioner has appeal remedy before the first

respondent, filing an appeal before the first respondent is only a formality, in view of the fact, the impugned order itself was made only as per the directions of the first respondent. Therefore, the learned counsel submitted that the appeal remedy available before the first respondent is not an effective one in the facts and circumstances of the case. Therefore, the petitioner was constrained to invoke the extraordinary jurisdiction of this Court.

5. Mr.B.Vijay, the learned Additional Government Pleader appearing for the respondents submitted that as per the recitals found in the document, the father of the petitioner viz., Shanmugam bequeathed the entire property in favour of his son viz., Ganesan. Hence, both the releasor and releasee had no pre-existing right at the time of execution of release deed. In such circumstances, the documents cannot be treated as a release deed and the same shall be treated as a conveyance for the purpose of levying stamp duty.

6. The learned counsel in this regard produced the directions issued by the first respondent to the second respondent dated 20.03.2017 which was also referred as Reference No.1 in the impugned order. The

learned Additional Government Pleader by taking this Court to the statement of object and reasons to Tamil Nadu Act 38 of 1987 which introduced Section 33(A) in the Parent Enactment, Indian Stamp Act, by way of amendment submitted that the very object of introduction of Section 33(A) of Indian Stamp Act was to give power to the District Registrar to recover Deficit Stamp Duty up to a period of three years from the date of registration of the document and therefore, the custody of the document was not an essential condition for exercise of power under Section 33(A) of Indian Stamp Act and the same can be exercised even after release of the document to the parties.

7. As far as the availability of alternative remedy of appeal before the first respondent is concerned, it is seen from the impugned order that the same was passed only as per the direction issued by the first respondent directing the second respondent to collect deficit stamp duty and registration charges treating the release deed executed by sisters of the petitioner as a deed of conveyance. Therefore, filing an appeal before the first respondent is only a formality and therefore, the said statutory remedy cannot be treated as an effective remedy for the petitioner. Hence, I hold that

the writ petition is maintainable in the facts and circumstances of the case, even though the remedy of appeal is available before the first respondent.

8. The learned counsel for the petitioner vehemently contended that when the original document is not available in the custody of the registering authorities, they are not entitled to invoke Section 33 (A) of Indian Stamp Act and direct the petitioner to pay Deficit Stamp Duty.

9. Section 33(A) of Indian Stamp Act reads as follows:

33-A. Recovery of deficit stamp duty.-

(1) Notwithstanding anything contained in section 33 or in any other provisions of this Act, if after the registration of any instrument under the Registration Act, 1908 (Central Act XVI of 1908), it is found that the proper stamp duty payable under this Act in respect of such instrument has not been paid or has been insufficiently paid, such duty or the deficit, as the case may be, may, on a certificate from the Registrar of the district under the Registration Act, 1908 (Central Act XVI of 1908) be recovered from the person liable to pay the duty, as an arrear of land revenue.

Provided that no such certificate shall be granted unless due inquiry is made and such person is given an opportunity of being heard:

Provided further that no such inquiry shall be commenced after the expiry of three years from the date of registration of the instrument.

(2) The certificate of the Registrar of the district under subsection(1) shall, subject only to appeal under sub-section(3), be final and shall not be called in question in any court or before any authority.

(3) Any person aggrieved by a certificate of the Registrar of the district under sub-section (1) may appeal to the Chief Controlling

Revenue Authority. Any such appeal shall be preferred within such time, and shall be heard and disposed of in such manner, as may be prescribed."

10. A perusal of the same would suggest that the said Section begins with a non obstante clause and it empowers the District Registrar to issue certificate for recovery of Deficit Stamp Duty against a person liable to pay the duty as arrears of land revenue, even after the registration of the instruments. The learned counsel for the petitioner by relying on the definition of the expression “instrument” under Section 2(14) of Indian Stamp Act submitted that unless the original instrument is available before the authority, they are not entitled to invoke Section 33(A) of Indian Stamp Act.

11. A perusal of Section 33-A of Indian Stamp Act extracted above, would make it clear that the District Registrar can take action for recovery of Deficit Stamp Duty by invoking Section 33(A) of Indian Stamp Act after registration of the documents, if it is found that the Stamp Duty paid under the document is insufficient. The second proviso to Section 33(A) empowers the District Registrar to recover the Deficit Stamp Duty up to three years from the date of registration of the instruments. Absolutely, there is no

necessity for the registering authority to keep the document in his custody for three years after registration. Further, it would be appropriate to refer to the statement of object and reasons for Tamil Nadu Act 38 of 1987 which introduced Section 33-A by way of amendment to parent legislation. The same reads as follows:

> *Section 47-A of the Indian StampAct, 1899 (Central Act II of 1899) as in force in this State provides that the deficit stamp duty payable on a document may be recovered from the person liable to pay duty upto two years from the date of registration, if the failure to collect the proper stamp duty was due to furnishing of incorrect information by the executant. But the Act does not provide for reclassification of documents already registered and collection of additional stamp duty consequent on such reclassification. Due to lack of such provisions a large number of misclassifications could not be acted upon and the deficit stamp duty could not be recovered. It is, therefore, proposed to insert a new Section 33-A in the Indian Stamp Act providing that the District Registrar may recover the deficit stamp duty upto a period of three years from the date of registration of the document and that the deficit duty may be recovered from the person liable to pay the duty as an arrear of land revenue.*

12. Therefore, it is clear that the object of introducing Section 33(A) of Indian Stamp Act is to empower the registering authority to collect correct Stamp Duty after reclassification of the documents which was registered under wrong classification. Therefore, the very object of introducing Section 33(A) of Indian Stamp Act is to empower the authorities to collect Deficit Stamp Duty after registration, by taking into consideration erroneous classification of the document. The provision also empowers the authorities to exercise such power after three years. Therefore, it is clear that the legislature in its wisdom never contemplated that the original documents should be in the custody of the authorities at the time of invoking power under Section 33(A) of Indian Stamp Act.

13. The learned counsel for the petitioner by relying on judgment reported in ***AIR 1971 (SC) 1070*** cited supra submitted that power under Section 33(A) of Indian Stamp Act can be exercised only if the original document is before the authority concerned. In the case law cited by the learned counsel for the petitioner, the Apex Court while considering the bar

under Section 35 of Indian Stamp Act held validation of unstamped or insufficiently stamped document under the provisions of Section 35 (a) of Indian Stamp Act could be done only if original instrument was before the Court. While considering the validation of the instrument under Section 35(a) of Indian Stamp Act, only the original instrument can be validated and copies of the documents cannot be validated by paying Stamp Duty together with penalty. Only if the original is validated by paying proper Stamp duty, the bar created under Section 35 of Indian Stamp Act will get lifted. Therefore, for the purpose of validation, the original is required before the Court.

14. As far as registering authority exercising a power under Section 33(A) of Stamp Act is concerned, the contents of the documents are already entered in the book No.1 of the registering authority. Based on the contents of the document, the registering authority can come to a conclusion with regard to the nature and character of the document and correct classification of the same. If it is found, document was not paid with proper Stamp Duty under correct classification or nomenclature, by exercising power under Section 33(A) the District Registrar can revisit the same and determine the correct stamp duty payable by placing the documents in the correct

classification or nomenclature. The authority concerned is empowered to exercise the power expressly after registration of the document within three years. The Section does not contemplate availability of the documents in the hands of the registering authority. Further, Section 33(A) introduced by the Tamil Nadu Amendment Act was not at all in statute book when the decision referred by the learned counsel for the petitioner was rendered. Therefore, the said decision is not useful to advance the case of the learned counsel for the petitioner.

15. The other decision relied on by the learned counsel for the petitioner in ***AIR (1992) Karnataka 388*** was rendered with reference to Section 46(A) of Karnataka Stamp Act. Section 46(A) of Karnataka Stamp Act simply authorised the Chief Control Revenue Authority or any other officer authorised by the State Government to collect Deficit Stamp Duty within two years from the date on which, the duty became payable. In that context, the Karnataka High Court held that the original document should be available before the authority for exercising power thereon. In the case on hand, having regard to the object and reasons of the the Tamil Nadu

Amendment Act and also the wordings used in Section 33(A) of Tamil Nadu Amendment, it is clear that Section 33(A) empowers District Registrar to exercise the power within three years from the date of registration of the document. When there is no occasion for the registering authority to keep the documents for three years from the date of registration, we can safely come to the conclusion that availability of original document before the authority was not at all contemplated by the Act. Therefore, the judgment of the Karnataka High Court relied on by the learned counsel for the petitioner is also not useful to advance his arguments.

16. In view of the discussions made earlier, I hold that the availability of the original document is not ***sine qua non*** for exercising power under Section 33(A) of Indian Stamp Act. The said Section begins with the non obstante clause and employment of the expression “after the registration of the instrument”, would make it clear that the Section does not contemplate availability of the document with the Registrar or retention of the documents by the Registrar for the purpose of recovery of the Deficit Stamp Duty. It only enables District Registrar to conduct an enquiry and issue certificate for collection of Deficit Stamp Duty as arrears of land revenue. In fact, this

Court in ***T.Paneer Selvam Vs. The Inspector General of Registration and others*** reported in ***2012(2) CTC 59 (MAD)*** held that documents need not be retained by the registering authority for the purpose of initiating proceedings under Section 33(A) of Indian Stamp Act. The registering authority by looking at the contents of the documents available in Book No.1 can take a decision, with regard to the classification or nomenclature of the document and decide about sufficiency or otherwise of the Stamp Duty payable. The availability of the original document before the authority is not at all necessary.

17. In view of the same, the contention raised by the learned counsel for the petitioner that proceedings initiated by the second respondent after release of the original registered document is not at all contemplated under Section 33(A) of Indian Stamp Act is not acceptable to this Court.

18. The impugned order was passed treating the release deed executed by sisters of the petitioner as a deed of conveyance mainly on the ground neither releasor nor releasee had any pre-existing right on the date of document. It is seen from the document in question, the subject matter of the

document originally belonged to the father of the petitioner viz., Shanmugam under registered partition deed dated 21.09.1963. As per the recitals in the document viz., Shanmugam executed a Will dated 11.02.1987 bequeathing the subject property in favour of his son Ganesan. Later on, Shanmugam died on 07.02.1997 and it is not in dispute that he had four children including petitioner. The above said Ganesan, Lakshmi and Ramani are the siblings of the petitioner. It is recited in the document, after death of Shanmugam, all of his four children have been in possession and enjoyment of the property treating the same as a family property. The sisters of the petitioner Lakshmi and Ramani executed a release deed releasing their 1/4th share each in favour of the petitioner for a consideration of Rs.1,00,000/- (each). Therefore, it is clear from the recitals found in the document that not with-standing execution of Will by Shanmugam, the four children of Shanmugam were jointly enjoying the property treating it as the family property. The Stamp Duty payable to a document has to be decided based on the recitals found in the document. When it is asserted by the parties to the documents that property was enjoyed by them in common and they released their undivided share in favour of the petitioner, there is no difficulty in coming to the conclusion that they released their share in the property in favour of another co-owner. Relying on the Will executed by Shanmugam, the first respondent came to the conclusion that only Shanmugam's son Ganesan has got right over the property and neither the releasor nor the releasee had any subsisting right on the date of execution of release deed. If releasor and releasee are not having any right, the document cannot even be treated as a conveyance deed as found by the first respondent. In the document after referring to the Will executed by Shanmugam, it is clearly mentioned that after his death, all the children are in possession and enjoyment of the property treating the same as a common property and two of the co-owners have released their undivided share in favour of one of the co-owners. As per the recital found in the document, it shall be treated as a release deed. While, holding so, this Court add a note of caution that any findings herein with regard to the nature of the documents will not affect the right of the above said Ganesan who is not a party to the document in question. Therefore, the order passed by the second respondent directing the petitioner to pay Deficit Stamp Duty treating the document as a conveyance deed under Article 23 of Schedule (I) of Stamp Act is not correct and the same is liable to be set aside.

19. In view of the discussions made earlier, the petitioner has paid proper stamp duty for the document registered before the 3rd respondent by treating the same as a release deed executed by two co-owners in favour of another co-owner and the same cannot be treated as a conveyance deed as held by the respondents 1 and 2. Therefore, the impugned order passed by the second respondent directing the petitioner to pay the Deficit Stamp Duty and deficit registration charges by treating the document as a conveyance is set aside and the writ petitions are allowed. No costs. Consequently, connected miscellaneous petition is closed.

29.08.2024

Index : Yes / No
Speaking order : Yes / No
Neutral Citation : Yes / No
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To
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No.100, Santhome High Road,

Chennai – 600 028.

2.The District Registrar,
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Office at Collector's Office Compound,
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S.SOUNTHAR, J.

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Pre-delivery order made in
W.P.Nos.31202 and 31205 of 2018

29.08.2024