BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 16.08.2024

CORAM :

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

W.P(MD)Nos.6338 & 6573 of 2019
and
W.M.P.(MD)Nos.5061 & 5266 of 2019

T.Azhagarsamy ... Petitioner in W.P.(MD)No.6338 of 2019
T.Kasthurirengarajan ... Petitioner in W.P.(MD)No.6573 of 2019

Vs.

1.The Inspector General of Registration,
No.100, Santhom High Road,
Chennai-600028.

2.The Special Deputy Collector (Stamps),
Madurai-625 020.

3.The District Registrar (Audit),
Periyakulam, Theni, Theni District. ... Respondents in both W.Ps.

COMMON PRAYER: Writ Petitions filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari, calling for the records relating to the impugned proceedings of the 2nd respondent in S.R.Nos.139/18 Theni, & 140/18 Theni, dated 28.03.2018 respectively and quash the same.

For Petitioners : Mr.K.Muthu Ganesa Pandian

For Respondents : Mr.M.Siddarthan,
Additional Government Pleader
(in both W.Ps.)

COMMON ORDER

The proceedings of the 2nd respondent, dated 28.03.2018 are under challenge in these Writ Petitions.

2.According to the petitioners, one Sivakumar, who is the son of the petitioner in W.P.(MD)No.6338 of 2019, had executed two gift deeds dated 28.11.2014 in favour of the petitioners vide Document Nos.8006/2014 and 8007/2014 respectively and the documents had also been registered by paying stamp duty of Rs.25,000/- as per G.O.(Ms)No.125, Commercial Taxes and Registration (J1) Department, dated 30.09.2013. After registration of the said documents, the 3rd respondent, vide proceedings dated 24.04.2017, ordered initiation of recovery proceedings for Document Nos.8006/2014 and 8007/2014 under Article 58a(ii) of the Stamp Act, claiming deficit stamp duty of Rs.25,08,336/- and Rs.50,41,704/- respectively. Based on the said audit objections, the 2nd respondent, vide proceedings dated 28.03.2018, issued Form-I under Rule 4 of Tamil Nadu Stamp (Prevention of Under Valuation of Instruments) Rules, 1968, seeking explanation from the petitioners regarding non-payment of stamp duty, which are impugned in these Writ Petitions.

3.The learned counsel appearing for the petitioners would submit that since the gift deeds had been executed between the family members, proper stamp duty, as per G.O.(Ms)No.125, Commercial Taxes and Registration (J1) Department, dated 30.09.2013, was already collected. Further, the very recitals in the documents itself indicate that the partnership has been dissolved and there was a partition among the partners and thereafter, the individual property had been settled in favour of the family members.

4.He would further submit that once the property has been allotted after the dissolution of the firm and the same has been dealt along with family members, still the property could not be considered as a firm property. What is the relevant is, the owner of the property at the relevant point of time. Therefore, the impugned order cannot be sustained and further, without any reasons, merely on the basis of audit objections, the proceedings under Section 47A of Stamp Act cannot be invoked. Hence, he prayed for setting aside the impugned order.

5.The learned Additional Government Pleader, by relying upon the counter affidavit filed by the 3rd respondent, would submit that the property is not an individual property and originally, it belonged to Thiruvengadam Ginning & Oil Mills, which is a partnership firm. Therefore, the audit objections are perfectly right and the partner of the partnership firm cannot claim that the firm property is an absolute property of him, though there is an existence of the partnership. Therefore, for the purpose of avoiding the stamp duty, the family relationship cannot be drawn between the settlor and settlee.

6.He would further submit that initially, these Writ Petitions were allowed by this Court vide order dated 26.04.2019, setting aside the impugned orders and the same is extracted hereunder:-

> *"Heard the learned counsel on either side.*
>
> *2.The subject matter of these Writ petitions pertains to execution of settlement deeds in favour of blood relatives. In such cases, the Government of Tamil Nadu has stated that the maximum stamp duty leviable will be Rs.25,000/-. In this case, the respondents have proceeded as if they are deeds of conveyance.*
>
> *3.In this view of the matter, the orders impugned in the Writ petitions stand quashed. The Writ petitions stand allowed, accordingly. No costs. Consequently, connected Miscellaneous petitions are closed."*

7.He would further submit that the said order has been challenged by the respondents in W.A.(MD)Nos.613 & 614 of 2020, where the respondents / appellants had taken an additional ground to the effect that the property of the partnership firm was dealt with. Therefore, the Writ Appeals have been allowed and the matter has been remitted back to this Court once again to decide the issue.

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

9.Now, the only issue for consideration is whether the firm's property has been dealt with or not. The respondents gave much reliance to the recitals in the settlement deed. The recitals in the settlement deed would indicate that the partnership firm existed among the family members has become non-existence and there was a partition and the properties had been apportioned among the family members. Pursuant to which, the partition settlement deed is also executed among the family members. Therefore, once the firm property has been divided among the partners allotting the properties to particular allottees, admittedly, the property stood in the name of the individuals.

10.In such view of the matter, merely on the fact that earlier the property was included in the stocks of the firm and later, it is divided among the partners, now, it cannot be said that the property cannot be gifted by the individual member of the family. When the property is allotted to the individual member, who in turn executed the settlement deed in favour of any of the family members, such member will fall within the ambit of the definition of 'Family' as defined under Article 58 of Indian Stamp Act. Now, the respondents cannot take a different view that the partnership property has been dealt with. Therefore, the very contention of the respondents cannot be sustained in the eye of law.

11.Further, merely based on the audit objections initiated after four years of the registration of the document, the proceedings under Section 47A of Stamp Act cannot be initiated. For initiation of the proceedings under Section 47A of Stamp Act at the time of registering the document, the Sub-Registrar ought to have formed an opinion that the property is under valued. Therefore, merely on the basis of audit objections, the proceedings under Section 47A of Stamp Act cannot be initiated.

12.In such view of the matter, I do not find any merits in the contention raised by the respondents. Therefore, the impugned orders are quashed and these Writ Petitions are allowed accordingly. No costs. Consequently, connected miscellaneous petitions are closed.

16.08.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes / No

Yuva

To

1.The Inspector General of Registration,
No.100, Santhom High Road,
Chennai-600028.

2.The Special Deputy Collector (Stamps),
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N.SATHISH KUMAR, J

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