IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 03.09.2025

Coram:

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.No.22478 of 2019
and
W.M.P.No.21879 of 2019
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Mr.S.Senthiel Kumar .. Petitioner

Vs.

1. The Sub-Registrar,
   Taluk Office campus,
   Government Garden,
   KatcheriRoad,
   Amburpettai,
   Vaniyambadi - 635 751.

2. The District Registrar,
   Integrated Building of Registration Department,
   Veppamara Street,
   Velppadi,
   Vellore-632 001.

3. The Inspector General of Registration,
   No.100, Santhome High Road,
   Chennai-600 028. .. Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus to call for the records of the first respondent leading to the impugned order dated 15.04.2019 and the consequential order and reference dated 23.05.2019 and 05.07.2019 respectively and quash the same and consequently direct the respondents to delete the entry made in the encumbrance certificate on the petitioner's property.

For petitioner : M/s.T.Dharani

For respondents: Mr.Stalin Abimanyu, Addl.G.P.

ORDER

This Writ Petition is filed praying for issuance of a Writ of Certiorarified Mandamus to call for the records of the first respondent leading to the impugned order dated 15.04.2019 and the consequential order and reference dated 23.05.2019 and 05.07.2019 respectively and quash the same and consequently direct the respondents to delete the entry made in the encumbrance certificate on the petitioner's property.

2. Learned counsel for the petitioner submitted that the petitioner is the owner of the property measuring about 338.50 Sq.Ft. acquired by way of release deed dated 27.12.2018, registered on the file of the first respondent. The said property is an ancestral property which devolved upon the petitioner's grandfather Mr.Govindaraj Mudaliar by way of partition deed, bearing Doc.No.2250 of 1934 and subsequent to his intestate death in the year 1960, his only son Mr.G.Srinivasa Mudaliar (petitioner's father) is the sole legal heir, who was in continuous possession and enjoyment of the property and was also paying property tax on the said property.

3. Learned counsel for the petitioner further submitted that the respondents have arrived at a conclusion by issuing the impugned order against the petitioner as if the property is family ancestral property. The petitioner and his 6 sisters, became the coparceners of the said property and acquired a right over the coparcenary property under the Hindu Succession Act and each one along with their father derived 1/8th of undivided common share in the coparcenary property. The petitioner's father Srinivasa Mudaliar and his six daughters, after receiving a sum of Rs. 7 lakhs from the petitioner, relinquished their undivided common share in the coparcenary property, i.e. 7/8th undivided common share to their only son and brother Mr.Senthil Kumar, being the petitioner herein, by way of a released deed bearing Doc.No.8000 of 2018, dated 27.12.2018, after paying the required stamp duty and registration fee of Rs.7,000/- and Rs.4,000/- respectively, thereby, the petitioner became the absolute owner of the property.

4. Learned counsel for the petitioner further submitted that the petitioner received the impugned order dated 15.04.2019 issued by the first respondent stating that only "family" property can be registered as release deed under the Registration Act and that the petitioner's property in Doc.No.8000 of 2018 is an ancestral property and could not be registered as release deed, but only as sale deed and called upon the petitioner to pay excess stamp duty at Rs.49,000/-

and registration fee at Rs.28,000/- within a period of 7 days and in the event of failure to pay, action would be initiated to recover the deficit stamp duty and registration fee. Thereafter, impugned order dated 15.04.2019 is passed without conducting due inquiry and without providing an opportunity of hearing and hence, the petitioner issued a legal notice dated 13.05.2019 to the respondents 1 to 3 apprising all the details regarding the nature of the petitioner's property being coparcenary property and that the same has been rightly registered as release deed and hence, the question of paying excess stamp duty and registration fee do not arise.

5. Learned counsel for the petitioner further contended that the impugned order is not sustainable, as the recitals in the release deed in Doc.No.8000 of 2018, dated 27.12.2018 clearly states that the instrument is executed by the sisters and the father, in favour of the petitioner (being son) who already holds a pre-existing right in the property and the instrument clearly falls under Article 55-A of the Schedule I of the Indian Stamp Act.

6. On the other hand, learned Additional Government Pleader appearing for the respondents submitted that the impugned order is sustainable and the petitioner has got no pre-existing right over the property and hence, the release deed in question has to be treated only as conveyance chargeable under Article 23 of Schedule-I to the Indian Stamp Act, since the release is made in

consideration of monetary payment. If the property is one of ancestral/HUF, any further alienation or encumbrance shall be made by the person in the capacity of "Kartha" of HUF. On a perusal of the release deed in question, it is clear that the property in question was devolved on the petitioner's father on the demise of the petitioner's grand-father and the petitioner's father sold a portion to third party. The property in question being solely belonged to the petitioner's father under Section 7 of the Hindu Succession Act and neither the petitioner, nor his siblings have any pre-existing right and as such, the release deed should only be treated as sale deed, since the petitioner paid the amount to the releasors including his father.

7. Hence, as contended by the respondents, if the petitioner pays necessary stamp duty, the respondents will initiate proceedings under Article 23 of Schedule-I to the Indian Stamp Act and the petitioner is entitled to participate in those proceedings, if initiated. The second respondent is a quasi-judicial authority to initiate action under Section 33-A of the Registration Act and also will take necessary action under Section 80-A of the Registration Act, to recover the deficit registration fee, after personally hearing the petitioner.

8. In view of the above stated legal position, if the second respondent initiates action, the petitioner is entitled to participate in the same and all the necessary proceedings be concluded within a period of 12 weeks from the date

of receipt of a copy of this order, after providing an opportunity of hearing to the petitioner and others who are all aggrieved. The time spent from the process of filing of this Writ Petition to till the date of taking necessary proceedings by the respondents, shall be excluded, as the petitioner has proceeded with time in the present writ proceedings. Necessary proceedings shall also be initiated under Section 33-A of the Registration Act and also under Section 80-A of the Registration Act to recover the deficit registration fee, if any after hearing the petitioner.

9. With the above observations and directions, this Writ Petition is disposed of. There shall be no order as to costs. Consequently, the miscellaneous petition is closed.

03.09.2025

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To

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M.DHANDAPANI, J

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