IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.02.2025

CORAM

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

Writ Petition No.33624 of 2022
&
W.M.P.No.33080 of 2022

1. Dr.K.Mani
   S/o.Kumarasamy

2. Dr.K.Dhanabackiam
   W/o.Dr.K.Mani ... Petitioners

Vs.

1. The District Registrar,
   Namakkal District.

2. The Joint-I Sub-Registrar,
   Office of Joint-I Sub-Registrar,
   Namakkal,
   Namakkal District. ... Respondents

Writ Petition filed under Article 226 of the Constitution of India seeking issuance of a Writ of Mandamus to direct the respondents to remove the entry insofar as deficit stamp duty under Section 47A(1) of Indian Stamps Act, mentioned in the Encumbrance Certificate relating to the partition deed dated 22.12.2006, registered in Doc.No.3099 of 2006 on the file of the Joint-I Sub-Registrar, Namakkal, with respect to the petitioners' property comprised in Old Survey No.485/4B of Namakkal Town, bearing T.S.No.64/1 & 2 of Block-24 of Ward – D by considering the petitioners' representation dated 25.11.2022.

For Petitioners : Mr.D.Vairamoorthy

For Respondents : Mr.B.Vijay
Additional Government Pleader

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O R D E R

This writ petition has been filed seeking issuance of a writ of mandamus directing the respondents to remove the entry made in the encumbrance certificate pertaining to the proceedings initiated under Section 47A(1) of the Indian Stamp Act [hereinafter referred to as 'the Act'] within the time frame fixed by this Court.

2. Heard Mr.D.Vairamoorthy, learned counsel for petitioners and Mr.B.Vijay, learned Additional Government Pleader appearing for respondents.

3. It is seen from records that seven persons as co-owners had entered into a partition through a partition deed dated 22.12.2006. This document was registered as document No.3099 of 2006. The petitioners were allotted 'A' schedule property described in the partition deed and according to the petitioners, they paid the stamp duty under Article 45(b) of the Act.

4. The further case of the petitioners is that the second respondent issued notice dated 09.02.2007 claiming deficit stamp duty by treating the partition deed dated 22.12.2006 as conveyance. The same was put to challenge before this Court in W.P.No.29416 of 2007 and this Court, by order dated 21.12.2009, was pleased to set aside the notice.

5. In the year 2016, the petitioners once again received a notice dated 28.09.2016 from the second respondent directing them to pay the deficit stamp duty of Rs.13,18,085/-. That apart, an entry was also made in the encumbrance certificate to the effect that proceedings under Section 47A(1) of the Act is pending and as per the audit report, the deficit stamp duty was sought to be recovered. The present writ petition has been filed for a direction to the respondents to remove this entry made in the encumbrance certificate.

6. In the considered view of this Court, there is no question of initiating proceedings under Section 47-A of the Act in a case where the parties have entered into a partition and there is no question of undervaluation since it is not a conveyance. Therefore, the only other alternative left is to initiate proceedings under Section 33-A of the Act

through which the deficit stamp duty can be recovered. However, this provision prescribes three years period of limitation and admittedly, no such proceedings were initiated. Thus, recovery of deficit stamp duty from the petitioners cannot be made and hence, the entry that has been made in the encumbrance certificate has to be necessarily cancelled.

7. In the light of the above discussion, there shall be a direction to the second respondent to cancel the entry made in the encumbrance certificate as if proceedings under Section 47-A of the Act is pending and this process shall be completed within a period of four (4) weeks from the date of receipt of a copy of this order. While cancelling the entry, this order can be given as the reference.

This writ petition is disposed of with the above direction. No costs. Consequently, connected miscellaneous petition is closed.

06.02.2025

Neutral Citation: Yes
Index: Yes
Speaking Order
gm

To

1.The District Registrar,
Namakkal District.

2.The Joint-I Sub-Registrar,
Office of Joint-I Sub-Registrar,
Namakkal, Namakkal District.

N.ANAND VENKATESH, J

gm

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(2/2)