IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23-10-2025

CORAM

THE HONOURABLE MR JUSTICE S. M. SUBRAMANIAM
AND
THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.A.No.1312 of 2025
and C.M.P. No. 9939 of 2025

1. The Inspector General of Registration
Cum Chief Controller Revenue Authority
No.100, Santhome High Road,
Chennai- 600 004.

2. The District Registrar (Audit)
O/o. District Registrar Of Department Of
Registration, Salem Town and City.

3. The Sub Registrar
Sankari Taluk, Salem District.

...Appellant(s)

Vs

S.S.P. Madhavan
S/o.Pachamuthu, Door No.2E,
Sandhaipettai, New Edappadi Road,
Sankari Taluk, Salem District,
Tamil Nadu- 637 301.

...Respondent

PRAYER:- The Writ Appeal is filed under Clause 15 of Letters Patent to set aside the order dated 10.04.2024 made in W.P. No.9716 of 2024 and allow the above Writ Appeal.

For Appellant(s) : Mr. U. Bharanidharan
Special Government Pleader

For Respondent : Mr. M. Rajasekhar

J U D G M E N T

(Judgement of the Court was delivered by ***S. M. SUBRAMANIAM, J.***)

Under assail is the writ order dated 10.04.2024 in W.P.No.9716 of 2020. The Inspector General of Registration-cum-Chief Controller Revenue Authority, Chennai, along with the District Registrar, Salem Town & City and the Sub Registrar, Salem District, have preferred the present intra-Court appeal mainly on the ground that the provisions of law applicable in the context of the facts of the present has not been considered by the Writ Court and the decision would have larger repercussion in the matter of registering release deeds presented for registration.

2. The facts of the present case are that Mr.Kandasamy was the original owner of subject lands. He passed away leaving behind his two sons namely, Mr.K.Chenna Kesavan and Mr.K.Pachamuthu. Upon demise of Mr.Kandasamy, the entire lands belonging to him devolved upon his legal heir that his two sons named above. One of the sons, Mr.Pachamuthu filed a Civil Suit in O.S.No.548 of 2019 against the legal heirs of his brother Late Mr. Chenna Kesavan. The suit came to be disposed of on 08.02.2020 based on an Award dated 18.12.2019 passed in a Lok Adalat proceedings. Consequently, Mr.Pachamuthu became absolute owner of the subject lands.

3. Mr.Pachamuthu along with his three daughters, presented a release deed for registration settling 4/5th share of lands in favour of respondent Mr.S.S.P.Madhavan, who is none other than son of Mr.Pachamuthu. The respondent has stated before registering authority that subject lands mentioned in the release deed had been acquired by an Award and decree and it is a joint family property and the sons and daughters of Pachamuthu are co-sharers. Therefore, the release deed is valid and to be registered by collecting stamp duty as applicable for release deed. Release deed was entertained by the registering authority for registration and registered as Document No.4980 of 2022 by treating as a document falling under Article 55A of the Indian Stamp Act, that is release between co-sharers, who are family members.

4. During the course of Audit, it was found that the sons and daughters of Mr.Pachamuthu are not co-owners as stated by the presentant of the document at the time of registration. Therefore, the release deed should have been treated as conveyance and applicable stamp duty and registration fees ought to have been collected.

5. Based on Audit Objection, a demand notice was issued to respondent, which came to be challenged by way of writ proceedings.

6. One of the grounds raised by the appellants is that the Writ Petition was allowed at the admission stage. However, the learned counsel for the

respondent would submit that the learned Additional Government Pleader conceded the case of the respondent before the Writ Court. Therefore, the Writ Court passed an order at the admission stage.

7. Two issues are necessarily to be considered by this Court in the present case. The releasee must have a pre-existing right and in the absence of pre-existing right, release deed cannot be executed. In the present case, this Court has to examine whether the respondent has got any pre-existing right for the purpose of maintaining a release deed presented and registered.

8. The case on hand would not fall under the Hindu Undivided Family. The executors of release deed are none other than the father and sisters of the releasee/respondent. The father of the respondent Mr.Pachamuthu acquired subject property through an Award dated 18.12.2019 passed by the Lok Adalat. The Lok Adalat Award was passed based on the compromise arrived at between the parties in a Civil Suit in O.S.No.548 of 2019. Therefore, Mr.Pachamuthu is the absolute owner of the subject lands. Even three daughters of Mr.Pachamuthu / Executors of the release deed have no right over the subject lands, since Mr.Pachamuthu is the sole owner of the subject lands.

9. As far as the pre-existing right, which is a pre-condition for maintaining a release deed, the daughters and the respondent, son of Mr.Pachamuthu have no right over the subject properties. Therefore, the releasee in the

present case has no pre-existing right for registering a release deed.

10. The learned Special Government Pleader would solicit the attention of this Court with reference to the instrument presented, which would show that three daughters of Mr.Pachamuthu/ Executors of the release deed received consideration for releasing their non-existing right at the time of presentation of release deed. However, consideration in a release deed is immaterial to ascertain the character of an instrument presented for registration. Therefore, the release deed is to be treated as conveyance for the purpose of charging stamp duty.

11. In this regard, a Full Bench of the Madras High Court in the case of ***the Chief Controlling Revenue Authority, Board of Revenue, Madras Vs. Rm.L.Rm.L. Lakshmanan Chettiar,*** reported in ***(1970) 83 LW 205*** held that ***"the essential difference between a conveyance and a release lies in the fact that, in the latter, there is no transfer of an interest or right to another, who had no pre-existing right in it to any extent. A release of a right or of a claim can only be in favour of a person who had a pre-existing right or claim, and by reason of the release the latter's right or claim is enlarged or is made fuller in its content"***. The Full Bench reiterated that the release deed can be registered only if the releasee has a pre-existing right, but not conveyance. In the absence of a pre-existing right, release deed, if any, presented is to be treated as conveyance for the purpose of charging stamp duty under Indian Stamp Act, 1899.

12. In the present case, facts presented would show that except Mr.Pachamuthu, who acquired right over the subject properties through an Award dated 18.12.2019 passed by the Lok Adalat. But, his daughters and son have no right over the subject properties. More specifically, the respondent herein has no pre-existing right. Thus, the release deed presented has been rightly treated as conveyance for the purpose of charging stamp duty based on the Audit Objection.

13. The respondent filed a Writ Petition challenging demand notice issued by the Sub Registrar, dated 26.02.2024. Though the demand notice *per se* would not provide cause of institution of writ proceedings and a person on receipt of notice, has to submit his objections before the authority concerned. The authority concerned has to conduct an enquiry and pass orders on merits. Thereafter, an appeal would lie before the Chief Controller Revenue Authority, who is an appellate authority under the Act. In the present case, the said procedure has not been followed. Therefore, the writ petition ought not to have been entertained, since it is not maintainable and the respondent ought to have been relegated to approach the authority by submitting his explanations enabling the authority to consider and pass a reasoned order.

14. Since the Writ Petition has been decided on merits and the State preferred present Writ Appeal and this Court heard the matter elaborately on merits, it would be unnecessary to remand the matter, which would do no service to the cause of justice, but, the litigant will be back again by filing

another writ petition, which is not desirable.

15. Thus, this Court is not inclined to remand the matter or to relegate the respondent to approach the authority once again.

16. As far as the demand made by the authority is concerned, it is well founded in view of the legal position as discussed above. Thus, this Court is inclined to set aside the writ order impugned dated 10.04.2024 made in W.P.No.9716 of 2024 and accordingly, the same is set aside.

17. In the result, this Writ Appeal stands allowed. The appellants shall proceed with the matter as expeditiously as possible. There shall be no order as to costs. Consequently, connected Miscellaneous Petition is closed.

(S.M. SUBRAMANIAM, J.) (MOHAMMED SHAFFIQ, J.)
23-10-2025

ASI

Index	:Yes
Speaking order	: Yes
Internet	:Yes
Neutral Citation	:Yes

To

S.S.P. Madhavan
S/O.Pachamuthu, Door No.2E,
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