BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON 26.11.2024	PRONOUNCED ON 28.01.2025

CORAM:

THE HON'BLE MR.JUSTICE K.KUMARESH BABU

W.P.(MD)No.5190 of 2017 &
WMP (MD) Nos.4182 of 2017 & 22446 of 2023

Saraswathi … Petitioner

vs.

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

2.The District Registrar,
Registration Department,
Dindigul.

3.The Sub Registrar Joint II,
Sub Registrar Office,
Dindigul-1. ... Respondents

PRAYER :- Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus to call for the records pertaining to the impugned order passed by the third respondent in pending document No.269/2016, dated 03.01.2017, quash the same and direct the respondents to return the pending document No.269/2014 on the file of the third respondent by assigning regular serial number to the petitioner, and pass such further order.

For Petitioner : Mr.M.Saravanan

For Respondents : Mr.S.P.Maharajan Spl., G.P.,

ORDER

This writ petition has been filed challenging the order passed by the third respondent dated 03.01.2017, wherein directed the petitioner to pay the deficit stamp duty and to release the document No.269/2014.

2. Heard Mr.M.Saravanan, learned counsel appearing for the petitioner and Mr.S.P.Maharajan, learned Special Government Pleader appearing for the respondents.

3. Mr.M.Saravanan, learned counsel for the petitioner submits that the husband of the writ petitioner executed a will in favour of the petitioner on 16.04.1994 with respect to the subject property. Thereafter, the petitioner executed a settlement deed in favour of her son on 31.12.2014, settling

undivided 1/6th share in T.S.No.730/7 measuring 1 Acre 72 cents and building and machineries. The said document was registered as Document No.269/2014 and was withhold by the third respondent to pay the stamp duty, as same as sale deed since because her son has already been given in adoption.

4.The learned counsel for the petitioner submits that the third respondent alleged that the petitioner's son was given in adoption to the brother of the petitioner's husband, when he was 16 years by an adoption deed. As per Section 10 of Hindu Adoptions and Maintenance Act, 1956 a child above the age of 15 cannot be given in adoption and the said adoption is void ab-initio. Further, he submits that the petitioner's son was not actually given and taken in adoption and there is no physical act or ceremony of giving and taking was performed.

5. He would further contend that on 20.05.2015, the petitioner sent a representation to the respondents to return the document. But no correspondence from the respondent, hence the petitioner filed a writ petition in W.P.(MD) No.11455 of 2015. This Hon'ble Court vide order

dated 03.08.2016, directed the third respondent to pass orders on the representation, dated 20.05.2015 within a period of six weeks.

6. He would further submit that when no progress, the petitioner issued a contempt Notice and filed Contempt Petition No.1462 of 2016. Subsequently the third respondent passed the impugned order dated 03.01.2017, directing the petitioner to pay the stamp duty. He would further contend that without passing an order considering the representation dated 20.05.2015, the third respondent passed an impugned order dated 03.01.2017. Hence, the impugned order violates the order of this Court and is *ex-facie* illegal and prays the interference of this Court to set aside the impugned order.

7. Countering his arguments, Mr.S.P.Maharajan, learned counsel for the respondents would submit that the third respondent after careful examination of the Court direction and representation of the petitioner, passed an order on 03.10.2016, whereby the subjected document nature was decided as 'Non Family Settlement'. Thereby the petitioner is directed to pay 8% as stamp duty and 1% as fee to a tune of Rs.17.71 lakhs, excluding the

amount already paid. The said order was sent to the petitioner on 03.10.2016. Though after receiving the order, the petitioner approached the third respondent office to release the document without payment. Thereafter, the impugned order came be to passed.

8. The learned counsel for the respondents would contend that the petitioner's son Mr.Saravana Venkataraman was given in adoption to brother of the petitioner's husband and acted upon. Hence, the petitioner cannot bequeath the property to her son by way of settlement. Therefore, the petitioner cannot claim any concession to pay the stamp duty. He would further submit that when her son was given in adoption, then there is no mother, son relationship between them and the property cannot be settled. The petitioner is trying to evade the payment applicable for sale and the request of the petitioner is conceded, the government will be put to irreparable revenue loss by way of stamp duty. Hence, he would pray this Court to dismiss the writ petition.

9. I have considered the submissions made by the learned counsels appearing for their respective counsels and perused the materials available on record.

10.The petitioner had executed a settlement deed in favour of her biological son, who had been given in adoption to his paternal uncle during the lifetime of biological father. The claim of the respondent is that since the petitioner had been given an adopt ion, he will not constitute a family as defined under Explanation to Article 58(A) of Schedule I Appended to the Indian Stamps Act, 1899. For better appreciation, the same is extracted hereunder:-

> *58. SETTLEMENT—*
> *A.—INSTRUMENT OF, (including a deed of dower).*
> *Exemptions (a) Deed of dower executed on the occasion of a marriage between Muhammadans. The same duty as a Bond (No. 15) for a sum equal to the amount or value of the property settled as set forth in such settlement: Provided that, where an agreement to settle is stamped with the stamp required for an instrument of settlement, and an instrument of settlement in pursuance of such agreement is subsequently executed, the duty on such instrument shall not exceed eight annas.*
> *Exemptions (a) Deed of dower executed on the occasion of a marriage between Muhammadans.*

11. The case of the respondent is that once a person is given on adoption, the adopted person loses his right to be a part of the family. The term “family” had been defined to include father, mother, husband, wife, son, daughter and grandchild. That would mean the family had been taken to be a group of persons, who are connected by blood. The petitioner's son who was given on adoption is connected by blood to the petitioner. Further the settlement between a family is brought about to avoid litigation between the family and to bring about the harmony and goodwill. Therefore, a family settlement need not be confined to only upon the legal heirs of the successors, but also to a person related by blood. In such an event, I am of the view that the claim made by the respondent that since the petitioner had been given on adoption would go out of the family for application of the definition “family” as appended to Article 58A of the Indian Stamps Act cannot be countenanced.

11. In fine, the impugned order is set aside and hold that the petitioner would be entitled for the benefit of the word term 'family' and will be only liable to pay the stamp duty payable between the family members of the documents covered under the impugned order.

12. For the aforesaid reasons, the Writ Petition is allowed and the impugned order is set aside in terms indicated above. However, there shall be no order as to costs.

28.01.2025

Index: Yes/No
Speaking Order/Non Speaking Order
Neutral Citation:Yes/No
Pbn

To

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

2.The District Registrar,
Registration Department,
Dindigul.

3.The Sub Registrar Joint II,
Sub Registrar Office,
Dindigul-1.

K.KUMARESH BABU.,J.

Pbn

A Pre-delivery order made in
W.P.(MD)No.5190 of 2017 &
WMP (MD) Nos.4182 of 2017 & 22446 of 2023

28.01.2025