(2009) 10 MAD CK 0185

In the Madras High Court

Case No : Writ Petition No. 21992 of 2008

A. Dhanasekaran APPELLANT

Vs

Government of Tamil Nadu RESPONDENT

Date of Decision : 13-10-2009

Acts Referred:
Stamp Act, 1899 — Article 58

Citation : (2010) WritLR 369

Hon'ble Judges : S. Nagamuthu, J

Bench : Single Bench

Advocate : R. Muthukumarasamy, for M. Ravi, for the Appellant; S. Sivashanmugam, for the Respondent

Final Decision : Allowed

Judgement

S. Nagamuthu, J.—During the year 2003, the petitioner was the Sub Registrar of Central Chennai Sub Registration District, at Periyamedu. One Amirthavalli, W/o. Gopalakrishnan executed a release deed in favour of one Anitha Rani, thereby releasing all her title and right in respect of undivided half share in the property. The said document was presented before the petitioner for registration. Accepting that the said document is only in the nature of the release deed, the petitioner collected stamp duty and registration charges and registered the said document. Subsequently, during audit conducted by the District Registrar, the District Registrar claimed that the document is in the nature of a settlement deed for which stamp duty should have been collected under Article 58(a)(ii) of the Stamp Act. According to the District Registrar, a sum of Rs. 1,56,400/- should have been collected as stamp duty, besides Rs. 10,000/- as additional registration charge. Thus a sum of Rs. 1,66,400/- was caused as loss to the Government is the allegation.

2. On the above allegation, a charge memo was issued to the petitioner levelling as many as two charges. The petitioner denied the allegations. The defence taken by him was that the document is only a release deed and it can never be

categorized as a settlement deed. Thus according to him, the stamp duty collected and the registration charges collected were all perfectly in accordance with law. Not satisfying with the said explanation, an enquiry was held. The Enquiry Officer submitted a report holding the charges not proved. But the disciplinary authority, namely, the first respondent was not satisfied with the findings of the Enquiry Officer. The first respondent deviated from the report of the Enquiry Officer and found that the charges were proved against the petitioner. Therefore a show cause notice was issued to the petitioner calling upon him to submit further explanation regarding the said finding of the disciplinary authority. Accordingly, the petitioner submitted further explanation. Finally rejecting all such explanations offered by the petitioner, the first respondent held the petitioner guilty of charge No. 1 alone and issued G.O.Ms.2D. No. 35, Commercial Taxes and Registration Department dated 29.02.2008 imposing a punishment of stoppage of increment for six months without cumulative effect. Challenging the same, the petitioner has come forward with this Writ Petition.

3. I have heard the learned Senior Counsel appearing for the petitioner and the learned Government Advocate and also perused the available records carefully.

4. A perusal of the records would go to show that the property in question was originally owned by one Mr. Gopalakrishnan and Radhakrishnan. Mr. Gopalakrishnan executed a registered will in favour of his wife Mrs.Amirthavalli and one Anitharani, thereby bequeathing 50% of the undivided share in favour of Amirthavalli and rests of 50% of the undivided share in favour of Anitharani. There is no dispute that it was the last will of Gopalakrishnan. After his demise, the will was duly probated by a Court of Law. Thus, as per the said Will the beneficiaries namely Amirthavalli and Anitharani should have half share each in the said property. It is also seen from the records that they did not divide the said property subsequent to the demise of Gopalakrishnan. Thereafter, Amirthavalli has executed the released deed, thereby releasing all her title and right in respect of undivided half share in favour of Anitharani. It is the said document, which is sought to be categorized as settlement deed.

5. Learned Senior Counsel appearing for the petitioner would submit that the document can never be categorized as a settlement deed at all because what was conveyed was the undivided half share of the property in favour of other sharer. The learned Government Advocate would submit that the document cannot be termed as the release deed, but instead the same should be treated only as settlement deed, for which the stamp duty should be collected under article 58(a)(ii) of the Act.

6. In my considered opinion, whether the document is a settlement deed as it is claimed by the respondents or it is a release deed is a complicated question. Prima facie from the materials, this Court is able to come to a conclusion that it is only a release deed. Assuming that the conclusion arrived at by the petitioner that the document is only a release deed is not correct, whether for such wrong

conclusion arrived at by the petitioner while registering the document can there be any punishment by way of disciplinary proceedings is a next question.

7. Learned Senior Counsel appearing for the petitioner would rely on the judgment of the Division Bench of this Court in The Special Commissioner and Commissioner of Commercial Taxes and The State of Tamil Nadu Vs. N. Sivasamy, Commercial Tax Officer (Under suspension) and The Registrar, Tamil Nadu Administrative Tribunal, wherein His Lordship P.Sathasivam,J (as he then was) after having considered the nature of the job of the petitioner therein, ultimately held that being a decision is taken by a quasi-judicial authority by error of judgment that cannot be a foundation for punishing him as per the Service Rules.

8. Learned Senior Counsel would rely on yet another judgment of this Court in W.P.(MD). No. 10682 of 2007 (N. Soundarapandian v. Government of Tamil Nadu) wherein after analysing various judgments of the Hon''ble Supreme Court, I have concluded that unless the decision taken by the quasi-judicial authority is tainted by reasons like extraneous considerations, corruption, abuse of power and malafide motive, there can be no punishment imposed as per Service Rules. Learned Senior Counsel, relying on the above two judgments, would submit that in the case on hand also there is no allegations that the petitioner registered the document by categorizing the same as a release deed either for any motive or for any other extraneous considerations. Therefore, according to him, punishment is liable to be quashed.

9. In my considered opinion, a perusal of the records would not go to show that the petitioner registered the document categorizing the same as the release deed not for extraneous consideration. Obviously, it is an error of judgment. Even now it cannot be clearly stated that the conclusion arrived at by the petitioner categorizing the document as release deed is a wrong conclusion. However, by means of subsequent proceedings, the further stamp duty and registration fee have been collected. Therefore, applying the principles stated in the above two judgments, since it is not stated before this Court that the petitioner''s action is tainted by malafide or for extraneous consideration or the same is tainted with any motive, I am of the view that the impugned punishment is not sustainable and therefore the same is quashed.

10. In view of the above reasons, the Writ Petition is allowed and the impugned order is quashed. No costs.