(2011) 01 MAD CK 0430

In the Madras High Court

Case No : Writ Petition No''s. 25292 and 17314 of 2010 and M.P. No''s. 1, 2 and 1 of 2010

Lakshmi Pradeep alias Lakshmi Subramanian and Prithiviraj Pradeep — APPELLANT

Vs

The Inspector General of Registration and The Sub-Registrar
Lakshmi Pradeep alias Lakshmi Subramanian Vs The Inspector General of Registration, The Assistant Inspector General of Registration and The Sub-Registrar — RESPONDENT

Date of Decision : 20-01-2011

Acts Referred:

Stamp Act, 1899 — Section 62, 62
Tamil Nadu District Municipalities Act, 1920 — Section 116A

Citation : (2011) 3 LW 92 : (2011) 4 MLJ 941

Hon'ble Judges : T. Raja, J

Bench : Single Bench

Advocate : G. Anbumani, in both WPs, for the Appellant; S. Sivashanmugam, GA. in both WPs, for the Respondent

Judgement

T. Raja, J.—As the facts relating to both the above petitions are one and the same, they are disposed of by this common order.

2. The Petitioner has filed the W.P. No. 17314 of 2010 seeking a direction to issue a writ of mandamus to the third Respondent to number the deed of transfer registered on 29.12.2009 as document No. P28 of 2009 and release the said deed of transfer to her.

In view of the subsequent order, passed by the second Respondent herein, in Proceedings No. P28 of 2010, dated 30.08.2010, no adjudication is required in the said W.P. No. 17314 of 2010 and hence, the same stands dismissed.

3. In W.P. No. 25292 of 2010, the Petitioners challenge the impugned order passed by the Sub-Registrar, Adyar Sub-Registrar''s Officer, the second Respondent, in proceedings No. P28 of 2010, dated 30.08.2010 and seek to

quash the same stating that they have executed the deed of transfer before the office of the second Respondent on 29.12.2009 and the same was registered as P28 of 2009, which has been incorrectly mentioned as P28 of 2010 in the impugned proceedings. It is further stated that they have also paid the necessary stamp duty and registration charges. Thereafter, the office of the second Respondent had also issued necessary receipt for the charges and they were directed to collect the document. But surprisingly, after few weeks the second Respondent had not returned the document. They were given to understand that since there was no Sub-Registrar at the time of presentation and registration of the document, the document was sent to the office of the Assistant Inspector General of Registration, South Chennai, Saidapet. Subsequently, as a new Sub-Registrar was appointed to the Sub-Registrar''s Office, Adyar, the office of the Assistant Inspector General of Registration returned the document back to the second Respondent and directed him to decide. Even though the document was returned to the second Respondent by the office of the Assistant Inspector General of Registration, the second Respondent had not numbered and returned the document. As there was a refusal in giving explanation as to the reason to hold back the document, the Petitioners had addressed a letter dated 10.07.2010 to the second Respondent requesting him to number the document. While so, by the impugned notice dated 30.08.2010, the Petitioners treated the deed of transfer as a conveyance under Entry 23 Schedule I of the Indian Stamp Act and demanded a sum of 2,36,000/-as deficit stamp duty and charges, which proceedings are under challenge in the said writ petition.

4. Admittedly, a Private Family Trust viz., Subramanian Family Trust, registered under the Indian Trusts Act, was created under a Deed of Declaration of Trust made at Chennai by the Petitioners'' grand-father for the benefit of the Petitioners and their family, in the year 1984 and the Deed was registered as Document No. 239 of 1984 in the Office of the Sub Registrar, Purasawalkam, Chennai. While so, in the year 2009, the Trust decided to transfer the above said property to the Petitioners, who are the only beneficiaries under the Deed of Declaration of Trust dated 04.09.1984, and such decision was acted upon by effecting transfer, whereupon, possession of the properties was also handed over to the Petitioners. Subsequently, the deed of transfer was presented at the Office of the 2nd Respondent on 29.12.2009 for registration by making payment of necessary stamp duty and registration charges. After registration, the Petitioners were directed to collect the document after a couple of days, but, even after a week, the 2nd Respondent did not return the document, therefore, a letter dated 10.07.2010 was addressed by the Petitioners to the 2nd Respondent, requesting him to number the document and return the same at the earliest. Since there was no response from the 2nd Respondent, the Petitioners filed W.P. No. 17314 of 2010 seeking issuance of a writ of mandamus to direct the said authority to number the Deed of Transfer registered on 29.12.2009 and release the same to the Petitioners.

5. While the said writ petition is pending, the 2nd Respondent passed the

impugned proceedings dated 30.08.2010 and as the Petitioners were away from India at the relevant time, only after returning back during October 2010, they were able to challenge the impugned proceedings, whereby, the authority demanded a sum of Rs. 2,35,750/-towards deficit stamp duty and Rs. 250/-towards penalty, in all a sum of Rs. 2,36,000/-, by unlawfully construing the Deed of Transfer registered as a conveyance falling under Entry 23, Schedule I of the Indian Stamp Act, 1899 and u/s 116A of the Tamil Nadu District Municipalities Act.

6. In an endeavour to assail the impugned order, Mr. G. Anbumani, learned Counsel appearing for the Petitioners placed three-fold submissions:

(a) The demand made by the 2nd Respondent is in total violation of the principles of natural justice as there was no opportunity afforded to the Petitioners to explain by way of personal hearing as to whether the document was a conveyance or a deed of transfer as contemplated u/s 62(e) of the Indian Stamp Act, 1899, and to show cause as to why such a demand should not be made from them.

(b) The 2nd Respondent erred in construing the Deed of Transfer as a conveyance under Entry 23, Schedule I, when the Act specifically provides to the contrary.

(c) The case of the Petitioners is squarely covered by Section 62(e) of the Indian Stamp Act, 1899 and such aspect has been completely overlooked by the 2nd Respondent while passing the impugned order.

7. Two questions require consideration by this Court viz., (i) Whether a reasonable opportunity was given to the Petitioners before passing the impugned order and (ii) whether the deed of transfer, treated as conveyance by the 2nd Respondent in his impugned proceedings, would, in the given case, fall under Entry 62, Schedule I of the Indian Stamp Act, 1899.

8. As regards issue No. 1, a mere reading of the impugned order would go to show that the second Respondent straight-away directed for payment of a sum of Rs. 2,35,750/-towards deficit stamp duty and Rs. 250/-towards penalty, in all a sum of Rs. 2,36,000/-without even seeking explanation from the Petitioners as to why the document should not be treated to be the one as construed by the authority and as to why the impugned demand should not be made. Further, when the 2nd Respondent has directed the Petitioners to pay the deficit charges specifying that failure in making payment would result in coercive steps being taken under the Revenue Recovery Act, such proceedings would undoubtedly give rise to civil consequences, therefore, in all fairness, the 2nd Respondent should have given a reasonable opportunity to the Petitioners to explain as to how the deed of transfer is not a conveyance falling under Entry 23, Schedule I of the Indian Stamp Act. Further, as rightly contended by the learned Counsel for the Petitioners, the impugned proceedings do not speak as to how and on what basis the 2nd Respondent arrived at a conclusion to term the deed of transfer as

a conveyance falling under Entry 23 Schedule I of the Indian Stamp Act. Therefore, prima facie, the impugned notice issued by the 2nd Respondent without giving reasonable opportunity to the Petitioner can only be termed as a non-speaking order and it is also, ex facie, in utter violation of the principles of natural justice.

9. Secondly, it is useful to have a look at Section 62(e) of the Indian Stamp Act, 1999, which is extracted below:

Transfer of any trust property from one trustee to another trustee or from a trusty to a beneficiary

With regard to the stamp duty payable, it is provided,

Thirty rupees or such smaller amount as may be chargeable under Clauses (b) and (c) of the Article

Thus, a close reading of the above provisions makes the position explicitly clear that if any trust property is transferred with or without consideration from one trustee to another trustee or from a trustee to a beneficiary, a sum of Rs. 30/-is chargeable. When the recitals in the Deed of Transfer expressly states that the transfer is for the benefit of the Petitioners as per the terms of Deed of Declaration of Trust dated 04.09.1984 and only in terms of such declaration of Trust, the property was transferred in favour of the Petitioners through the Deed of Transfer dated 24.12.2009, duly executed by the Trustee of the Trust, I have no hesitation to hold that the Deed of Transfer registered as Document No. P28/2009 as per the Receipt dated 29.12.2009 is not a conveyance but only a deed of transfer covered by Section 62(e) of the Indian Stamp Act.

10. In the result, the writ petition No. 17314 of 2010 is dismissed and the writ petition No. 25292 of 2010 is allowed and the second Respondent is directed to number the transfer deed, registered on 29.12.2009 as document No. P28 of 2009 (incorrectly mentioned as document No. P28 of 2010 in the impugned proceedings), within a period of four weeks from the date of receipt of a copy of this order and also release the same to the first Petitioner. No costs. Consequently, connected miscellaneous petitions are closed.