(2011) 07 MAD CK 0309

In the Madras High Court

Case No : Writ Petition No. 16597 of 2010

Mrs. D. Shanthi and D. Sridhar APPELLANT

Vs

The Sub Registrar and The District Registrar RESPONDENT

Date of Decision : 04-07-2011

Acts Referred:

Income Tax Act, 1961 — Section 230A
Registration Act, 1908 — Section 71, 72
Tamil Nadu Registration Rules, 1983 — Rule 166(1)

Citation : (2011) 8 MLJ 126

Hon'ble Judges : K.N. Basha, J

Bench : Single Bench

Advocate : G. Sankaran, for the Appellant; P.S. Sivashanmugasundaram, AGP, for the Respondent

Final Decision : Allowed

Judgement

K.N. Basha, J.—The Petitioners have come forward with the above writ petition seeking for the relief of quashing the order of the 2nd Respondent dated 12.02.2010 and to direct the Respondents to register and the return the pending document No. 70/1987.

2.1. The case of the Petitioners is that one Mr. Ellaya Reddiar, father-in-law of the 1st Petitioner and the grandfather of the 2nd Petitioner, executed a Settlement Deed in favour of the husband of the 1st Petitioner and father of the 2nd Petitioner, viz., Mr. Damodharan in the office of the 1st Respondent in the year 1987 and the same was assigned as pending Document No. 70/1987 and thereafter, the 1st Respondent herein did not release the document and called upon the Settlor to get an Income Tax Clearance Certificate u/s 230A of the Income Tax Act, 1961. Meanwhile, the Settlor Mr. Ellaya Reddiyar expired within a week after execution of the Settlement Deed and the presentation of the same. Thereafter, the settlee, viz., Damodharan, was pursuing the matter with the 1st Respondent herein. However, unfortunately, he also expired in the year 1992 and as such, the matter was put in the cold storage. The Petitioners were also not instructed by the settlee, viz., Late Mr. Damodharan with regard to the above said issue. When certain issues were raised in respect of the transfer of the title surfaced, the pending issue came to the notice of the Petitioners. On enquiry, the 1st Respondent gave evasive answers which necessitated the present Petitioners to present an application for registration of the document and return of the same in September 2003.

2.2. In response to such representation of the Petitioners, the 1st Respondent gave a reply stating that a Refusal Order was passed in order No. 1/1990 way back on 23.08.1990. But the said Refusal Order was neither served on the Settlee, Mr. Damodharan or on the legal heirs of the settlee, viz., the present Petitioners herein and therefore, they would not be taking any further action. Being aggrieved against the said order, the Petitioners preferred an appeal u/s 72 of the Registration Act read with Rule 166[1] of the Tamil Nadu Registration rules to the 2nd Respondent on 16.12.2003. The 2nd Respondent kept the issue pending without any progress. As a result, the Petitioners preferred a writ petition in WP. No. 1074/2005 and this Court vide order dated 18.04.2009, directed the 2nd Respondent to dispose of the appeal preferred by the Petitioners within a period of eight weeks therein. The Petitioners appeared before the 2nd Respondent and made detailed submissions relating to the legality of the action of the 1st Respondent in not registering the document and retaining the same.

2.3. The Petitioners also pointed out that the order of refusal was never served upon either to the executants or to the beneficiary of the documents or to the Petitioners herein. Further, it was brought to the notice of the Respondents herein that Section 230A of the Income Tax Act, 1961 was repealed and there was no necessity for obtaining clearance. In spite of pointing out the said legal aspect, the 2nd Respondent dismissed the appeal confirming the order of the 1st Respondent by observing that the appeal has been preferred belatedly. Being aggrieved against the said order, the present writ petition is filed by the Petitioners with the above said prayer.

3. Mr. G. Shankaran, learned Counsel for the Petitioners would contend that the persons who have executed the Settlement Deed, viz., the Settlor and the Settlee, died and the Petitioners are the legal heirs of the settlee and as such, they have taken steps in this matter. It is mainly contended that the impugned order was passed on two grounds and both the grounds are unsustainable. Firstly, the original executant, viz., the settlor has not produced the Income Tax Clearance Certificate as required u/s 230A of the Income Tax Act, 1961. But the said provision is no more in existence and the same was repealed as early as in the year 2001 and as such, the question of obtaining clearance certificate as on date, does not arise, more particularly, the Petitioners herein cannot step into the shoes of the Settlor or settlee. It is contended that the rejection of the prayer of the Petitioners is untenable on that ground. Secondly, it is contended that the impugned order was passed on the ground of delay in preferring the appeal after

a period of 13 years and even the said ground is unsustainable on the ground that the Petitioners have never been served with the order passed way back in the year 1990, viz., on 23.08.1990 and as such, the question of computing the limitation period from that date not at all arises. It is further contended that the 1st Respondent has not even sent an intimation in writing in respect of the said refusal order passed in the year 1990 and therefore, there was no fault on the part of the Petitioners and the Petitioners challenged the said order within the time from the date of the knowledge of passing the said order.

4. The learned Counsel for the Petitioners would contend that in view of the above said admitted factors, the question of remanding the matter for reconsideration by the 2nd Respondent, viz., the Appellate Authority does not arise as the said provision of getting the income tax clearance certificate was already repealed way back in the year 2001 and more particularly, the said order was passed against the executants who are no more and as such, it is practically impossible to perform such statutory requirement. Therefore, it is contended that the impugned order is liable to be set aside and the 1st Respondent may be directed to register and deliver the original document to the Petitioners. In support of his contentions, the learned Counsel for the Petitioners would place reliance on the decision of the Full Bench of this Court in G. Karmegam And Ors. v. The Joint Sub Registrar, IV, Gowri Plaza, Bye Pass Road, Madurai and 3 Ors. reported in 2007 (5) CTC 737 for the proposition that the power conferred upon any Statutory Authority shall be exercised to advance the cause of justice and not to upset the settled right of the parties concerned.

5. Per contra, Mr. P.S. Sivashanmugasundaram, learned Additional Government Pleader would contend that there is no infirmity or illegality in the impugned order passed by the 2nd Respondent. It is contended that at the time of presentation of the Settlement deed in the year 1987, the provision u/s 230A of the Income Tax Act, 1961 was very much in force and the same was repealed only in the year 2001 and as such, the Respondents have rightly held that compliance of Section 230A of the Act is required for registering the document as the property value exceeds Rs. 5 lakhs. It is contended that even in respect of the limitation, there is no illegality in the impugned order as it is clearly stated in the counter that the service of the said order passed on 23.08.1990 to the Petitioners is not required as per the provisions of the Registration Act. It is contended that as per the provision u/s 71 of the Registration Act, such copy of the order of refusal shall be given only on application and the Petitioners have not preferred any such application. It is further contended that the intimation in respect of the refusal to register the document has been promptly sent by post to the executant and beneficiary to the address as found in the document and as such, the Petitioners have come forward with an appeal belatedly and no reasons assigned. Therefore, it is submitted that the Petitioners have not made out any ground warranting interference of this Court in the impugned order.

6. This Court carefully considered the rival contentions put forward by either side

and perused the affidavit filed by the Petitioners; counter filed by the 2nd Respondent and the impugned order.

7. The fact remains that the Petitioners are the legal heirs of the settlee, viz., Late Mr. Damodharan and his father Late Ellaya Reddiyar executed a settlement deed in favour of the said Damodharan. As already pointed out, the settlor, late Ellaya Reddiyar is the father of the 1st Petitioner and grandfather of the 2nd Petitioner. It is seen that unfortunately both the settlor and settlee died after the execution and presentation of the above said Settlement Deed, The said document was pending on the ground of non-compliance of the requirement contemplated u/s 230A of the Income Tax Act, 1961 as the settlee not produced the Income Tax Clearance Certificate since the property value exceeded Rs. 5 lakhs as stated above. It is not disputed by the learned Additional Government Pleader that the said provision was repealed as early as in the year 2001 and as such, there is no requirement as on date for obtaining the Clearance certificate as contemplated u/s 230A of the Income Tax Act, 1961. It is needless to state that in view of the death of both the settlor and settlee, the requirement of complying the provision u/s 230A of the Income Tax Act, 1961 does not arise though the said provision was very much in force at the time of execution as both of them are now no more and as such, it is practically impossible to comply with the said statutory requirement existing at the time of execution of the Settlement deed. In view of such undisputed fact, it is not fair for the Respondents to ask the Petitioners to comply with such requirement contemplated under old Section 230A of the Act which is now repealed and further the Petitioners cannot step into the shoes of the settlor and settlee. The learned Counsel for the revision Petitioners also rightly placed reliance on the decision of the Full Bench of this Court G. Karmegam and Ors. v. The Joint Sub-Registrar IV Gowri Plaza Bye Pass Road Madurai and 3 Ors. reported in 2007 (5) CTC 737 wherein the Full Bench has observed as follows:

...

33. The ratio laid down by the Supreme Court would go to the effect that any power conferred upon any statutory authority shall be exercised to advance the cause of justice and not to upset the settled rights of the parties concerned.

8. The Full Bench of this Court, in the decision cited supra, placed reliance on the decision of the Hon''ble Apex Court in Regional Provident Fund Commissioner Vs. M/s. K.T. Rolling Mills Pvt. Ltd., and Corporation Bank and Another Vs. Navin J. Shah, and the principle laid down by the Hon''ble Apex Court in the said decisions is squarely applicable to the facts of the instant case as in this case also, the rights have already been settled by the settlor in favour of the settlee and there is no dispute that the Petitioners are the legal heirs of the settlee. Therefore, it is crystal clear that the refusal of the 1st Respondent to register the document and return the same to the Petitioners is unsustainable in law.

9. Now, coming to the second point involved in this matter, viz., the delay in

preferring the appeal challenging the order passed as early as in the year 1990, i.e., on 23.08.1990, viz., refusal to register the document on the ground of non-compliance of Section 230A of the Income Tax Act, 1961 is concerned, it is to be stated at the outset that the categorical stand of the Petitioners is to the effect that they have not at all been served with the said order dated 23.08.1990. The said stand is not disputed by the Respondents. But, on the other hand, it is stated in the counter that only on submission of the application as per Section 71 of the Registration Act, the Petitioners are entitled to get such an order copy. Be that as it may, but the fact remains that the Respondents though claimed that a written intimation was sent in respect of passing of the order dated 23.08.1990, the Respondents have not produced any documents to substantiate their claim. However, this Court is of the considered view that the entire issue is revolving round the production of the income tax clearance certificate as contemplated under the old Section 230A of the Act, 1961 and this Court already pointed out in the earlier paragraphs that such requirement cannot be fulfilled as on date as both the settlor and settlee are no more and it is inherently impossible for the Petitioners to perform such compliance. Therefore, in the interest of justice, the Respondents cannot stand on hyper technicalities for not registering the document and issuing the same to the Petitioners.

10. In view of the aforesaid reasons, this Court is of the considered view that the impugned order is liable to be set aside. Accordingly, the impugned order dated 12.02.2010 passed by the 2nd Respondent in Ref. No. 12585/A/09 is set aside and the writ petition is allowed. No costs.

11. Consequently, the 1st Respondent herein is directed to register the document, viz., the Settlement Deed executed by the Settlor and settlee and pending in Document No. 70/1987, if the said execution is otherwise in compliance with the other requirements of the Registration Act and to deliver the said documents to the Petitioners. It is made clear that the above said process should be completed within a period of four weeks from the date of receipt of a copy of this order.

