
(2002) 09 MAD CK 0242

In the Madras High Court

Case No : Writ Petition No. 20450 of 2000 and W.M.P. No. 29723 of 2000

Mrs. Mageswari, Sankara Pandian, Ramesh, Natarajan, Miss Usha Devi, Miss Gomathi (minor rep. by her mother and guardian, Mrs. Mageswari), Mageswaran, Mrs. Geetha, Chandrasekara Pandian, Mrs. Vijayalakshmi, Mrs. Padmavathi, Miss Preetha, (Minor rep. by her mother and guardian, Padmavathi) and Master Prathish (Minor rep. by his mother and guardian, Padmavathi) APPELLANT

Vs

The Sub Registrar and The District Registrar (Administration), Madras South (In the cadre of Assistant Inspector General of Registration) RESPONDENT

Date of Decision : 26-09-2002

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2002) 09 MAD CK 0242

Hon'ble Judges : P.K. Misra, J

Bench : Single Bench

Advocate : R. Nadana Sabapathy, for the Appellant; N.G. Kalaiselvi, Spl. G.P., for the Respondent

Final Decision : Allowed

Judgement

P.K. Misra, J.—Heard the learned counsel appearing for the parties.

2. This writ petition is filed for quashing the order of the District Registrar, Madras South, dated 20.10.2000 in proceedings No. 6699/A1/2000.

3. The brief facts in this writ petition are as follows:

One late Sivasankara Pandian had four sons. The eldest son has expired on 3.10.1993 and the petitioners 1 to 6 are the legal representatives of the eldest son. The seventh and ninth petitioners are the brothers and the 8th and 10th petitioners are their wives, respectively. The youngest brother expired on 14.3.2000 and the petitioners 11, 12 and 13 are his legal heirs. In other words,

all the family members belonging to the joint family of late Sivasankara Pandian. The four brothers had jointly purchased five immovable properties and the sale deeds relating to the four properties are in the joint names of all the four brothers and the another property was purchased jointly in the names of their wives. Subsequently, a deed of partition, dated 16.7.1999 was executed and it was signed by the three brothers as well as the wife of the fourth brother, who had expired by then. The said document was presented for registration on 23.7.1999. The Sub Registrar only gave a pending number to the document. It appears that subsequently the matter had been referred to the District Registrar. The District Registrar in the impugned order has held that the properties cannot be treated as joint family properties and it should be construed as a partition/settlement among all family members and settlement among non family members and therefore the properties covered by the document are liable to be stamped as per Articles 45, 58(a)(1) and 58(a)(11) of the Indian Stamp Act. As per those Articles the stamp duty payable is Rs.9,61,780/-, and since the stamp duty of Rs.2,60,000/- has been paid, only the balance stamp duty of Rs.7,01,780/- along with penalty of Rs.220/- should be paid.

4. Section 47-A deals with the Power of the Sub Registrar in case he is of the opinion that the document has not been sufficiently stamped. Section 47-A of the Act is quoted hereunder:

"47-A - Instruments of conveyance etc., undervalued how to be dealt with (1) If the registering officer appointed under the Indian Registration Act, 1908 (Central Act XVI of 1908) while registering any instrument of conveyance, exchange, gift, release of benami right or settlement has reason to believe that the market value of the property of which is the subject matter of conveyance, exchange, gift, release of benami right or settlement, has not been truly set forth in the instrument he may, after registering such instrument, refer the same to the Collector for determination of the market value of such property and the proper duty payable thereon."

The above provision makes it clear that if the Registering Authority has reason to believe that the market value of the property has not been truly set forth in the instrument, he may, after registering such instrument, refer the same to the Collector for determination of the market value of such property.

5. In the present case, the District Registrar has observed that the document cannot be considered as a deed of partition and has to be considered as a deed of partition/settlement. This conclusion is not supportable. The law is well settled that the female members of a joint family are also the members of the joint family, even though they may not be construed as coparceners .

6. Partition can be effected between co-owners. It is not necessary that such a co-owner must necessarily be coparceners . The properties, which had been purchased jointly, could be divided among the co-owners by executing a deed of partition.

7. For the reasons stated above, the impugned order passed by the District Registrar is quashed. The writ petition is allowed without costs. Consequently, connected W.M.P. is closed.