(2012) 06 MAD CK 0055

In the Madras High Court

Case No : W.P.No. 34855 of 2007

M/s. Chevalier T. Thoma Educational Trust — APPELLANT

Vs

The Inspector General of Registration Santhome High Road Chennai 28, The District Revenue Officer (Stamps) Collectorate Rajaji Sali, Chennai 1 and The Sub Registrar Sub Registrar's Office Sembium Chennai — RESPONDENT

Date of Decision : 05-06-2012

Acts Referred:
Stamp Act, 1899 — Section 2(14), 40

Citation : (2012) 06 MAD CK 0055

Hon'ble Judges : K. Chandru, J

Bench : Single Bench

Advocate : V. Shanmugam, for the Appellant; M. Dig Vijaya Pandian, A.G.P, for the Respondent

Final Decision : Allowed

Judgement

K. Chandru

1. The Writ Petition is filed by Chevalier T.Thomas Educational Trust represented by its Managing Trustee and Correspondent Sri.L.Palamalai,

I.A.S., (retired) seeking for a direction to the third respondent Sub Registrar to return the rectification deeds to the petitioner bearing Registration

Nos.5042/01, 5043/01, 5044/01, 5045/01, 5046/01, 5047/01 without insisting upon any stamp duty from them. The Writ Petition was admitted

on 30.11.2007. In the rectification deed, it was stated that the petitioner purchased the property from the vendor and in the sale deed, instead of

typing that the property was purchased from Elizabeth Thomas Education and Welfare Trust, it was typed that the property was purchased by

Elizabeth Thomas, W/o.late T.Thomas, President of Elizabeth Thomas and

Education and Welfare Trust. Petitions were addressed to the 3rd

respondent and the 3rd respondent finally in their reply dated 27.6.2007 had stated as follows:

Once documents were registered they can''t be withdrawn. Because it attracts stamp duty and fee at the rate, it is applicable. So you are requested

to pay the deficit stamp duty and fees and get back those documents.

It is also brought to the notice that payment of the purchase of the property was meted out by Trust Fund and the extract of payments made to the

vendor was also produced including cash withdrawal.

2. But, in the counter affidavit filed by the 3rd respondent dated 24.6.2011, it was contended that once the name of the purchaser has to be

changed, it should be treated as a fresh sale. In paragraph 7 of the counter, it was stated as follows:

It is submitted that the District Registrar, Chennai North who is also the Collector u/s 40 of the Stamp Act has considered that the change of

description of the Purchaser from ""Tmt.Elizabeth Thomas wife of late T.Thomas, President of Elizabeth Thomas Education & Welfare Trust,

having its office at No.3, St.Mary''s Road, Sembium"" to that of ""Elizabeth Thomas Education & Welfare Trust, rep.by President Tmt.Elizabeth

Thomas, wife of late T.Thomas under the Deed of Rectification will amount to creation of right to a new entity which is an instrument as defined u/s

2(14) of the Stamp Act and consequently chargeable to stamp duty as Sale Deed.

3. It must be noted that the Trust was mismanaged by the original trustee and several litigations were filed in this matter. A Division Bench of this

Court under a scheme decree, appointed a Board of Trustees and the matter finally went to the Supreme Court. The Supreme Court in Dr. T.

Varghese George Vs. Kora K. George and Others, held as follows:

33.It is material to note that the Division Bench had framed the scheme by its order dated 4-12-1995, after calling upon Smt Elizabeth Thomas to

give her proposals which she had declined to do so. Still, with a view only to give one more opportunity to her, this Court remanded the matter

once again to the High Court. The Division Bench of the High Court which heard the matter after remand appointed Justice J. Kanakaraj, a retired

Judge of the Madras High Court as the interim Chairman, and a retired IAS officer, Shri Palamalai as the Executive Trustee and Correspondent in

April 2002. Hon_ble Justice J. Kanakaraj made the necessary reports to the Division Bench and pointed out that Smt Elizabeth was mismanaging

the Trust. The Division Bench considered all the aspects and proposals including that of Smt Elizabeth Thomas for framing the scheme and framed

an appropriate scheme by its order dated 5-12-2002. Apart from the appellant and Smt Elizabeth hardly anybody has raised any grievance with

respect to the functioning of the Chairman or the Correspondent. The appellant did not choose to initiate any proceedings with respect to the

functioning of the Trust as required u/s 92. After the scheme was finalised, although Smt Elizabeth filed an appeal, she withdrew the same. It was at

this stage that the appellant filed the present appeal raising the issues that he has raised. The correct course of action for him ought to have been to

file his suit u/s 92, if he deemed it fit.

34. As can be seen from the narration above, as far as the character of the Trust as a secular public trust is concerned, that view was taken initially

by a learned Single Judge. Subsequently, it was confirmed by a Division Bench as well as by a Bench of three Judges of this Court. The fact that

the Trust was set up by late Shri T. Thomas who belongs to a religious minority was very much there before the courts all throughout. The fact that

three schools of this Trust had obtained a certificate of minority character was canvassed before the Single Judge, and in spite of that submission

the Single Judge gave a finding that the Trust was not a minority trust. He recognised the secular character of the Institution, particularly by referring

to Para 10 of the declaration made by the founder. The specific finding on Issues 6 and 7 concerned was left undisturbed by a Division Bench of

the High Court in appeal and reaffirmed by a Bench of three Judges of this Court. Smt Elizabeth did not file any appeal on this finding of the Single

Judge to the Division Bench of the High Court. This Court has already confirmed that finding.

4. Therefore, when it is clearly established that the Trust has purchased the property and paid the amounts from out of funds and the Trust being

Public Charitable Trust and administered by the persons appointed by this Court, it is unthinkable that the respondents cannot make any

rectification in the document received by them and it cannot be treated as if it was a fresh sale, especially when the Trust had purchased the properties from out of its own funds. When once it is established that it is the Trust property, certainly the documents should reflect that the

purchase was done by the Trust from the original vendors. Treating the document as a fresh sale was unwarranted. The Writ Petition stands

allowed and the respondents are directed to register the document as a rectification deed and not to treat the same as a fresh sale. This exercise

shall be done within a period of four weeks from the date of receipt of a copy of this order. No costs.