(2009) 04 MAD CK 0023

In the Madras High Court

Case No : Writ Petition No. 6015 of 2000

T.T. Gnanamurugan (deceased) and G. Aye Muthu APPELLANT

Vs

The Inspector General of Registration and District Registrar RESPONDENT

Date of Decision : 28-04-2009

Acts Referred:
Stamp Act, 1899 — Article 4

Citation : AIR 2009 Mad 202 : (2010) 8 RCR(Civil) 2687

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

Bench : Single Bench

Advocate : N. Damodaran, for the Appellant; Lita Srinivasan, Government Advocate, for the Respondent

Judgement

K.N. Basha, J.—This petition was heard on 08.04.2009 and again posted on 24.04.2009 for certain clarifications and after hearing both

sides this order is passed today, i.e., on 28.04.2009.

2. The petitioner has come forward with this Writ Petition seeking for the relief of calling for the records relating to the proceedings of the

Inspector General of Registration, Santhome High Road, Chennai-600 028 made in Pa.Mu. No. 17473/E3/95 dated 14.10.1999 received on

8.2.2000, the 1st respondent herein and the proceedings of the District Registrar, Tirupur made in No. 3271/83/94 dated 20.1.1995, the second

respondent herein and quash the same.

3.The case of the petitioner is that as per the compromise decree passed on 25.4.1970 in O.S. No. 272/1990 on the file of the Subordinate

Judge, Coimbatore for partition and separate possession of the property comprised in Survey No. 376, Ravanapuram Village, the petitioner and

all other respective parties were in possession and absolute enjoyment of their shares. That being the position, the petitioner applied to the

Tahsildar, Udumalpet to effect sub-division of the property to their respective possession on 12.1.1992 and necessary fees also paid. The

Tahsildar, Udumalpet while effecting the sub-division committed mistakes and omissions in respect of the properties. It is further stated that the

wrong inclusion of the survey numbers by the Revenue authorities will not confer any title upon other sharers, namely, the brother of the petitioner

in respect to the said extent of lands and as such, the petitioner and his brother and his brother''s son entered into a deed of confirmation dated

30.5.1994, wherein it was made clear that the other sharers namely, the brother of the petitioner and his brother''s son have no objection for the

petitioner to get a separate patta in respect of the portion under his possession and enjoyment. The petitioner further states that by such

confirmation, the petitioner''s brother and his brother''s son only confirmed the title interest and possession of the petitioner herein in an extent of 89

cents in Survey No. 376/2 of Ravanapuram Village and by the said document they have also conveyed their no objection for transferring the patta

wrongly given in their names.

4.The further version of the petitioner is that when the above said document was presented for registration before the Sub-Registrar, Komangalam

on 30.5.1994, the said authority impounded the said document by treating it as a Settlement Deed and valued the property at Rs. 3,25,954/- and

directed the petitioner to pay the deficit stamp duty of Rs. 39,120/-. The 2nd respondent accepted the said view of the Sub-Registrar,

Koramangalam by interpreting the said document as Settlement Deed, issued a show-cause notice dated 18.11.1994 calling upon the petitioner to

give his explanation why he should not pay the deficit stamp duty of Rs. 39,110/- and Rs. 90/- towards penalty within one month from the date of

the said show cause notice. The petitioner submitted a detailed explanation dated 12.1.1995 to the said show cause notice.

5.It is further stated by the petitioner that the second respondent without properly considering the facts of the case and without properly adverting

to the recitals of the documents confirmed the earlier order in his proceedings No. 3271/B1/94 dated 20.1.1995 and directed the petitioner to pay

the amount within one month from the date of receipt of such proceedings. Being aggrieved against such order, the petitioner preferred a statutory

appeal before the first respondent herein and the first respondent after hearing the matter, passed the impugned order dated 14.10.1999 confirming

the orders of the second respondent herein.

6. Mr. N. Damodaran, the learned Counsel appearing for the petitioner contended that both the respondents 1 and 2 have wrongly interpreted the

disputed document as settlement deed without considering the actual contents and recitals of the document. It is further contended that the reading

of the document on the face of it makes it very clear that it is only a deed of confirmation and not a deed of settlement. The learned Counsel for the

petitioner also contended that both the authorities have ignored the detailed explanation given by the petitioner herein and passed the order

mechanically without application of mind. It is contended that the second respondent while passing the original order dated 20.1.1995 clearly

stated that the petitioner is entitled to prefer an appeal and accordingly, the petitioner preferred an appeal u/s 56(1) of the Indian Stamp Act, 1899

(hereinafter referred to as ''the Act'') raising elaborate grounds.

7. The learned Counsel would also submit that the first respondent passed the impugned order without even adverting to and considering the

detailed grounds raised by the petitioner herein. It is contended that the first respondent has not given reasons for confirming the order passed by

the second respondent except incorporating certain portion of the disputed document presented by the petitioner for registration as a deed of

confirmation. It is pointed out by the learned Counsel for the petitioner that the portion incorporated from the disputed document in the impugned

order shows that the brother and the son of the brother of the petitioner have no objection for the change of patta in the name of the petitioner and

as such recitals, the said document could not be construed to be a deed of settlement as the brother and the brother''s son of the petitioner have

not conveyed or transferred any of their property and they have simply declared and confirmed the property which were already in possession and

enjoyment of the petitioner and the title of the property belonging to the petitioner. It is contended that as such the disputed document has

construed to be a ''deed of declaration'' confirming the earlier partition effected between the parties and as such it would come under the Article 4 to the Schedule I of the Act attracting the stamp duty of Rs. 20/- only. The learned Counsel for the petitioner lastly contended that even assuming if

not admitting that there is any doubt about the interpretation of the document in dispute, the first respondent ought to have invoked Section 57 of

the Act and referred the matter to this Court. The learned Counsel in support of his contention placed reliance on the following decisions:

The Chief Controlling Revenue Authority (Stamp Act) and Inspector General of Registration, Madras-1. and another Vs. M.S. Dhanakodi Pillai

and another, ;

T. Dulip Singh Vs. Chief Controlling Revenue Authority and Inspector General of Registration and Registrar of Assurances, ;

V.S.Somasundaram v. The Chief Controlling Revenue Authority reported in 2003 (2) L.W. 253 ; and

Chief Controlling Revenue Authority v. The Maharashtra Sugar Mills Limited reported in AIR 1950 SC 218 ;

8. Per contra, the learned Government Advocate contended that there is no illegality or infirmity in the impugned order passed by the first

respondent and the original order passed by the second respondent to the effect that the disputed document is a deed of settlement and not a mere

deed of confirmation. It is submitted that the petitioner only preferred a revision invoking Section 56(1) of the Act and not an appeal. The learned

Government Advocate would further contend that the authorities have rightly classified the document as a deed of settlement as per the definition of

the deed of settlement under the Sub-Section (24) of section 2 of the Act and chargeable to duty as per Article 58(A)(ii) of the Schedule I to the

Act, 1899. Therefore, it is submitted that the Writ Petition is liable to be dismissed as devoid of merits.

9.I have carefully considered the rival contentions put forth by either side and also thoroughly scrutinised the entire materials available on record

including the impugned orders passed by the first respondent herein confirming the order passed by the second respondent.

10. The crux of the question involved in this matter is in respect of the interpretation of the disputed document involved in this matter, namely,

whether the instrument is a ''deed of settlement'' as held by the respondents or a ''deed of confirmation'' as contended by the petitioner.

11. Before proceeding to consider the above said question, it is relevant to refer the provision for definition of ''settlement'' under the Act. Section

2(24) of the Act defines ''settlement'' which reads hereunder:

2. Definitions --

(24) Settlement ï¿½ ""Settlement"" means any non-testamentary disposition in writing of movable or immovable property, made-

(a)

(b) for the purpose of distributing property of the settlor among his family or those for whom he desired to provide, or for the purpose of providing

for some person dependent on him, or

(c)

12. A reading of the above said provision makes it crystal clear that the quintessence of the definition of the word ""settlement"" in Clause 24(b) to

Section 2 of the Act is that the property should be distributed among the members of the family of the settlor or should be ordained to be given to

near and dear to him. In the absence of any such clause express or implied to be culled out by necessary implication from out of the instrument to

conclude about distribution of property, either movable or immovable among the settlor''s heirs or relatives, it would be difficult to hold that such an

instrument should be treated as a settlement.

13. The Hon''ble Apex Court in The Madras Refineries Ltd. Vs. The Chief Controlling Revenue Authority, Board of Revenue, Madras, while

dealing with the definition of ""settlement"" also referred the definition of the term ""disposition"" used in the above said provision as hereunder:

The terms ""disposition"" has been defined in Stroud''s Judicial Dictionary as a devise ""intended to comprehend a mode by which property can pass,

whether by act of parties or by an act of the law"" and ""includes transfer and charge of property.

14. In the light of the above said definition of the term ""settlement"", let me now scrutinise and peruse the disputed document involved in this matter.

15. It is to be borne in mind that in order to interpret the nature of a document, the document should be read as a whole and any isolated portion

of the document cannot be taken into consideration. It is well-settled by a catena of decisions of the Hon''ble Apex Court that it is a sound cannon of construction that all parts of a document are to be read together ; no portion can be read disjunctly or in isolation or omitted.

16. It is also equally important that in order to interpret a document, the recitals in the said document ought to be generally safe and sole guide for

such interpretation. The Hon''ble Apex Court in the decision cited supra in the Madras Refineries''s case also held that,

In order to determine whether any, and if any, what stamp duty is chargeable upon an instrument the legal rule is that the real and true meaning of

the instrument is to be ascertained, that the description of it given in the instrument, itself by the parties is immaterial.

17. A perusal of the disputed document discloses that it is dated 30.05.1994 and titled as ""agreement deed"". There are three parties to the

document, namely, the petitioner, the petitioner''s brother and his brother''s son. The third party to the document is the petitioner herein ; the first

party is the brother of the petitioner ; the second party is the brother''s son of the petitioner. The recitals of the document reveals that all the three

parties including the petitioner were in actual possession and enjoyment of the property situated at Ravanapuram village under Survey No. 376/2

as per the partition deed dated 01.08.1949 under the document No. 2908/49. It is revealed from the impugned document that the patta was

wrongly given in the names of the parties 1 and 2, namely, the petitioner''s brother and brother''s son in respect of the portion of the property under

the above said survey Number, namely, 376/2 and as such the parties 1 and 2 have no objection for giving a separate patta in favour of the third

party, namely, the petitioner herein. Therefore, the above said recitals contained in the impugned document makes it crystal clear that there is no

distribution or disposition of the property in favour of the petitioner or any one of the parties to the impugned document and the parties 1 and 2

have not transferred or conveyed any share of their property in favour of the petitioner herein. All the three parties to the impugned document were

in continuous possession and enjoyment of their respective portion of the property as per the partition deed dated 01.08.1949 as stated above.

The ingredients of the provision u/s 2(24)(b) of the Act to the definition of settlement are not at all attracted from the recitals of the impugned

document.

18. Though the document is described as ""agreement deed"", the recitals of the document reveals that it is nothing but a deed of declaration of

confirmation of the earlier partition effected between the parties and their possession and enjoyment of their respective portion of the property and

as such it would attract stamp duty under the Article 4 to the Schedule I of the Act, namely, affidavit including the confirmation or declaration in the

case of persons by law allowed to affirm or declare instead of swearing.

19. Now coming to the impugned orders passed by the respondents 1 and 2, it is to be stated, at the outset, that both the respondents have

wrongly interpreted the instrument involved in this matter construing the said document as ""settlement deed"" ignoring and overlooking the fact that

none of the ingredients to the definition of settlement u/s 2(24)(b) of the Act made out. It is pertinent to note that both the respondents considered

and referred only an isolated portion of the impugned document in stead of reading the document as a whole. The respondents 1 and 2 have not

read the recitals together and also not considered the true character of the document. Therefore, this Court has no hesitation to hold that the

impugned orders passed by the respondents 1 and 2 are unsustainable in law and accordingly, the impugned orders passed by the first respondent

in Pa.Mu. No. 17473/E3/95 dated 14.10.1999 and the second respondent in No. 3271/83/94 dated 20.01.1995 are hereby quashed.

20. It is made clear, as already pointed out, that the impugned document would attract stamp duty under Article 4 to the Schedule I of the Act.

21. The Writ Petition ordered accordingly. No costs.

