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(2006) 09 MAD CK 0138

In the Madras High Court

Case No : W.A. No. 1557 of 1999

Usha Rajaram — APPELLANT

Vs

The Inspector General of Registration, The District Registrar and The Sub Registrar — RESPONDENT

Date of Decision : 29-09-2006

Acts Referred:

Registration Act, 1908 — Section 78
Stamp Act, 1899 — Article 62

Citation : (2007) 2 LW 984

Hon'ble Judges : P.R. Shivakumar, J;D. Murugesan, J

Bench : Division Bench

Advocate : Radhika Krishnan, for the Appellant; A. Arumugham, A.G.P., for the Respondent

Final Decision : Allowed

Judgement

D. Murugesan, J.—The writ appeal is directed against the order in the writ petition, whereby the challenge to the impugned order made by

the appellant was rejected.

2. The facts in brief are that the Annapoorani Dharma Chatram and Yajurveda Patasala Trust, Tiruchottruthurai was created under two Wills dated

15.10.1895 and 7.8.1898 executed by one Vaidyanatha Iyer, S/o Ganesan Iyer. The object of the Trust was to run a Veda Patasala at

Tiruchottruthurai and to perfrom daily pooja at the Oodaneswaraswami temple and for feeding brahmins during the Sapthasthana festival in the

Tiruvaiyaru Panchanidheswarar temple. After the demise of the said Vaidyanatha Iyer, the Trust was managed by his adopted son Ganesa Iyer.

There were some disputes between the said Ganesa Iyer and the executors of the Will of the late Vaidyanatha Iyer, and the same landed before the District Munsif Court, Tiruvaiyaru. The matter was ultimately compromised and that the management of the said Trust shall go to Ganesa Iyer

and his descendants. After the demise of Ganesa Iyer on 17.9.1945, his son G.Vaidyanatha Iyer became the managing trustee and he was

managing the Trust till the year 1986.

3. It appears that as the said Vaidyanatha Iyer was not in a position to manage the Trust due to his age, he executed a document dated 8.12.86 in

and by which he appointed the appellant by name Usha Rajaram, W/o N.Rajaram as the managing trustee of the said Trust. The said document

was produced before the Sub Registrar, Tiruvaiyaru for registration and the Sub Registrar was of the opinion that the document was a sale deed

which intended to convey the properties belonging to the Trust. As the same was disputed by the appellant, the matter was referred to the District

Registrar, Thanjavur, the second respondent herein for his opinion. The District Registrar also was of the opinion that the document produced

before the Sub Registrar, though couched as trust deed, had in fact conveyed the properties. Thereafter, an appeal was preferred by the appellant

before the Inspector General of Registration who, by his order dated 26.6.89, upheld the contention of the appellant and found that the document

would fall under Article 62(e) of the Indian Stamp Act. In spite of the said appellate order, the Sub Registrar, Tiruvaiyaru appears to have insisted

for payment of 1% registration fee on the value of the Trust property said to have been mentioned in the document. The said decision was

communicated to the appellant by order dated 7.10.89. Questioning the same, the appellant again preferred an appeal to the District Registrar,

who rejected the same. Against the said order, an appeal was also filed and the appellate authority found that the document conveyed the property

and therefore the appellant should pay 1% towards registration fee. The writ petition filed by the appellant questioning the said order was also

dismissed. Hence the present appeal.

4. We have heard the learned Counsel for the appellant and the learned Additional Government Pleader for the respondents.

5. The entire issue revolves upon the question as to what was conveyed under the deed was only the trusteeship or the trusteeship along with the

properties as well. To find out the above, we perused the deed. Insofar as the

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intention of the executant by name Ganesa Iyer to execute the deed

was that since he was unable to maintain the Trust due to his old age, the appellant being his daughter, he wanted to convey the managing

trusteeship to her. Incidentally, the Trust properties are also transferred for the purpose of achieving the object of the Trust. It appears that not only

the Sub Registrar and the District Registrar but also the Inspector General of Registration were of the opinion that by the deed the properties have

been conveyed specifically and the appellant, having furnished the value of the properties of the Trust, should pay the registration fee on the basis

of the value of the property. This opinion was arrived at apparently after reading the last but one paragraph of the trust deed. The said paragraph

cannot be read in isolation, but should be read from the earlier paragraph whereby the said Ganesa Iyer has indicated his mind not only to transfer

the trusteeship but also the right to get back the properties in respect of which litigation was pending. Only to that extent, the trust deed had

conveyed the right on the appellant. On a perusal of the document we could find that it is a deed of conveyance conveying only the trusteeship and

incidentally the trust properties for the purpose of maintaining and achieving the object of the Trust.

6. On the basis of the above factual findings, the provisions applicable to the payment of registration fee shall be considered. In fact, Article 62(e)

of the Indian Stamp Act contemplates only the payment of thirty rupees or such smaller amount as may be chargeable under Clauses (b) and (c) of

the said Article in respect of any transfer made with or without consideration of any trust property from one trustee to another trustee or from a

trustee to a beneficiary. Clause I(g) of the table of fees prepared u/s 78 of the Registration Act contemplates that in the case of a document in

which the transaction is not susceptible of money valuation, the fee leviable shall be Rs. 100/-. It is the contention of the learned Counsel for

appellant that in view of the fact that only the trusteeship has been conveyed with right to the office, the provisions of Article 62(e) of the Indian

Stamp Act could be made applicable. Even if the table of fees is taken into consideration, in terms of Clause I(g), the appellant is liable to pay only

a sum of Rs. 100. On the contrary, it is the contention of the learned Additional Government Pleader that in terms of Clause I(b) ""unless it is

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specifically provided, the consideration expressed in the document shall generally be taken to be its value for determination of the registration fee"".

According to the said clause, the registration fee chargeable is on the basis of the value of the property given by the appellant herself and therefore

only the impugned order was passed. In our opinion, Clause I(b) could be pressed into service only in such of those cases where there is no

specific provision for Charging the registration fee under the table of fees and not otherwise. Wherever the table of fees is specifically provided

under the manual, the provisions of Clause I(b) cannot be made applicable. The right of the respondents to levy and collect the registration fee

could only be traced to Clause I(g), in and by which the levy and collection of fee would be only Rs. 100/-. We do not find that the levy of fee in a

sum of Rs. 26,435/- arrived on the basis of the value of the properties which has been incidentally mentioned in the trust deed could be accepted.

7. In view of the above, we do not find any merit in the demand of Rs. 26,435/- by the respondents towards registration fee. Accordingly, the writ

appeal is allowed and the orders impugned in the writ petition are set aside. The appellant is entitled to approach the Sub Registrar, Tiruvaiyaru for

further action based on this order for registration of the document. No costs.

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