(1954) 07 MAD CK 0017

In the Madras High Court

Case No : Letters Patent Appeal No. 133 of 1951

V.S. Shanmugha Mudaliar APPELLANT

Vs

Board of Revenue, Madras and Another RESPONDENT

Date of Decision : 16-07-1954

Acts Referred:

Constitution of India, 1950 — Article 226
Stamp Act, 1899 — Section 57

Citation : AIR 1955 Mad 304 : (1955) ILR (Mad) 1037 : (1954) 67 LW 1067

Hon'ble Judges : Rajamannar, C.J;Somasundaram, J

Bench : Division Bench

Advocate : N.R. Raghavachariar, for the Appellant; Special Govt. Pleader, for the Respondent

Judgement

Rajamannar, C.J.—This appeal against the judgment of Subba Rao J. arises out of the levy of stamp duty and penalty by the Revenue

Divisional Officer, Cheyyar, on a document on the ground that it was a partition deed. There was an appeal filed against the order of the Revenue

Divisional Officer to the Board of Revenue who dismissed it on the ground that there was no reason to interfere. To quash the said order of the

Board of Revenue, there was an application for a writ of certiorari to this Court, but this Court dismissed the application on the ground that the

order of the Board of Revenue was not contrary to the principles of natural justice. Thereafter, the appellant approached the Revenue Board for a

revision of its previous order, but the Board rejected the petition. Thereupon, the appellant filed another application to this Court for a writ of

prohibition or for such other appropriate order to restrain the Board of Revenue from enforcing the stamp duty and penalty. That application was dismissed by Subba Rao J. on the ground that the result of the dismissal of the prior application for certiorari should be deemed to be that there

was a final adjudication that the stamp duty imposed by the Revenue Divisional Officer was correct.

2. With respect to the learned Judge, we think that the result of the dismissal of the prior application could not have the effect of an adjudication as

to the correctness of the stamp duty. Though the order of the Revenue Board may not be quashed by a writ of certiorari, it was certainly open to

this Court to have directed the Revenue Board to make a reference to this court u/s 57, Indian Stamp Act. This Court on the prior occasion was

not inclined to pass such an order. The decision of the Supreme Court in -- ''Chief Controlling Revenue Authority v. Maharashtra Sugar Mills

Ltd.'', AIR 1950 SC 218 (A), which has direct bearing on the facts of this case is ample authority for the position that in an appropriate case this

Court can and ought to issue a writ in the nature of mandamus to direct the Board of Revenue to make a reference to the Court. We are of opinion

that this is the course that should be followed in this case. On this application we cannot go into the merits of the levy of the stamp duty or penalty.

3. We hereby direct the Board of Revenue to refer the case with its own opinion thereon, u/s 57, Indian Stamp Act for the decision of this Court.

The appeal is allowed and there will be an order accordingly.