

Proceedings of the Chief Controlling Revenue Authority & Inspector
General of Registration, Chennai-600 028.

Present: Thiru.M.P.Sivanarul, I.A.S.,

D.Dis.No. 179/P1/2022

Date: 20.1.2023

sub Revision Petition – Pending document No.12/2018
: –Sub Registrar Office, Konnur – Revision Petition
received under section 56(1) of the Indian Stamp
Act, 1899 against the order passed by District
Registrar (Chennai North) – order issued –
regarding.

Ref : 1.District Registrar (Chennai North)
order.I.No.10283/B1/2019 dated 16.12.2021.
2.Revision petition from Mrs.C.Maheswari and two
others dated:03.01.2022

- x - x -

ORDER:

Revision Petition 2nd cited has been preferred before the Chief
Controlling Revenue Authority under section 56(1) of the Indian Stamp
Act, 1899 against the order 1st cited passed by the District Registrar,
Chennai North, wherein demand for payment of deficit stamp duty of
Rs.18,51,001/- has been raised in respect of pending document
No.P12/2018 of Sub Registrar Office Konnur.

2) Gist of the instrument:-

Document No	P12/2018, Sub Registrar Office Konnur
Title of document	RELEASE DEED
Date of Execution	23.01.2018
Executant	1. Mrs.C.Maheswari W/o late Mr.S.Chidambaram 2. Mrs.Y.Ramya D/o Late Mr.S.Chidambaram
Claimants	Mr.C.Narendren S/o Mr.S.Chidambaram
Value of Property	Rs.2,68,00,014/-
Stamp duty borne by the document	Rs.25000/-

(P.T.O)

Nature and Deficit stamp duty determined by the Sub Registrar	Non-Family Settlement under Article 58(a)(ii) of Indian Stamp Act 1899 Rs.18,51,001/- + 1999/-
---	---

The document in question purports to release 2/3 share said to be held by the Releasors over the property set out in Schedule B of the document in favour of the Releasee herein. The Releasors Mrs.C.Maheswari and Mrs.Y.Ramya herein are respectively Mother and Sister of the Releasee herein. Initially the property in question has been purchased (vide document No.1933/1989, Sub Registrar office, Ambathur) in the name of a partnership firm viz., M/s Guha Industries wherein the Releasors and Releasee were partners. When the document was presented for registration, the registering officer opined that it should be treated as settlement under Article 58(a) (ii) of the Indian Stamp Act, 1899, and accordingly impounded the same and forwarded to District Registrar Chennai (North) for further action. The District Registrar in the proceedings under section 40 of the Indian Stamp Act, 1899, considering the fact that the Partnership has not been registered under the Indian Partnership Act of 1932 and also that the property has been purchased in its name, classified the document as Settlement among Non-family members falling under Article 58(a)(ii) of the Indian Stamp Act, 1899 and passed orders requiring payment of deficit stamp duty of Rs.18,51,001/-and penalty of Rs.1999/-. Aggrieved over the same, the present revision petition has been preferred before this Authority.

3) The revision petitioners through their counsel were personally heard on 15.11.2022. The counsel filed a written statement dated 15.11.2022. The main grounds advanced by the revision petitioners are as Follows:

(P.T.O)

a) The Appellants are family members. Therefore classifying the stamp duty under Article 58 does not arise.

b) The appellants are partners in M/s.Guha industries. While Mrs.Y.Ramya (Releasor) retired from partnership in 1993. Hence release of her share of 1/3 in the property to her brother (i.e. Releasee) attracts stamp duty of Rs.25000/- under Article 55A only.

c) While registering this instant document, Mrs.C.Maheshwari is a partner of the firm. Hence releasing of her share of 1/3 in the property to her son (i.e.Releasee) attracts 3% stamp duty of Rs.4,02,000/- under Article 55D (i).

4) Contents of revision petition, connected records received from District Registrar, the argument advanced by the counsel of the petitioner have been carefully examined by me.

At the outset it is seen that, as the property has been acquired in the name of partnership firm and the partners are having joint interest over the property, and more particularly as the tone and tenor of the document being a "Release", the District Registrar's conclusion in having classified the document under Article as a settlement seems to be unsustainable. The next point which arises for consideration is that under which clauses of Article 55 the document in question would fall.

For this purpose the provisions contained in Article 55A and 55D.

(i) are Extracted hereunder:-

Article 55A. Release, that is to say any instrument (not being such a release as is provided for by section 23-A) or a release referred to in clauses B, C and D of this Article whereby a person renounces a claim upon another person or against any specified property.	* One rupee for every Rs.100 or part thereof of the market value of the property which is under release.
*Stamp duty reduced to 1% for every Rs.100/- or part thereof subject to a maximum of Rs.25, 000/- vide G.O.Ms.No.125/CT & Registration Department dated 30.09.2013 with effect from 01.10.2013.	
Article 55D(i) Release of Right in favour of partner (i)A release of right by a partner or partners in favour of other partners relinquishing his or their rights over the immovable property, when the release is between family members who constitute the partnership or when the property is movable property.	Three rupees for every Rs.100/- or part thereof the market value of the immovable property, which is the subject matter of release.

On a careful reading of the Article 55 of the Indian Stamp Act, 1899 it would become abundantly clear that clause A of Article 55 is a 'residue Clause' within the Article 55. In other words as per the scheme of Article 55, main test for classifying a Release deed under clause A of Article 55 is to check where there such document falls within the scope of Clause B or C or D of Article 55 and only if it is found that such release deed is not capable of being classified under clauses B or C or D then only the same can be classified under Article 55-A.

Further a bare reading of Article 55D(i) would undoubtedly indicate that an instrument evidencing Release of right by a partner in favour of other partner, who is a family member is chargeable to duty at the rate of 3% on the market value of the immovable property, which is the subject matter of such release.

The main contention of the petitioner is that as the Releasor Mrs.Y.Ramya had retired from the partnership in the year 1993 itself and as such release of her share should be treated as a release falling under Article 55A of the Indian Stamp Act, 1899. It is further contended that the other Releasor Mrs.C.Maheswari still continues to be a Partner of the firm and as such release of her share should be treated as Release of right by a partner or partners in favour of other partners who are Family members under Article 55D(i) of the Indian Stamp Act, 1899.

At this juncture it is noteworthy that in the verdict of the Hon'ble Supreme Court of India rendered in *S.V. Chandra Pandian And Ors vs S.V. Sivalinga Nadar And Ors* 1993 SCR (1) 58, 1993 SCC (1) 589 it has been held that;

".....since a partnership is not a legal entity but is only a compendious name each and every partner has a beneficial interest in the property of the firm even though he cannot lay a claim on any earmarked portion thereof as the same cannot be predicated. Each and every partner of a firm has an undefined interest in each and every property of the firm and it is not possible to say unless the accounts are settled and the residue of surplus determined what would be the extent of the interest of each partner in the property.

(P.T.O)

Therefore on a conjoint reading of Article 55D (i) Indian stamp Act, 1899 with the above Supreme Court Judgment it becomes crystal clear that the stamp duty should be determined for subject matter of property (i.e. whole property under release) and not by presuming and earmarking shares to the individuals.

Hence in light of the aforesaid legal position, the question of classifying the document as claimed by partly under Article 55-A and partly under Article 55-D (i) will not arise. Whereas the document in question is classifiable under Article 55D (i) of the Indian Stamp Act, 1899, and the same is leviable with Stamp Duty of 3% on the market value of the whole property which is subject matter of the document. Based on the above decision, and the order of the District Registrar is hereby ordered to be modified as above. The District Registrar shall issue revised orders accordingly.

Sd)/- M.P.Sivanarul /-20.01.2023
Chief Controlling Revenue Authority &
Inspector General of Registration.

/By Order/

For Inspector General of Registration

To

- 1) Mrs.C.Mageswari
W/o.S.Chidambaram,
No.5, 3rd Cross Orms Road,
Chennai - 600 010.
- 2) Mrs.C.Narendran
S/o.S.Chidambaram,
No.237/8A, Lakshmipuram Main Road,
(Opp.Gas Gowdown) Chembarampakkam
Tiruvallur - 600 123.

(P.T.O)

- 3) Mrs.V.Ramya
W/o.Yuvaraj,
No.74, "Raj Paris", New Avadi Road,
Chennai – 600 010
- 4) Mr.S.Saravanan
Mr.S.Venkatesh Perumal (Advocate)
New No.273 (Old No.130), 2nd Floor,
Thambu Chetty street, Parrys,
Chennai – 600 001.
- 5) District Registrar,
Chennai North
(With original File)

✓ Copy to: Stock File

Verified  RealEstate™