Proceedings of the Chief Controlling Revenue Authority and Inspector General of Registration, Chennai–600 028

Present: Thiru.Dinesh Ponraj Oliver, I.A.S.,

D.Dis.No. 24622/P1/2021 Date: 19.9.2023

Sub : Revision Petition – Pending Document No.508/2020, Joint 1 Sub Registrar Office, Chennai south – Revision Petition received under section 56(1) of the Indian Stamp Act, 1899 against the order passed by District Registrar (Chennai South) – order issued – regarding.

Ref : 1. District Registrar, Chennai (South)
Order. No. 11196/B1/2020 dated 25.3.2021.
2.Revision petition from Mr.Rangaparthasarathy and others dated 23.7.2021.
3.Hon'ble High court of Judicature at Madras
order dated 12.06.2023 in W.P.No.17227/2023.

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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 (South), wherein a demand has been raised for payment of deficit stamp duty of Rs.22,77,090/– and penalty of Rs.2,910/– in respect of document No.P.508/2020 on the file of Sub Registrar office, Joint–I Chennai South.

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2) Facts relating to the document, revision petition are as follows:–

Document No	P508/2020, Joint 1 Chennai South, Sub Registrar Office
Title of document	DEED OF SETTELMENT (Father and Mother to son's)
Date of Execution	09.11.2020
Executants	1. Mr.S.V.Rangaparthasarathy S/o late Mr.Ramanujam 2. Mrs.S.Radha (alias) Radhalakshmi W/o S.V.Rangaparthasarathy
Claimants	1. Mr.S.V.Anil Kumar 2. Mr.S.V.S.Sunil Kumar 3. Mr.Raghuram Samudrala Venkata Sons of Mr.S.V.Ranga Parthasarathy
Value of Property	Rs.1,09,62,320/–
Stamp duty borne by the document	Rs.25,000/–
Nature and Deficit stamp duty determined by the District Registrar	Non–Family Settlement under Article 58(a)(ii) of India Stamp Act, 1899 Rs.22,77,090/– + 2910/–

The deed of settlement in question purports to Settle the property set out in Schedule A of the document said to be held by the Settlors in favour of the Settlees herein (1/3rd undivided share to each of the settlees). The Settlors Mr.S.V.Rangaparthasarathy and Mrs.S.Radha @ Radhalakshmi are respectively Father and Mother of the Settlees herein.

Initially the property in question has been purchased (vide document No.2053/1981 and 144/1983, Sub Registrar Office, Joint 1 Chennai (South) by Late.Mrs.S.Andal, Mrs.S.Radha (alias) Radhalakshmi (Settlor 2) and Mr.K.Seshadri. Later the aforesaid persons while joining as partners of Unitech Engineering

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Industry, a partnership firm have used the above jointly purchased property as an asset of the firm.

Whereas Late.Mrs.S.Andal one of the partner of the firm died on 27.10.2001 leaving behind Mr.S.V.Rajagopal, Mrs.Ramadevi, Mrs.Yasodha Mohan, Mr.S.Vijayaraghavacharlu, Ms.A.Subhasree and Mr.S.V.Rangaparthasarathy (1st Settlor) as her legal heirs. Vide document No.7754 of 2019 the other legal heirs released their 1/3rd undivided share of property to and in favor of their brother Mr.S.V.Rangaparthasarathy (1st Settlor). Whereas another partner of the firm Mr.K.Seshadri had resigned on 27.01.2005 and vide document No.11765/2019 released his 1/3rd share of property to Mrs.S.Radha (alias) Radhalakshmi (2nd Settlor). The partnership firm has been dissolved on 02.11.2020 through an unregistered deed of dissolution dated 2.11.2020.The Settlors herein claiming that they have become absolute owners of the property mentioned in schedule A of the instant document have executed the same.

When the settlement document in question 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 (South) for further action. The District Registrar in the proceedings under section 40, considering the fact that the property stands in the name of partnership firm and hence cannot be considered as the property of the individual, and also relying upon Hon'ble High Court order in S.A.Kovil Nadar Vs IGR, classified the document as a Settlement in favour of

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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. 22,77,090/– and penalty of Rs.2910/.Aggrieved over the same the present revision petition has been preferred before this Authority.

3) In the Hon'ble High Court order 3rd cited it has been directed to pass orders on the revision petition within 8 weeks from the date of receipt of the copy of court order. In the personal hearing held on 1.8.2023 the counsel for the petitioner appeared and presented his arguments.

Major contentions of the revision petitioner:

a) The Property is purchased by three individuals jointly Mrs.Andal, Mr.K.Seshadri and Mrs.R.Radha (alias) Radhalakshmi through their self earnings and the Partnership firm Unitech Engineering Industry was started in 1978 even before the property was purchased.

b) The Joint owners of the scheduled property had become partners in the firm and the property was used for the business of the firm only on lease. There was no document evidencing transfer of property to the partnership firm. The property never vested in firm.

c) On the demise of Mrs.Andal, her legal heirs succeeded to her share in the property and the same was released to Mr.Ranga Parathasarathy (1st Appellant)

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by other heirs. Likewise Mr.K.Seshadri released his share in favour of Mrs.Radha, 2nd Appellant.

d) The Sub Registrar failed to note that under section 48(B)(iv) of Partnership act 1932 the individual partners become the owner of their respective share in the firm.

e) The property does not belong to the Partnership firm and thereby do not attract any stamp duty under Article 58(a)(ii) of India Stamp Act 1899 as claimed by the Sub Registrar.

f) During the course of personal hearing, the counsel for the petitioners submitted two judgments of Hon'ble Supreme Court of India viz., 1969 SCC 3 555 and 2007 AIR SC 1501 in support of their contentions.

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.

Initially the property in question has been purchased (vide document No.2053/1981 and 144/1983, Sub Registrar Office, Joint 1 Chennai South) by Late.Mrs.S.Andal, Mrs.S.Radha (alias) Radhalakshmi (Settlor 2) and Mr.K.Seshadri. Thereafter on 1.1.1980 a partnership has been created between Mrs.S.Radhalakshmi, Mr.K.Seshadri. Later on 07.10.1982 Mrs.Andal has been admitted into the partnership. Later upon death of Mrs.Andal on 27.10.2001 her

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son Mr.S.V.Rangaparthasarathy (Husband of Mrs.S.Radhalakshmi) has been inducted into the partnership. Subsequently on 27.1.2005, Mr.K.Seshadri has retired from the partnership. Vide document No.7754 of 2019, the other legal heirs of late Andal released their 1/3rd undivided share of property to and in favor of their brother Mr.S.V.Rangaparthasarathy (1st Settlor). Whereas the retired partner of the firm Mr.K.Seshadri vide document No.11765/2019 released his 1/3rd share of property to Mrs.S.Radha (alias) Radhalakshmi (2nd Settlor). Later the partnership firm has been dissolved on 02.11.2020 through an unregistered deed of dissolution dated 2.11.2020.

In respect of the contention raised by the petitioner that no document evidences transfer of property into the partnership firm, it is pertinent to note that it is a settled law that even if an immovable property is brought into the firm it does not require registration of a document.

In the page 4 of instant document the recites that *"Whereas this property with superstructure was shown as the asset of Unitech Engineering Industry, a partnership firm run by the second Settlee namely Mrs.Radha S.alias Radhalakshmi S, Mr.K.Seshadri and Late.S.Andal"* .Since the property has been shown as property of the firm in the instant document, it is crystal clear that the property in question has to be consider as property of the firm only.

Further at this juncture, referring to section 48 of the Indian partnership Act, 1932 would be useful. Section 48 of the said Act runs as under:

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48. Mode of settlement of accounts between partners.—In settling the accounts of a firm after dissolution, the following rules shall, subject to agreement by the partners, be observed:—

(a) losses, including deficiencies of capital, shall be paid first out of profits, next out of capital, and, lastly, if necessary, by the partners individually in the proportions in which they were entitled to share profits;

(b) the assets of the firm, including any sums contributed by the partners to make up deficiencies of capital, shall be applied in the following manner and order:—

(i) in paying the debts of the firm to third parties;

(ii) in paying to each partner rateably what is due to him from the firm for advances as distinguished from capital;

(iii) in paying to each partner rateably what is due to him on account of capital; and

(iv) the residue, if any, shall be divided among the partners in the proportions in which they were entitled to share profits."

On a careful reading of the said section 48, it would become clear that even after dissolution of a partnership firm, its erstwhile partners are referred and considered by the law as 'Partners' and asset of the dissolved firm is referred and

considered as 'assets of firm' for the purpose of settlement of accounts between the erstwhile partners as well as for the purpose of division or allocation of residual property. Hence the property in question is to be considered only as property of the firm.

The next point that arises is whether the document can be classified as a settlement in favour of a family member considering the relationship between the executant and claimant viz., 'Father' 'mother' and 'sons'. In this regard following points emerge for consideration,

In Hon'ble High Court order in S.A.Kovil Nadar Vs IGR, it has been held that as per the language of section 2(24) (b) of the Indian Stamp Act, for a document for being classified as settlement, the property so settled therein must be 'absolute property of the settler' and consequently a settlement deed, concerning property of the firm, executed by a partner in favour of his sons was held to be a settlement in favour of non–family member. The operative portion of the said order of the Hon'ble High Court is as follows:

"*The language of Section 2(24)(b) is clear as it uses the expression "property of the settlor". Therefore, to bring a document within the definition of Section 2(24) (b) of the Act, it is essential that the property shall be the property of the settlor and in my view an absolute property of the settlor.*"

Accordingly as the property in question is a property belonging to a partnership firm, the document in question has to be considered as Settlement in

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favour of non-family member under Article 58(a) (ii) (i.e., settlement deed executed by the firm represented by the partners in favour of individual). In view of the aforesaid legal position, the revision petition is hereby dismissed and the order of the District Registrar is upheld.

Sd/- Dinesh Ponraj Oliver /-19.09.2023
Chief Controlling Revenue Authority &
Inspector General of Registration.

/By Order/

20/9/23
District Registrar (Inspection)

20/9/23

To

1) Thiru.S.V.Ranga Parthasarathy,
Thirumathi.S.Radha,
Thiru.Dr.S.V.Anil Kumar,
Thiru.Raghuram Samudrala Venkata,
Thiru.S.V .Sunilkumar
No.7/A, Galaxy Apartments,
Sayee Nagar Annex Main Road,
Virugambakkam,
Chennai – 600 094.

2. Thiru.M.L.Ramesh, Advocate,
No.18/27, Shanthi Nagar, Korattur,
Chennai – 600 080.

3) District Registrar,
Chennai South (With original File)

Copy to: Stock File

Verified Registrate

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