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PROCEEDINGS OF THE CHIEF CONTROLLING REVENUE AUTHORITY AND
INSPECTOR GENERAL OF REGISTRATION

CHENNAI – 600 028.

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

D.Dis No.37652/P1/2021 Dated 16.02.2022

Sub: Review Petition– pending document No.P–45/2021 –Joint II
Sub Registrar Office Chennai (Central) – Review Petition
under section 56(1) of the Indian Stamp Act, 1899 against
the order passed by Joint II Sub Registrar (District Registrar
cadre) Chennai (Central) – order issued – regarding.

Ref: 1. Joint II Sub Registrar (District Registrar cadre), Chennai
(Central) order I.No.2/2021 dated 9.8.2021
2. Revision petition from Mrs.Andal Damodaran dated
1.10.2021

oOo

ORDER:

A revision petition under section 56(1) of the Indian Stamp Act, 1899, 2nd cited
has been filed against the order 1st cited passed under section 40(1) (b) of the said Act,
wherein it has been directed to pay an amount of Rs.6,75,000/- towards deficit stamp
duty and Rs.5,000/- towards penalty in respect of Pending document No.P45/2021 on
the file of Joint II Sub Registrar Office Chennai (Central).

2) Facts and circumstances relating to the revision petition is as follows:-

Document No.	P45/2021, Joint II SRO, Chennai (Central)
Date of presentation	16.4.2021
Title	SETTLEMENT DEED
Executants	Mrs.Andal Damodaran W/o Late A.R.Damaodaran
Claimant	Mr.D.Sathyanarayanan S/o. Late A.R.Damodaran
Value of property as set-forth in document	Rs.1,00,00,000/-
Stamp Borne by the deed	Rs.25,000/-
Classification of document by Sub Registrar	Settlement in favour of non-family member under Article 58(a)(ii) of the Indian Stamp Act, 1899.
Deficit stamp duty & penalty as determined by the Sub Registrar	Rs.6,75,000/- & Rs.5,000/-

(P.T.O)

Recitals of the document in question states that the land and building bearing No.8, Rutland Gate, has been obtained by Mrs. Andal Damodaran from her mother in law Mrs. Kamatchi ammal vide a WILL document dated 12.6.1972 registered as document No.14 of 1972 in the office of the Joint I SRO, Cuddalore and the same was probated through O.P.No.138 of 1984 by High Court of Madras. The document further recites that the said property was developed through Kamatchi Enterprises as a multi storied building by selling undivided share lands. Further it has been recited that out of such developed property certain properties were allotted to Mrs.Andal Damodaran and that out of such allotted properties certain portion is being settled by Mrs.Andal Damodaran through the instant Settlement deed to her son Mr.D.Sathya Narayanan. Thus the Executant had stamped the settlement document to the tune of Rs.25,000/- as a settlement in favour of a family member falling under Article 58(a) (i) of the Indian Stamp Act, 1899.

However the registering officer in his order dated 9.8.2021 has stated that the property in question which forms part of a larger property has been contributed to M/s.Kamatchi Enterprises, a Partnership firm and developed by the said firm by entering into construction agreement with M/s.Aswath Real Estate and Techno Services Private Ltd., and sold some UDS and flats to various purchasers. The said order further states that no release deed or dissolution of partnership deed has been registered and as such the remaining unsold property which is being settled through the instant document is to be treated as property of the firm. Further it has been stated that an unregistered deed of dissolution produced as evidence by the registrant does not contain any immovable property details and also that the said deed which should have been stamped under Article 55D(i) of the Indian Stamp Act is not duly stamped as such the same cannot be admitted in evidence.

On the above grounds the Sub Registrar (District Registrar Cadre) has treated the document as settlement in favour of non-family member under Article 58(a) (ii) of the Indian Stamp Act, 1899. Aggrieved over this decision, present revision petition has been filed. Revision petitioner represented by her Advocate was heard on 2.12.2021.

3) Main contentions of the Revision petitioner are as follows:

- i. The partnership was dissolved on 31.12.2020 which was registered with in Form A kept by the Registrar of Firms, Chennai (North) on 23.3.2021. Such dissolution is not compulsorily registerable under Registration Act, 1908.

(P.T.O)

- ii. Share in a partnership is a 'movable property' and the value of share can be determined by the partners themselves.
- iii. Partnership is not a legal personality. Hence cannot hold property. Property of the partnership is not held by the firm but by the partners.
- iv. As per Hon'ble Supreme court verdict in Narayanappa Vs Bhaskara Krishnappa AIR 1968 SC 1300, partnership property will vest in all the partners.
- v. As per Hon'ble High Court order in T.K.Subramaniam Vs CCRA (AIR 1987 Mad 260) release deed executed by partners cannot be treated as 'Conveyance' but only as Release deed.
- vi. The registering officer's observation that immovable property details has not been mentioned in the deed of dissolution is against the cardinal principles of Partnership Act that share in the partnership is only a movable property and hence the partners have discretion to determine the value of the share.
- vii. The observation of the registering officer that shares of Mr.Aswathnaryan and Mr.Satya naryan have not been released by them and as such settler cannot have right over entire property is wrong for the reason that Mr.Aswath Narayanan has resigned in the year 1989 and Mr.Satyanarayanan has retired in the year 1998.
- viii. A similar case vide CCRA Proceedings No.56851/P1/2010 dated 23.3.2011 supports the revision petition. Further IGR order No.22897/C3/01 dated 4.4.2002 holds that a proprietor of a proprietary concern has every right to sell or settle the properties of the proprietary ship in any way he decided.

Further during the course of hearing held on 2.12.2021, the counsel of the petitioner relied upon a judgment of Hon'ble High Court of Madras in AIR 1955 Mad 641 (Board of Revenue Vs V.M.Murugesu Mudaliar) to claim that 'a Partnership release between family members will not fall under the headings of Dissolution of Partnership or Conveyance, but under the heading Release.'

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

At the outset it is seen that the revision petitioner has not denied the findings of registering officer that the property in question was initially contributed to the partnership firm. On the other hand the revision petitioner claims that consequent to dissolution of firm, the property becomes property of the individual. In the above backdrop following points arise for consideration;

- a) Whether the contention of the petitioner that document in question is classifiable as 'Release' in light of AIR 1955 Mad 641 is correct.
- b) Whether in light of the dissolution of firm said to have been effected through an unregistered deed, the property after such dissolution has to be considered as property of the individuals (erstwhile partners) or still to be considered as property of the firm.
- c) Whether the property in question has to be treated as property of the firm and as a consequence, the deed in question ought to be treated as settlement made by the firm in favour of individual, i.e., under Article 58(a) (ii) of the Indian Stamp Act, 1899, as decided by the Registering officer.

As far as point (a) above, it is seen that the findings in AIR 1955 Mad 641 was on a reference made by the Board of Revenue under Section 57 of the Stamp Act. In the said case, the property involved in the transaction was owned by five persons, as co-owners, by virtue of being partners of a registered firm by name "Gudiyatham Lungi Company". Three out of the said five partners retired from the firm and after such retirement, they executed a document dated 23.5.1949 releasing and relinquishing their 3/5 shares in the said property to and in favour of the remaining two partners. The Board of Revenue was of the opinion that the document in question had three facets namely, it purported to be (i) a deed of dissolution of partnership, (ii) an instrument of release as well as (iii) a deed of conveyance and hence it was chargeable to duty under each of the Articles relating to a dissolution, release and conveyance. After rejecting the theory that the document could be a deed of dissolution of partnership, the Full Bench went on to decide whether it was a conveyance or release and the Full Bench held as follows:

"It only remains to consider whether the instrument falls within the definition of conveyance under Article 19 of Sch. I-A of the Stamp Act. We are of opinion that it does not. The document proceeds on the footing that the five persons, namely, the three

executants and the two persons in whose favour the instrument was executed, who were carrying on business of that firm owned the property as co-owners, the executants being entitled to a three-fifths share and the other two being entitled to the remaining two-fifths share. It is not the case of any one that there was a division of the property by metes and bounds and in accordance with the said shares. In such circumstances the document in and by which the co-owner purports to abandon or relinquish his claim to the share to which he would be entitled would be in the nature of a release within Article 44.

In such a case there need be no conveyance as such by one of the co-owners in favour of the other co-owners. Each co-owner in theory is entitled to enjoy the entire property in part and in whole. It is not therefore necessary for one of the co-owners to convey his interest to the other co-owner. It is sufficient if he releases his interest. The result of such release would be the enlargement of the share of the other co-owner. There can be no release by one person in favour of another, who is not already entitled to the property as a co-owner."

Thus it could be seen that the document dealt under AIR 1955 Mad 641 was styled as "Release" and the Revenue Board was of the view that document was multifarious in nature viz., Dissolution of Partnership cum Release cum Conveyance, whereas the High Court was of the view that it was only a "Release". Moreover the aforesaid judgment pertains to a period when there was no separate charging Article under the Indian Stamp Act, 1899 for Release deeds between the partners of a partnership firm. (Article 55-D was inserted vide Act No.1 of 2000) But in the case on hand while the tone and tenor of the document is settlement, the Registering officer has classified it as 'settlement in favour of non-family member' under Article 58(a) (ii). Therefore application of AIR 1955 Mad 641 in the case on hand does not arise.

As far as point (b) above, referring to section 48 of the Indian partnership Act, 1932 would be useful. Section 48 of the said Act runs as under:

'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 close 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 assets 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.

Accordingly, In CCRA orders No.49299/P1/2011 dated 12.12.2011 and 46538/P1/2016 dated 17.7.2018, release deeds executed after the dissolution of the firm have been classified either under Article 55D(i) or 55D(ii) as the case may be, but not under Article 55A or 55C. While so, the document in question which deals with the property belonging to a firm has been styled as 'Settlement deed'. Had the tone and tenor of the instant document been styled as Release deed, the same might have fallen under Article 55-D (i) of the Indian Stamp Act, 1899, i.e., as 'Release of right in favour of partner who is a family member'. But the executant (Revision Petitioner) has chosen to style the tone and tenor of the document only as a 'Settlement'. Hence the question of classifying the instant document either under Article 55A or Article 55D does not arise.

As far as the next point (c) above, i.e., whether the document can be classified as a settlement in favour of a family member considering the relationship between the executant and claimant viz., 'mother' and 'son', 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 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.

Accordingly as the property in question is a property belonging to a partnership firm, the document in question does not answer the requirement of being absolute property of the revision petitioner, consequently it has to be considered as Settlement in favour of non-family member under Article 58(a) (ii) (i.e., settlement by the firm in favour of individual)

At this juncture it is pertinent to mention that the CCRA Proceedings No.56851/P1/2010 dated 23.3.2011 relied upon by the revision petitioner has been passed before the findings rendered in Hon'ble High Court order in S.A.Kovil Nadar Vs IGR dated 30.9.2011. Moreover IGR order No.22897/C3/O1 dated 4.4.2002 relied upon by the revision petitioner relates to property belonging to a sole proprietary concern. Hence aforesaid orders do not render any assistance to the case on hand.

In view of the aforesaid legal position, the document in question is classifiable as a deed of Settlement in favour of non-family member under Article 58(a) (ii) of the Indian Stamp Act, 1899. Based on the above decision, the revision petition is hereby dismissed and the order of the District Registrar is upheld.

Sd/- M.P.Sivanarul/16/02/2022

Chief Controlling Revenue Authority &
Inspector General of Registration

/By order/

For Inspector General of Registration

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18/02/22

To

1. Mrs.Andal Damodaran,
W/o. A.R.Damodaran,
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2. Mr.A.Arumuga Nainar, M.A., B.L., L.L.M.,
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3. Sub Registrar (In the cadre of District Registrar),
Jt II Sub Registrar Office, Chennai (Central)
(With original file)

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