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. 2965/P1/2019 Date: 20.1.2023

sub : Revision Petition – Pending document No.212/2015 –Sub Registrar Office, Thiruvottriyur – 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.l.No.1676/B1/2017 dated 30.06.2017.

2.Revision petition from Mrs.D.Sakku bai dated:28.12.2018

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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 North, wherein demand for payment of deficit stamp duty of Rs.5,75,000/- has been raised in respect of pending document No.P212/2015 of Sub Registrar, Thiruvottiyur.

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

Document No	P212/2015, Sub Registrar office Thiruvottiyur
Title of document	SETTLEMENT DEED
Date of Execution	28.12.2015
Executant	Mrs.D.Sakku bai W/o late Mr.M.Devarajulu
Claimants	Mr.M.D.Ravikumar S/o late Mr.M.Devarajulu
Value of the property as set forth in the document	Rs.75,00,000/-
Stamp duty borne by the document	Rs.25,000/-

(P.T.O)

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Nature of document as determined by the District Registrar	Non-Family Settlement under Article 58(a)(ii) of Indian Stamp Act, 1899
Deficit stamp duty & penalty determined by the District Registrar	Rs.5,75,000/- + 1000/-

The document in question purports to settle 50% Undivided share of land and building held by the settler over the property set out in Schedule B in favour of the settlee herein. The settler Mrs.D.Sakku bai herein is the mother of the Settlee. Initially the Property in question has been purchased by Mr.D.Ravikumar (vide document No.1792/1987, Sub Registrar office, Thiruvottiyur) in the name of a partnership firm viz., M/s R.K.B Transport wherein the settler and settlee herein were partners. Thus the Property is purchased in the name of partnership firm and the firm is said to be dissolved as per deed of dissolution dated 23.12.2015.

On examining the subject document the District Registrar has classified the same as a 'Settlement in favour of non-family member' chargeable to stamp duty as prescribed under Article 58(a)(ii) of Indian Stamp Act, 1899 and adduced the following reasons in support of his decision :-

In CCRA order No.1416/P1/2014 dated 17.09.2014 where it is ordered as "*If the principles of the English law are to be followed it would appear that the partners of the firm can convert immovable property belonging to the firm in to their personal property only by means of an instrument in writing in point of fact of conversion of firms property into personal property of the partners involves declaration that the interest of the firm in the property is extinguished and that thenceforward the property could belong to partners in their individual capacity according to their shares in the firm*"

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The District Registrar came to the conclusion that the property belongs only to the firm and it has not been transferred to the settler through any registered document and hence classified the document as a 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.5,75,000/-and penalty of Rs.1000/-. Aggrieved over the same the present revision petition has been preferred before CCRA.

3) The revision petitioners through their counsel were personally heard on 22.12.2022. The main grounds of revision petition are as follows:

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

b) Further petitioner has placed reliance on following orders:

i) IGR order 56851/P1/2010 dated 23.02.2011.

ii) IGR order 16332/C3/2001 dated 01.10.2002.

iii) IGR order 22897/C3/2001 dated 04.04.2002.

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

At the outset it is seen that the revision petitioner has not denied the fact that the property in question was initially acquired in the name of the partnership firm. But on the other hand the revision petitioner claims that consequent to dissolution of firm, the property becomes property of the individuals. In the above backdrop, following points arise for consideration;

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a) Whether the property of the firm after its dissolution has to be considered as property of the individuals (erstwhile partners) or still to be considered as property of the firm.

b) If the property in question has to be treated as property of the firm and as a consequence, whether the deed in question ought to be treated as a settlement made by the firm in favour of its partner, 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, 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."

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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.

As far as the next point (b) 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. 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."

At this juncture it is pertinent to mention that the CCRA Proceedings No.56851/P1/2010 dated 23.3.2011, 16332/C3/2001 dated 1.10.2002 relied upon by the revision petitioner have been passed before

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the findings rendered in Hon'ble High Court order in S.A.Kovil Nadar Vs IGR dated 30.9.2011. Moreover CCRA order No.22897/C3/01 dated 4.4.2002 relied upon by the revision petitioner relates to a property belonging to a sole proprietary concern. Hence aforesaid orders do not render any assistance to the claim of the petitioner.

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). In view of the aforesaid legal position, the revision petition is hereby dismissed and the order of the District Registrar is upheld.

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

/By Order/

For Inspector General of Registration

To

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3) District Registrar,
Chennai North (With original File)
Copy to: Stock File

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