

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.40076/P1/2021 Dated 12.10.2022

Sub: Revision Petition–Pending Document No.P.26/2015–
Sub Registrar Office, Kolathur– Revision Petition
under section 56(1)of the Indian Stamp Act, 1899
against the order passed by District Registrar Cadre,
Pudukottai– order issued – regarding.

Ref: 1. District Registrar, Pudukottai order No.1301/B1/2020
dated 27.8.2021.
2. Revision Petition from Mr.R.G.Nilesh Parekh
dated.6.10.2021

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ORDER:

A revision petition under section 56(1) of the Indian Stamp Act, 1899 2nd
cited has been filed before the Chief Controlling Revenue Authority against the
order 1st cited. In the said order it has been ordered to pay deficit stamp duty of
Rs.25,40,621/- and penalty of Rs.379/-in respect of pending document
No.P26/2015 on the file of Sub Registrar office, Kolathur.

2) Facts of the Revision Petition are as follows:–

Document No.	P26/2015
Office	Sub Registrar Office, Kolathur.
Date of Execution	28.5.2015
Title of document	Gift Settlement Deed (Father To Son)
Executants	Mr.K.Ratan Chand Jain S/o.Late.D.Kavarlal
Claimant	Mr.R.G.Neelesh Parekh S/o.Mr.Ratan Chand Jain

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Value of Property set–forth in the document	Immovable Property – Rs.3.15,01,250/– Movable Property – Rs.72,10,515/–
Stamp Borne by the deed	Rs.25,000/–
Classification of document, Deficit stamp duty & Penalty as determined by the District Registrar	Settlement in favour of a person who is not a family member. {Article 58(a) (ii)} Rs.25,40,621/– & Rs.379/–

The underlying property which is subject matter of document in question was initially acquired in the name of a Partnership Firm "JAIN PAPER PRODUCTS". (Later name of the firm changed as M/s PACKS–FIELD"). While so the document in question has been executed by one of the partners thereby settling the property in favour of his son under the pretext that the executant has become sole owner of the property, since all the other partners have retired from the partnership by releasing their right over the property. The said document was impounded by the registering officer and sent to District Registrar, Pudukottai for further action. The District Registrar in his order dated 27.8.2021 passed under section 40(1) (b) of the Indian Stamp Act, 1899 classified the document as a Settlement in favour of a person who is not a family member {Article 58(a) (ii)} and directed the registrant to pay deficit stamp duty of Rs.25,40,621/– & penalty of Rs.379/– on the following grounds:

a) Deeds of Release executed by other partners are not duly stamped and hence in light of section 35 of the Indian Stamp Act, 1899, these release deeds cannot be taken in evidence.

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b) As per order of the Hon'ble High Court in S.A.Kovil Nadar Vs IGR & Sub Registrar, Purasawalkam CDJ 2011 MHC 5322 document is classifiable as settlement in favour of a person who is not a family member.

Aggrieved over the above decision present revision petition has been filed.

3) The revision petitioner was heard on 20.6.2022.

Main arguments advanced by the petitioner;

- i. A partnership firm is not an independent legal entity. (Civil Appeal No.5680-81 of 1994)
- ii. As per AIR 1969, Supreme Court, 1238, IGR orders No.40865/P1/14 dated 14.10.2014 and 56851/P1/2010 dated 27.2.2011, order of the District Registrar is not sustainable.
- iii. The order of the single judge in S.A.Kovil Nadar Vs IGR & Sub Registrar, Purasawalkam is not binding in light of Full Bench judgment in R.C.No.3 of 1999 dated 22.12.2000.
- iv. Further the petitioner has requested to treat submissions made in his letters dated 4.12.2020, etc submitted before the District Registrar as part and parcel of revision petition. Main averments made in those petitions are as follows:
 - a) In Addanki Narayanappa & Anr Vs Bhaskara Krishtappa & 13 ors, 1966 AIR 1300 Hon'ble Supreme Court have held that unregistered deed of Release concerning partnership property is admissible in evidence.

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- b) As per Hon'ble Supreme Court verdict in District Registrar and Collector Vs Canara Bank, 2004 (5) CTC 376 (SC) 'Possessing a document not duly stamped is not by itself an offence'
- c) Hon'ble High Court of Madras in D.B.Prakashchand Jain & R.Ramesh Vs The Inspector General of Registration (AIR 2014 Mad 161) have held that registering authorities are not entitled to go into the validity of the title to the property conveyed and sought to be registered.
- d) Hon'ble Supreme Court in Satyapal Anand Vs the State of M.P & Ors AIR 2014 Mad 161 have held that registering officer is not expected to evaluate the title.

4) Contents of the revision petition, connected records, the arguments advanced by the petitioner during the personal hearing have been carefully examined by me and following conclusions are arrived at:

- a) At the outset it is seen that the declaration deed which witnesses release of right over the property by other partners in favour of the settler herein is not duly stamped. Hence as per the provisions contained in Section 35 of the Indian Stamp Act, 1899 such deed cannot be admitted as evidence. Therefore the so claimed release of right said to have been made by other partners is not recognizable in the eye of law.

None of the case laws relied upon by the petitioner hold that a deed of release executed by a partner need not be stamped but only holds that such release deed does not require compulsory registration. Consequently the various case laws relied upon by the petitioner also become out of context.

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In this context it would be pertinent to note that the provisions of the Stamp Act and the Registration Act are not in '*pari materia*' and hence it would be incorrect to say that an instrument need not be stamped in accordance with the Indian Stamp Act merely because it does not require compulsory registration (as held by Hon'ble High Court in Company Application No.1928 of 2009 dated 23.12.2009.)

Further order of the single judge in D.B.Prakashchand Jain & R.Ramesh Vs The Inspector General of Registration (AIR 2014 Mad 161) relied upon by the petitioner has been set aside by the Division Bench of Hon'ble Madras High Court vide its judgment dated 16.09.2021 in W.A.No.570 &571 of 2014.

b) Moreover Section 48 of the Indian partnership Act, 1932 stipulates as follows:

'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

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(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 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.

c) 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. Hence it is considered that order of Hon'ble High Court in S.A.Kovil Nadar Vs IGR squarely applies to the case on hand.

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 well before the findings rendered by Hon'ble High Court order in S.A.Kovil Nadar Vs Inspector General of Registration dated 30.9.2011. While so Inspector General of Registration order No.40865/P1/14 dated 14.10.2014 relied upon by the petitioner also does not render any assistance to the case on hand for the reason that said order holds that even when partition of firm property is made

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consequent to the dissolution of a firm, between partners such instrument is liable to 8% stamp duty under Article 46B(i) of the Indian Stamp Act, 1899. Further the document in question involves settlement of firm party by one of the partners in favour of his son who is not a partner of the firm.

In view of the legal position discussed supra, 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 Settler herein, consequently the document in question is classifiable as Settlement in favour of non-family member under Article 58(a) (ii) (i.e., settlement by the firm in favour of individual) Based on the above decision, the revision petition is hereby dismissed and the order of the District Registrar is upheld.

(Sd)/– M.P.Sivanarul/12.10.2022
Chief Controlling Revenue Authority &
Inspector General of Registration.

/By Order/

For Inspector General of Registration.

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14.10.22

To

1. Mr.R.G.Nilesh Parekh,
S/o.K.Rattan Chand,
C-199, Kavimani Street,
Anna Nagar, Thennur,
Tiruchirapalli- 620 017.
2. District Registrar,
Pudukottai. (with original file)
3. Copy to: Stock file.

