E. Samy Vs. E. Muthaih,

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SooperKanoon Citation : sooperkanoon.com/838926

Court : Chennai

Decided On : Jun-28-2007

Reported in : (2007)5MLJ929

Judge : S. Nagamuthu, J.

Acts : Indian Stamp Act, 1899 - Sections 2(15) - Schedule - Article 45; Tamil Nadu Inams (Assessment) Act, 1956; Constitution of India - Article 227

Appeal No. : Civil Revision Petition PD(MD) No. 251 of 2005

Appellant : E. Samy

Respondent : E. Muthaih, ;shanmugavel, ;nambi and ;vellathai

Advocate for Def. : No Appearance

Advocate for Pet/Ap. : A. Arumugam, Adv.

Disposition : Petition allowed

Judgement :
ORDER

S. Nagamuthu, J.

1. The petitioner who is the plaintiff in O.S. No. 10 of 2000 has come forward with this revision under Article 227 of the Constitution of India, challenging the order

dated 22.11.2004 made in a memo filed by the petitioner.

2. The above suit in O.S. No. 10 of 2000 was filed by the petitioner/plaintiff for partition. The respondents are the defendants. On trial, preliminary decree was passed and then a final decree was also passed. Later, the Court has directed the petitioner to pay necessary stamp duty for drafting final decree. At that stage, the petitioner filed a memo of calculation regarding stamp duty to be paid by him. In the said memo, the petitioner has calculated the stamp duty on the basis of the market value as required under proviso (b) to Article 45 of Schedule I of the Indian Stamp Act, 1899. But the learned Subordinate Judge has rejected the memo with an observation that the petitioner should pay stamp duty for the actual market value of his share of the property. Challenging the said order passed on the memo, the petitioner has come forward with this revision petition.

3. The learned Counsel for the petitioner would draw my attention to Section 2(15) of the Indian Stamp Act and Proviso (b) to Article 45 of Schedule I of the said Act.

4. Section 2(15) of the said Act defines the Instrument of Partition which reads as follows:

15. Instrument of partition:- 'Instrument of Partition' means any instrument whereby co-owners of any property divide or agree to divide such property in severalty and includes also a final order for effecting a partition passed by any revenue authority or any civil Court and an award by an arbitrator directing a partition.

5. A plain reading of this provision would make it clear that final decree passed by a Civil Court is an instrument of partition for the purpose of this Act.

6. Proviso (b) to Article 45 of Schedule I of the said Act deals with the mode of calculation of the stamp duty in cases of instrument of partition, which is as follows:

45. Partition:- Instrument of the same duty as a Bottomry Bond (No. 16) for the amount of the value of the separated share or shares of the property.

N.B. - The largest share remaining after the property is partitioned (or if there are two or more shares of equal value and not smaller than any of the other shares, then one such equal shares) shall be deemed to be that from which the other shares are separated:

Provided always that:

(a) When an instrument of partition containing an agreement to divide property in severalty is executed and a partition is effected in pursuance of such agreement, the duty chargeable upon the instrument, effecting such partition shall be reduced by the amount of duty paid in respect of the first instrument but shall not be less than (two rupees fifty paise);

(b) Where the land is held on Revenue settlement and paying the full assessment or is an Inam land assessed under the Tamil Nadu Inams (Assessment) Act, 1956 (Tamil Nadu Act XL of 1956) the value for the purpose of duty shall be calculated at twenty five times the annual revenue.

7. Again a plain reading of Proviso (b) to Article 45 would make it clear that the duty shall be calculated at twenty five times of annual revenue since the properties involved in this case are assessed to revenue.

8. The learned Counsel for the petitioner would clarify that some of the properties fall under Proviso (b) to Article 45 of the said Act and the remaining properties do not fall under the said provision. Therefore, the Trial Court should have calculated the stamp duty as required under Proviso (b) to Article 45 in respect of the properties which are assessed to revenue by the Government and on the basis of the actual market value with reference to other properties. The lower Court has however failed to do so by simply rejecting the memo.

9. In these circumstances, the order made by the lower Court on the memo is set aside with the following direction:

The learned Subordinate Judge shall calculate for the purpose of stamp duty, the market value of the properties which are subject to annual revenue in accordance with proviso (b) to Article 45 and in respect of the other properties shall calculate on the basis of the actual market value.

10. With the above observation, the Civil Revision Petition is allowed. No costs.