

V.Vanaja Vs. the Inspector General of Registration and ors.

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Court : Chennai

Decided On : Apr-18-2012

Judge : K.Chandru, J.

Acts : [Hindu Adoptions and Maintenance Act, 1956](#) - Section 47A(3), 12, 14(4);
[Constitution of India](#) - Articles 226

Appeal No. : W.P.No.9072 of 2012 and M.P.No.1 of 2012

Appellant : V.Vanaja

Respondent : The Inspector General of Registration and ors.

Advocate for Def. : Mr.S.Gunasekaran, Adv

Advocate for Pet/Ap. : Mr.D.Ravichander, Adv

Judgement :

This writ petition is preferred under Article 226 of the [Constitution of India](#) praying for the issue of a writ of certiorari to call for the records of the impugned order dated /03/2012 passed by the second respondent vide his proceedings in Na.Ka.C.Pa.No.A3/79/11 and quash the same.

ORDER

1. The petitioner has come forward with the present writ petition seeking to challenge an order of the second respondent, i.e., District Revenue Officer (Stamps), Chennai-1, dated Nil (March, 2012) in demanding deficit stamp duty of Rs.1,35,360/- in respect of document No.1150/09.

2. The contention of the petitioner was that the petitioner was the natural mother of one Rajesh. Out of love and affection, her son Rajesh had wanted to settle his property in her favour. Pursuant to the same, he had settled the property through his power agent D.Venugopal in her favour vide settlement deed, dated 13.04.2009. It was registered as Document No.1156/2009 on the file of the Sub Registrar, Anna Nagar. The document was duly registered after payment of necessary stamp duty and registration charges. The document was also returned to the petitioner. Since the date of settlement, she is in possession and enjoyment of the property. While so, she had received a notice, dated 18.11.2010 from the third respondent, wherein she was asked to pay Rs.78,000/- as deficit amount (Rs.70000/- being the deficit stamp duty and Rs.8000/- towards deficit registration charges) and thereafter to receive the original document with necessary certificate pursuant to the said payment. The said order came to be issued on the basis of the audit objection made in the department. The petitioner was informed that failure to pay the stamp duty will result in invocation of revenue recovery proceedings. The demand made by the respondents was illegal and was passed without affording an opportunity to the petitioner. It was also silent as to on what basis the deficit stamp duty and registration charges were demanded from her. Even though she had sent an objection on 24.11.2010, they remained silent without any response and they have not provided any clarification. Since she is in possession of green card, she is mandated to stay in the USA for a period of six months every year. Therefore, she could not do any follow up action. It is under these circumstances, the impugned order came to be passed. She was forced to stay in the US from 04.04.2012 to 31.01.2013. Hence the demand was illegal.

3. It is stated by her that the property belonged to one late Sarojini, D/o.Late T.K.Rajagopalan. The late Sarojini was a spinster. Out of love and affection, she adopted the petitioner's son Rajesh vide adoption deed dated 26.10.1979. It was also registered on the file of the Additional Sub Registrar Office, Periamet as

document No.278 of 1979. The said Sarojini left behind her the house property to the said Rajesh being the sole surviving legal heir. Thus, the petitioner's biological son had inherited the said property. Since then, he has been in enjoyment of the property.

4. In the writ petition, notice on admission was granted on 09.09.2012. The learned Special Government Pleader was directed to get instructions. Accordingly, the learned Special Government Pleader produced the correspondence with reference to the demand of levy of deficit stamp duty.

5. On 30.9.2011, the Sub Registrar (In-charge), Sub Registrar Office, Anna Nagar sent a letter to the District Revenue Officer (Stamps), Chennai stating that the document, i.e., the settlement deed was submitted for registration on 13.4.2009. It was written by V.Rajesh, S/o.R.Sarojini through his power agent D.Venugopal. The document was written in favour of the petitioner Vanaja, W/o.D.Venugopal. It was an house property situated in the 6th Street, B-Block, Anna Nagar East. The value of the settlement was filed as Rs.10 lakhs in favour of the biological mother. But the market value of the property worked out to Rs.18,17,000/-. For the landed property alone, it worked out to Rs.1,45,360/-, which was not included in the value of settlement. Therefore, the stamp duty to be leviable was Rs.1,35,360/-. The Sub Registrar made remarks that once a person is given in adoption to an another couple, it cannot be said that biological mother is the near relative. Hence it was sent for valuation under Section 47A(3) of the Act. The Sub Registrar did not make any field inspection and had fixed the value at Rs.2300/- per sq.ft. Hence the provisional valuation was made. Since it was a misclassification and the document was given in favour of the petitioner being the biological mother, there is no question of the petitioner being treated as a part of the family. Hence it requires deficit stamp duty to be paid. It is in that view of the matter, an appropriate direction was directed to be initiated.

6. Apart from the true valuation of the property, the question arises for consideration was after giving in adoption whether the petitioner being the biological mother is entitled to claim herself as a part of the family as provided under Article 58 dealing with the settlement, wherein the explanation appended to

Article 58(a)(i) found in Schedule I of the Stamp Act reads as follows:

"Explanation.-

For the purpose of this Article, the word "family" means father, mother, husband, wife, son, daughter, grand child. In the case of any one whose personal law permits adoption, "father" shall include an adoptive father, "mother" an adoptive mother, "son" an adopted son and "daughter" an adopted daughter."

7. The respondents are correct in stating that the petitioner will not come within the said definition because the effect of adoption among Hindus is covered by the provisions of the [Hindu Adoptions and Maintenance Act, 1956](#). Section 12 of the Act deals with the effects of adoption, which reads as follows :

"12.Effects of adoption.-An adopted child shall be deemed to be the child of his or her adoptive father or mother for all purposes with effect from the date of the adoption and from such date all the ties of the child in the family of his or her birth shall be deemed to be severed and replaced by those created by the adoption in the adoptive family :

Provided that -

(a)the child cannot marry any person whom he or she could not have married if he or she had continued in the family of his or her birth;

(b)any property which vested in the adopted child before the adoption shall continue to vest in such person subject to the obligations, if any, attaching to the ownership of such property, including the obligation to maintain relatives in the family of his or her birth;

(c)the adopted child shall not divest any person of any estate which vested in him or her before the adoption."

8.Under HAMA Act, the Supreme Court vide its judgment in Chandan Bilasini v. Aftabuddin Khan reported in (1996) 7 SCC 13 has held that the adopted child severs his ties with his natural family and became a part of the adoptive family. In paragraphs 6 and 7, it was observed as follows:

6. On adoption of the respondent Amaresh Sarkar by the widow of the deceased Kalikrishna Sarkar, the adopted son Amaresh Sarkar severed his ties with his natural family and became a part of the adoptive family. As such, Chandan Bilasini Dasi became his mother and Kalikrishna became his deceased father. Section 12 of the Hindu Adoptions and Maintenance Act clearly provides that an adopted child shall be deemed to be the child of his adoptive father or mother for all purposes with effect from the date of the adoption and from such date all ties of the child in the family of his or her birth shall be deemed to be severed and replaced by those created by the adoption in the adoptive family. As a consequence, when a widow adopts a child, the child not merely acquires an adoptive mother but also acquires other relationships in the adoptive family, unless there is anything to the contrary in the Hindu Adoptions and Maintenance Act.

7. This position is reinforced by Section 14(4) which sets out that where a widow or an unmarried woman adopts a child, any husband whom she marries subsequently shall be deemed to be the step-father of the adopted child. In other words, the family relationship gets crystallised as at the date of adoption. The child will be deemed to be the child of the parent who adopts the child and the existing or deceased spouse of that parent (as the case may be), if any, will be considered the child's father or mother. A spouse subsequently acquired by the adoptive parent becomes the step-parent of the adopted child. The adopted child, however, cannot divest any person of any property already vested in that person [Section 12(c)]."(Emphasis added)

9. Therefore, the adopted child had acquired all rights of biological child in the family who adopted him and also renounces all his right in the family which gave him in adoption. Therefore, if the adoption is held to be valid, the petitioner's biological son having been adopted by late R.Sarojini, ceases to have any relationship with the biological mother as he has been transplanted into the family of late Sarojini. Therefore, when he had settled the property which he had acquired through late Sarojini in favour of his biological mother, certainly as per the definition found under Section 12 of HAMA Act, the petitioner will not come within the definition of the term "family". The explanation in the Act has been brought in tune with Section 12 of the HAMA Act. Hence the petitioner cannot

claim any concession in the stamp duty by claiming that she is a member of the "family" of her biological son Rajesh.

10.The question raised herein is no longer res integra. A division bench of this court vide its judgment in The District Registrar, Tindivanam, Villupuram District and another Vs. V.Ranganathan and another reported in 2008 (1) CTC 1 in relation to Article 45(a) of Schedule-I, which borrowed the term "family" from the explanation to Article 58, in paragraph 13 of the order had observed as follows :

13.....Under such circumstances, it is not possible to order the release of the documents, especially after an order has been passed by the first appellant. Admittedly, the respondents have filed an Appeal to the Chief Controlling Authority, viz., Inspector General of Registration, on 19.4.2006. Therefore, the respondents will have to await the outcome of the said Appeal and the question of return of documents could be considered only after final orders are passed on the Appeal.

11. In the light of the above, the petitioner is bound by pay the deficit stamp duty and she cannot feign ignorance about the nature of demand made by the respondents. Hence the writ petition will stand dismissed. No costs. Consequently connected miscellaneous petition stands closed.

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